

SUPREME COURT OF NOVA SCOTIA

Citation: *C.B. v. N.I.*, 2022 NSSC 290

Date: 20220901

Docket: *SFHP*SA, No. 107325

Registry: Halifax

Between:

C.B.

Applicant

v.

N.I.

Respondent

Judge: The Honourable Justice Cindy G. Cormier

Heard: February 14, 15, 16, & 17, 2022, in Halifax, Nova Scotia

Final Written Submissions: February 25, 2022 for the Applicant
February 28, 2022 for the Respondent

Counsel: William Leahey, for the Applicant
Kerri-Ann Robson, for the Defendant

By the Court:

Issues

[1] In 2007, the parties, C.B. and N.I., began living together. Their son was born in 2008 and their daughter was born in 2012.

[2] In May 2017, the parties separated. Both were working full time and they agreed on a shared parenting arrangement for their children. Initially, they alternated time with the children in the family home on a “2, 2, and 3 day rotation.” They continued with the same schedule when C.B. moved into her own home approximately five minutes from the family home. The parties shared the children’s child-care provider, and they at times attended their children’s medical appointments and school meetings together.

[3] N.I. acknowledged there were some issues related to the number of transitions between the homes, but he stated that he believed the children appeared to enjoy spending time with both parties. Reports were received of historical and ongoing mostly verbal conflict between the parties, including conflict on social media. N.I. acknowledged he has suffered from symptoms of ADD, he has experienced symptoms of anxiety, and he has suffered from “a minor case of depression.”

[4] Since June 2020, the parties' children have lived with C.B. primarily. She takes the position that their children are afraid of N.I. and should not be forced to have contact with him.

[5] N.I. has argued that C.B. has unilaterally and without good reason kept their children from him. He is seeking: to have this Court find that C.B. has alienated the children from him; order C.B. to pay fines for denying him his parenting time; and order that the children be placed primarily with him on an interim basis until his relationship with the children is restored. N.I. is open to a review of the children's circumstances to determine if a return to a shared parenting arrangement is in their children's best interests.

[6] C.B. was initially requesting retroactive child support for the period when she initially suggested the children resided primarily with her: August 2017 – April 2018. On February 7, 2022, C.B. filed a "child support table" with her pre-trial brief. The parties adopted the figures included in that table, including the figures provided for the parties' incomes; however, the parties did not come to an agreement with respect to whether the Court should use its discretion to retroactively calculate child support.

[7] N.I. acknowledged that C.B. had primary care of the children in April 2018 and then again after June 2020. N.I. relied on an earlier finding by the Court in

April 2018 that the parties had a shared parenting arrangement except in April 2018. N.I. relied on the Interim Consent Order (Support) granted in June 2019 to support his argument that the parties had agreed to use the “set-off” only to determine child support. N.I. argued that the Interim Consent Order (Support) did not reference any future retroactive calculation and that I should not recalculate child support before June 2020. He suggested that because of the parties’ previous agreement to share the care of their children and because of C.B.’s unilateral denial of his parenting time, he should not have to pay the table amount of child support.

[8] C.B. has asked the court to order N.I. to pay any retroactive award of child support with the \$25,000.00 held in trust following the division of the parties’ property.

1 Parenting

1.1 Facts

1.1.1 R’s wishes, circumstances, and disclosures to third parties

[9] R was almost 14 years old at trial in February 2022. He is more than four years older than his sister. He is a teenager who has enjoyed baseball and playing with his friends. R’s therapist, Dr. C testified as a fact witness only. He worked with R September 21, 2020 through November 1st, 2021. Dr. C was not asked to

provide any reunification counseling. C.B. often attended R's counseling sessions with him.

[10] On April 19, 2018, R was interviewed by a representative of the Minister of Community Services – Child Protection. The following is a summary of some relevant portions of a case recording report from the interview which was produced contemporaneously:

R stated that when he gets in trouble at his mother's house, she tells him what not to do. That he gets along with his dad sometimes, but his dad sometimes gets 'really mad' at E. That 'really mad' means 'being fussy, yelling very loud, screaming, and swearing.' That a long time ago, his dad was trying to put boots on E, but they didn't fit, so he got mad and threw the boots against the wall.

The Minister's representative asked R about an alleged incident at a Scout meeting and R stated:

His dad was not allowed to go to any more Scout meetings because he yelled at them before, however, he came to this meeting. His dad got fussy and was yelling at the Scout leaders. His dad was mostly yelling at his (R's) mom's friend. He was present for half of this as after his dad started yelling, he took his sister into the gym. E was frightened and crying. He saw 3 marks on the window which he believes were from his dad trying to keep himself inside the room. He could still hear his dad yelling from the gym. Police took his dad out of the room. That this makes him feel sad for the people his dad is yelling at because he doesn't like to see other people upset. That he felt unsafe at the meeting because of all the yelling from his dad.

That his dad loses his temper a lot, he gets mad for no reason sometimes, and he yells loudly. After his dad yells, he will go back upstairs. That his dad swears, and he will sometimes throw things, and R provided the example of E's boots. That his dad pushes his mom out of the way when they are getting picked up or dropped off for visits. That he sees this happen a lot. That his dad has never pushed himself or E, and his dad will only yell and scream at them when he is mad.

R went on to disclose to the representative that:

...he “doesn’t feel comfortable talking to his dad” ... but that if he had 3 wishes he would “wish for his family to be back together in the same house, for there to be no more arguing, and that this never happened.”

It is not unusual for children experiencing difficulties within their family of origin to still wish to have that family remain together.

[11] The Minister of Community Services contacted R’s babysitter to inquire about R’s circumstances. R’s babysitter suggested that R: gets very upset; worries a lot; struggles with conflict; and that R would go over to the babysitters’ home and sometimes cry because of the conflict between his parents. R’s babysitter reported that R had recently yelled at some of the children when they were arguing and said: “I can’t take fighting, I hear it all the time,” and he became very upset. The babysitter observed that R did not have any positive coping skills and would yell when he is “upset and triggered.”

[12] In July 2018, a representative from the Minister of Community Services – Child Protection spoke with R. The case recording report indicates R stated in part:

He recently was at baseball and his mother went with him. When his mom went to hug him, his dad blocked her, got in the way, and pushed his mom with his hands. When R was asked how N.I. pushed C.B. he stated with open hands towards his mother’s upper chest / collarbone area...it was after his baseball game and his mom went to drop R off at the Tim Horton’s to meet up with his dad and E. He stated it happened by the door of the car.

His parents argued a lot. For example, they argue about where the kids are supposed to be.

Both parents yell at each other. Sometimes this happens when his mom and dad are sitting in front of the car and E and R are sitting in the back.

His father yelled really loud. When asked a scaling question from 1 – 10, R gave his father an 8. When asked about his mother yelling, he gave her about a 4. R stated that is dad will yell at E and R when their mother gets close to them.

His mom also yelled at his dad. The last time was two weeks ago. The incident when his dad pushed his mom was within the past two weeks.

E, his mom, his dad, and R were present when dad pushed mom.

Mom told R someone reported his dad for being mean and E overhead and got upset and said she did not want dad to go to jail. E cried a lot and over everything.

When R was asked if he ever felt unsafe, he stated one time when his dad was going to court, and they got stuck in traffic. R reported that N.I. got mad, turned off the phone, went really fast, and then stopped the car abruptly. N.I. then swore and said the “f-word.” R suggested this was a long time ago...indicating his dad got mad a lot when driving and swore at people...

[13] In August 2018, R was interviewed by a representative of the Minister of Community Services – Child Protection, and he stated in part:

...

His visit with dad was good. He thought they were staying at the lake longer, but his dad got mad, yelled at his Nan, and they left. He felt scared when this happened.

...

Mom and dad are still not getting along. Mom will not talk to E or R long on the phone when he’s at his dads’. Dad feels that C.B. does not like him.

Mom would text R on the phone, but his dad did not like this and got mad.

Dad told him on the way to the lake to tell mom to get off her phone because he thinks mom is texting other guys. When asked about how R knew this, he stated he has heard mom and dad talk about how dad felt she was on her phone too much and texting guys. R heard them talk about it while the four of them were in the car. This was about two months ago.

Yesterday dad was sick, so his mom came to get them at dad’s house. Dad started yelling at his mom about coming to the house to pick up them up because usually pick up and drop offs were at Tim Horton’s.

...R stated that dad texted off R's phone, but his mom did not text off R's phone. Mom gets messages from dad on her phone which include f-bombs.

...

He was going back to his dad's next week and was excited that they were going to Halifax to the Atlantic Hotel as there was fun things to do there.

I accept R's evidence as disclosed to the Minister's representative and find it was inappropriate for N.I. and C.B. to place R in the middle of their conflict.

[14] On October 3, 2018, the Minister of Community Services – Child Protection, interviewed the children. E did not disclose any relevant concerns. R stated in part:

...

He enjoys staying at his dad's but doesn't like that his dad yells at him when he is running late getting ready in the morning. R also stated that his dad sometimes yells at his mom, however he stated that this hasn't happened for over a month"

...

I accept that there were periods when N.I. and C.B. were better able to manage their relationship and that the parties were not continually embroiled in conflict, but I find there was a consistent pattern of conflict.

[15] On November 26, 2018, representatives from the Minister of Community Services – Child Protection, interviewed E and R. E did not share any concerns, indicating that her time with her father was "awesome."

When asked how his weekend was with his father, R stated in part:

...that it was good, but that his dad yelled a lot...that when his dad yells it scares him and that he feels sad for his sister. When this happens, he goes upstairs into his room and closes the door to get away from the yelling. R said that his dad yelled at him and his friends when they needed help fixing the X-box, and when his bouncy-ball hit the wall and broke the clock...

R stated that it had been getting better but is still not good...

The evidence supports a conclusion that although there were times when the conflict between N.I. and C.B. lessened, that N.I.'s parenting style, which often included yelling at the children, did remain consistent.

[16] On February 5, 2019, R and E's guidance counselor contacted a representative of the Minister of Community Services. She stated in part:

...

She was concerned about something R disclosed to her that day but also that the children are both fearful of their dad and present as very anxious.

That day R told her that on Sunday while visiting with his dad he was pushing the table to move it and his dad got angry because it made a loud noise.

R told his guidance counselor that his dad yelled and screamed at him.

R told his guidance counselor that he only wants to see his dad when his dad isn't angry.

He also reported observing his dad giving his mom the middle finger while they were driving in a car together.

R was scheduled to get teeth removed at the IWK the following day and told his guidance counselor that he would be staying with his dad after the surgery, and R was fearful.

I find that C.B. was most likely encouraging the children to speak to third parties about their stated fears and she did so because she was concerned about the children. On a balance of probabilities, I find it is more likely than not that the

children's disclosures reflect their own feelings and experiences around the time they provided the information to third parties.

[17] I accept that R and E were afraid of their father's outbursts. I also accept that the children's guidance counselor observed that they presented as "very anxious." Regardless of what factors were contributing to the children's apparent discomfort, I find that both R and E required support to address their fears and anxieties and that their father's parenting style combined with the parties' conflict was likely exacerbating their symptoms.

[18] I accept that despite their expressed fears, that the children also enjoyed a lot of their time with N.I. The concern is that N.I. consistently became frustrated in many situations and created an overall environment where the children never knew when he would yell, throw something, or become emotionally dysregulated.

[19] On April 16, 2019, R's guidance counselor contacted a representative of the Minister of Community Services – Child Protection, expressing concern about R and E being "traumatized when they are with N.I." The guidance counselor reported that she does not prompt R and that he seeks her out in school. She stated that R comes to her about every two weeks "to tell her things that have happened with dad."

The guidance counselor reported in part that R had shared that:

dad had a very angry telephone call that R overheard...he was screaming, yelling, and cursing while the door was open...on another occasion E got out of the truck and she knocked over N.I.'s coffee and N.I. started yelling and slammed the door to the truck...R said dad is rude – he gives the finger to people...R expressed that he doesn't want to upset N.I. and he would feel best not to see N.I.

The guidance counselor observed that the children were telling her that N.I.'s behaviour was a problem for them. She further observed further that they are not focused at school and that E seems like she is in a daze.

[20] The guidance counselor did not testify, but her observations were communicated to a representative of the Minister of Community Services – Child Protection. Her concerns were documented in the Minister's business records. As a third-party professional referral source, I find that the guidance counselor did not have "a horse in this race" and she also had very relevant experience. I found her observations as recorded in the Minister's business records to be relevant and reliable.

[21] In other words, there is no reason for the guidance counselor to exaggerate or to take time to make a referral to the Minister unless she has a significant concern. School officials have contact with hundreds and sometimes thousands of children and parents, and, if through observation, a school official identifies there may be a problem with a child's homelife, this is another piece of evidence I must consider.

[22] On April 17, 2019, a representative of the Minister of Community Services – Child Protection, interviewed E and R. E did not disclose any concerns.

R did share the following:

That he was with his dad on the weekend and that there was a lot more yelling than usual...he overheard his dad on the phone yelling at someone on Friday, but didn't know what happened...another time he was filling up his water bottle when he was supposed to be in bed and dad came and yelled at him and broke the railing...in addition they went to the skatepark and he was getting E's scooter out of the car and E spilled N.I.'s coffee and then dad slammed the car door on Saturday...R was worried that he would be in trouble for sharing this ...R said he feels bad that he doesn't want to go to his dad's sometimes and doesn't want his dad to be sad.

I accept R's statements to the Minister's representative: that his father did something to the railing, suggesting N.I. might have broken it, and on another occasion, R felt his father slammed the car door in anger in response to E spilling his coffee.

R's comment that he "was worried that he would be in trouble for sharing this" is consistent with what one would expect from a child who is seeking support but genuinely worried about how his father might react.

[23] I find it is more likely than not that N.I. had warned the children not to report concerns to their mother or any other support persons. It is more common for children to try to protect their parents and for them to want to continue to see their parents, despite any risk of being exposed to an abusive environment.

[24] On September 14, 2019, W.G., the children’s counselor at that time, reported to a representative of the Minister of Community Services – Child Protection, that R was clear that “he wishes to spend time with his father” ... “he was also clear that, at times, he becomes concerned about his father’s reactions towards him.”

WG stated:

N.I. is encouraged to continue his personal work on emotional regulation as his children at times perceive him as angry which concerns them. This is important work for N.I. to continue as it could have more of a negative effect on his relationship with his children in the future.

R also discussed his confusion regarding his involvement, at least emotionally, in their conflict. R was tearful when he discussed not knowing what is the truth sometimes. R was often on edge and felt as though he needed to report certain information and / or as if he had done something bad.

...

When counseling began, E’s dependency on R was evident and equally clear was R’s need for healthy boundaries with his sister, so they both could develop independently.

[25] On October 17, 2019, a representative of the Minister of Community Services – Child Protection, met with R. R reported no issues at that time; “he informed it was going well at both houses.”

[26] In March 2020, the Minister of Community Services – Child Protection, received referral information from R’s school principal. She reported in part that

R:

...came in distressed today and said he wants to live more time with his mother, but doesn’t want to tell his father and hurt his feelings. The school principal

reported that R said his mother told him now that he has turned twelve, he is old enough to make the decision about where he wants to live...

Children get a voice but not a choice. I accept that C.B. told R he could decide where he wanted to live. It was wrong of her to do so.

[27] On June 25, 2020, R's therapist, J.B., reported that C.B. had arranged for the children to see her as C.B. was concerned about what R and E were reporting to her. R had shared the following:

That the previous Sunday his father got into a heated fight with R's uncle C.

That R and E were quite fearful due to the adults yelling and screaming, so they ran into the woods.

When they were in the woods R heard his paternal grandmother scream and then heard a loud "thud" sound.

That R is worried that his father may have pushed his paternal grandmother.

That his father then came out of the home screaming and cursing at the other adults present.

That his father then started screaming and cursing at R and E to get "in the fucking car".

That R saw his father kicking and punching his own truck, and that N.I. threw items in the car resulting in E's phone getting broken.

R also made J.B. aware that his father threatened his brother (R's uncle) when leaving and stated, "if you ever come near my kids again I'll fucking kill you".

R showed her a text message on Tuesday from his father that stated, "I'm sorry."

J.B. reported that she spoke with the children's mother, C.B., who reported that N.I.'s mother "indicated that the children's father had attempted suicide."

[28] I am not prepared to rely on reports by C.B. that N.I. has at times presented as suicidal. In the first instance, in 2017, when C.B. reported that N.I. was

experiencing suicidal ideation, N.I. was seen by a health professional and discharged. Subsequently, C.B.'s own therapist stated she understood N.I. had sought support when he was in distress, and she was not concerned about the possibility that N.I. would take his life. Without expert evidence, I am not prepared to find that N.I. was at any time experiencing suicidal ideation and at risk of physically harming himself or others; however, I do find that N.I. has often presented as highly emotional, raising concerns by some about his mental health.

[29] A representative of the Minister of Community Services – Child Protection interviewed the children and C.B. on June 25, 2020. The following is a summary of some relevant portions of the interview with R:

R explained that he was living mostly with his mother C.B. “until things get figured out.” That “his father uses bad words and stated that he was going to kill himself.” That his father “makes him nervous and he wants to go back when his mental health is better.”

When asked what would happen when N.I. became angry R stated:

when his sister was in trouble, that his father would ‘focus on him.’ When asked to provide an example R indicated E could not find her shoes and that he “yelled like crazy” and was sweating. That he felt nervous and scared. That if he swore at his mother’s house he would be told to go to his room for 10 – 30 minutes but if he swore or hit at his father’s house he will get grounded for the day. That he felt safe with his mother and sometimes felt safe with his father. He did not feel safe at the lake when there are a lot of people around that he does not know.

There is some dispute with respect to where R obtained information suggesting his father was going to kill himself. R himself has told his father that C.B. was not influencing him and that C.I. told him she was concerned about N.I.

[30] N.I. has suggested that C.B. has instilled an irrational fear in the children. C.B. suggested that N.I.'s mother, C.I., talked to R about N.I.s' behaviour and that C.I. sought help for N.I. by calling the police. I find it is likely a combination of both, with C.B. talking about N.I.'s behaviours within earshot of the children, and N.I.'s mother talking to R about her concerns for N.I. Either way, it would be very distressing for R or E to believe their father made a statement about wanting to end his own life, whether N.I. intended to follow through or not.

[31] On July 27, 2020, R contacted the after-hours child protection referral line. C.B. explained to a representative of the Minister of Community Services – Child Protection that she had suggested R contact the “Kids Help Phone,” and she was not aware R was calling child protection services. R reported “not wanting to go to his father’s home the following day.” The Minister determined they would not investigate further as R did not report any new concerns. I find that on balance of probabilities, C.B. did encourage R to contact child protection services, however, I feel C.B.’s concerns were justified.

[32] I do believe R was afraid to go to his father's home for various reasons and that some of those reasons were valid reasons. N.I. has suggested R was afraid to go to his home because C.B. fed him lies about N.I. I find that N.I.'s behaviors contributed to R's fear. I also accept that C.B. likely felt it was necessary to speak to the children about incidents when N.I. would yell and curse at her, others, or the children. It would have been necessary for C.B. to explain to the children that N.I.'s behaviour was not justified under any circumstances, because it was not. The children also disclosed that C.B. yelled and fought with N.I. and I find that at times C.B. minimized her own involvement in the parties' conflict, thereby exaggerating N.I.'s involvement.

[33] R and E's counselor reported to the Minister of Community Services – Child Protection that C.B. had left her a message requesting further sessions for the children. The counselor advised that “there were no child protection concerns” and if there were further issues that a Child Wishes' Assessment could be requested. Further, she explained that she could recommend someone to complete the assessment and she could assist in formulating questions, but she could not complete the assessment herself.

[34] The children's counselors' suggestion that she had no more “child protection concerns” does not result in a determination by this Court that there were no

serious concerns. It is often the case that the Minister of Community Services – Child Protection, and other support providers, will determine that there are no more children protection concerns if the children are in the non-offending parents’ care exclusively, and the risk of harm is therefore mitigated.

[35] In other words, if the non-offending parent is acting protectively by taking the necessary steps to ensure the children are not placed at risk, a service provider may close their file. It is unclear to me whether this applies to the counselors’ comments in this situation, but a determination by her that there are no more “child protection concerns” does not end the inquiry by the court or replace the court’s determination which must be based on all the evidence, not only the information which may have been available to the children’s counselor. It is my responsibility alone to review all the evidence and to determine what the children’s best interests are.

[36] In April 2021, C.B. MSW, RSW, prepared a Voice of the Child report. She found R “was consistent in both meetings about how he felt with regards to his relationship with his father.” She noted that:

R even said he was not comfortable with Zoom meetings with his father, as this had been attempted.

CB’s recommendations included:

1. That R continue to live primarily at his mother’s home.

2. It would be beneficial for R to begin therapy to address his anxieties and fears surrounding his father.
3. That R have no forced contact with his father until such a time as R (in conjunction with the therapist) deem appropriate. If the therapist at some point feels that family therapy with R and his father would be beneficial and appropriate, that R's father participate in it.
4. It would be beneficial for R's father to engage in his own individual therapy to address the concerns his son has with regards to their relationship.
5. That both parents recognize how much of an emotional strain that R feels about contact with his father. It is important that with this recognition that both parents work to put R's needs first and address this fractured relationship.

The assessor, CB did state that R:

Is still young and his views regarding his relationship with his father may change with age. It is important that his relationship with his father not be closed permanently, but that R's wishes be respected by the adults in his life at this time.

R's mother, C.B., supports the assessor's recommendation. I agree that R's relationship with his father should not be closed permanently.

1.1.2 E's wishes, circumstances, and disclosures to third parties

[37] E was almost 10 years old at trial in February 2022. She is more than four years younger than her brother. While she is not yet a teenager, she is a "tween". E has also reported concerns about her father, and she has refused to have contact with him.

[38] E engaged in therapy with W.G. in or around 2019. E then engaged in therapy with M.M., who is a clinical social worker providing individual counseling

for children and teens. M.M. worked with E between October 2020 and June 2021. M.M. has described E as a child who struggles with sleep and flare ups of eczema. M.M. also reported that E initially talked in counseling about “worries about her father going to her school to see her.” M.M. worked with E on “strategies to help her cope with tough feelings.” M.M. testified that E later became reluctant to speak about her father in her therapy sessions.

[39] On February 7, 2018, E’s teacher contacted the Minister of Community Services – Child Protection and reported that E had disclosed she was:

scared to go home because her dad yells a lot, and her father yells at her to put away her toys, even though she already did.

The Minister of Community Services – Child Protection, noted that the matter was not investigated, as “there is no information suggesting that C.B. is not able to protect her children.”

[40] In April 2018, following the alleged incident at a Scout’s meeting at the end of March 2018, a representative of the Minister of Community Services - Child Protection interviewed E. The following is a summary of some of the relevant portions of the interview:

E stated that she doesn’t want to play with her dad, and she doesn’t get along with her dad, so she will only colour with him but nothing else. That there are no rules

at mom's house because she doesn't get in trouble. That she plays with pets at her dad's house.

...

E stated that her dad only yells at her mom and doesn't yell at her. That her dad yells loud sometimes and she is scared when he yells. That she doesn't like it and doesn't like loud sounds. That she talks to her mom when she feels scared. She only remembers one time that her dad was yelling, and E stated someone called the police. That she was scared because her dad slammed the door, and she didn't like that. That her dad slams the door a lot and does it at home. E said this makes her feel a little bit scared...

E was five years old when she was interviewed in 2018. What is consistent throughout E's disclosure is that she has heard her father yell and slam doors and it scares her.

[41] On July 3, 2018, a representative of the Minister of Community Services – Child Protection interviewed E. According to the case recording report, E stated in part:

She gets along well with her mother, they cook supper together, cuddle, and play. Sometimes they do not get along and when this happens, they take some space from each other.

Her dad and her get along sometimes and got along bad others. Her dad can be nice, but other times he is rude. She advised one time her mother wanted to kiss her, and her dad would not let her. Instead, he drove away.

Mom and dad do not get along. Her dad fought with her mom. When this happens, he makes an angry face and his voice changes. When asked for an example E stated that her dad yells "go away from my kids." When dad is happy, he plays with R and E. They play on their bikes, tag, hide and seek, butterflies, and jump on the trampoline. Her father and her have fun playing games.

...

Her dad can get mad in public or at home. When this happens, he yells.

When asked if anything else happens when dad gets mad:

E stated she did not want to talk about what dad does when he is mad and that she did not like it when he yelled.

...

In addition to the concerns E has raised, E does not hesitate to communicate that she has had some very fun times with her father. E's comfort in reporting the good with the bad reduces concerns of improper influence and provides increased reassurance of reliability.

[42] On August 7, 2018, a representative of the Minister of Community Services

– Child Protection interviewed both E and R. E reported in part:

...

E and R went to the lake with her dad for the weekend. They went on Sunday and slept the night in the trailer...they ended up leaving because dad was yelling at his mom and when this happened, she went 'really fast' to the car. That was the only time he yelled all weekend.

...

Dad had not been upset lately except at camping with his mom.

...

She felt safe at her dad's, but not when he is yelling.

E rated her father's yelling as a 5 on a scale of 1 to 5.

[43] When interviewed by a representative of the Minister of Community Services – Child Protection, N.I. denied he yelled at his mother. I accept E and R's disclosures as more reliable than N.I.'s statement to the Minister's representative.

I find N.I. minimized the extent of his emotional outburst.

[44] On October 3, 2018, a representative of the Minister of Community Services – Child Protection interviewed E and she did not disclose any concerns; however, as noted above, R reported that his father “yells at him when he is running late in the morning” and that his dad sometimes yells at his mom, reporting that “this hasn’t happened for over a month.” I find that R’s comments are consistent with E not expressing any concerns at that time.

[45] On February 7, 2019, a representative of the Minister of Community Services – Child Protection met with E, who stated in part:

she had spent the previous evening with her dad and dad’s is awesome, and they watched a movie ... she shared that R needed someone to talk to about being nervous in the dark...

E also disclosed:

...E and R were attempting to move a dresser from R’s room and dad yelled at them. E expressed that it was ‘really heavy’, and dad didn’t want it moved. E explained that she cried, and dad said he was sorry lots of times. E also said she was sad for dad because he hurt his back moving the dresser.

[46] E’s disclosure about N.I.’s elevated emotional reaction to their behaviour is consistent with R’s disclosure. Parents are not expected to be perfect, and it is understood that there are times when most parents will get frustrated with their children and perhaps react emotionally. Although both N.I. and C.B. have contributed to the conflict the children have been exposed to, N.I.’s tendency to

react explosively when frustrated and his parenting style add additional challenges for the children, exacerbating an already difficult situation.

[47] On March 30, 2019, E's counselor observed that E became quite tearful and reported:

her father yells at her and this upsets her – and that he is usually angry with her. E's counselor also reported that during a session with E on February 19, 2019, E reported:

her father had been angry with her for telling her friend that she had seen his penis at the swimming pool

The counselor observed that E is often tearful within sessions and becomes overwhelmed with her emotions. She suggested that E is a young child who requires further assistance in regulating her emotions and establishing coping strategies to deal with her personal circumstances.

[48] Third party support persons have repeatedly observed that the children struggle to regulate their emotions, and they have suggested that the children need to develop coping strategies. In addition to therapeutic interventions, I feel both N.I. and C.B. would benefit from professional assistance, if for example N.I. would like to have some success instituting rules. There is a fine balance to the art of being their “father and not their friend.” N.I. was cautioned that his parenting style

may have a negative impact on his relationship with the children and I find that it has. N.I. must seek professional help to assist him to learn new parenting skills to assist with the reunification process.

[49] E's counselor suggested:

A child can learn coping skills in these types of circumstances, however, the parents must learn ways to alter their responses to each other and towards their children in order to move towards a calmer and less emotionally provocative day to day lifestyle. E's parents may require individual work to assist them in minimizing high conflict type behaviours and to create a healthy co-parenting relationship.

The children will need both parties' love, support, and respect, and not ultimatums.

R, especially, is at an age and stage of development when he is expected to be striving for autonomy, freedom, and input into decisions that impact him.

[50] It will not be sufficient for N.I. to just stop reacting explosively or to stop succumbing to his frustrations. N.I. must learn to parent his children differently, to develop additional parenting skills, and to respond to his children's needs and their feelings while still "being a parent to them."

[51] Assuming N.I. is willing and able to make the necessary changes, C.B. must refrain from telling the children they get to decide **where they live**, or they don't have to do any work to try to address the problems in their relationship with their father. It is both a privilege and responsibility to have care of the children, and C.B. must take all reasonable steps to ensure the children have an opportunity to

reconnect with their father in a manner that ensures their best interests. There is no doubt that the loss of contact with their father has been a huge loss for these children. Regardless of the other support available to the children, they will only ever have one biological father.

[52] In June 2020, a representative of the Minister of Community Services -- Child Protection interviewed E. The following is a summary of E's comments:

That she is supposed to spend time with her father, however has been with her mother. That her father was yelling and that he yelled at his family. That her father yells often.

When the Minister's representative inquired about what E meant by often, E stated:

about once a month or every six weeks. That she felt nervous when "he yells." E reported that there were no rules at her father's home, however her father would yell when he "gets the feeling to." That her father mostly yells at his family and it makes her want to cry. E indicated that she felt safe at her mother's home.

When E was asked if she felt safe with at her father's home E stated: "kind of, but not when he yells."

[53] On July 15, 2020, a representative of the Minister of Community Services -- Child Protection contacted the children's counselor. Their counselor indicated that she was working with R and E to help them "build coping skills."

The counselor reported that when E attended an appointment without C.B., she stated that:

she wanted to see N.I. once per week with her paternal grandmother present so that if N.I. yells she can go somewhere else. E reported that N.I. yelled at R more.

[54] It is generally accepted that the presence of a parent while a child is being interviewed is likely to influence what the child will and will not tell the interviewer. Young children especially have a natural tendency to want to please their parent by saying what they think the parent wants them to say. E's disclosures support the conclusion that E loves her father very much but is experiences fear when he yells at others or at her.

1.1.3 N.I.'s reports

[55] In December 2017, N.I. reported to a representative of the Minister of Community Services – Child Protection that the parties experienced further conflict, this time while they were attending teacher conferences for their children at the children's school. Specifically, a conflict arose between the parties about who was right or wrong regarding R's teacher's direction to R about his homework.

[56] N.I. took the position that R was right and C.B. should speak to R to advise him he was right. N.I. alleged that C.B. had been yelling at R, suggesting he was not doing his homework properly and she made R cry. Subsequently, when the parties were about to go to E's teacher conference, N.I. noticed that C.B. was

videotaping him. N.I. stated that he “asked C.B. repeatedly why she was videotaping him, and C.B. did not respond at any point or put the phone down.”

N.I. explained:

I eventually pushed the phone out of C.B.’s hands. I acknowledge I should not have done this, but I was upset. After this I went to the meeting and the applicant went to the principal’s office.

N.I. stated that C.B. subsequently filed for a peace bond against him but later withdrew her application. It is clear from N.I.’s version of this event that although C.B. was videotaping him apparently without his consent, N.I. was responsible for his reaction.

[57] N.I. reported that C.B. had suggested to him that the children were afraid of him. Further, that the school would be contacting the RCMP and child protection services. N.I. reported that the children subsequently visited with him, and the school principal advised him, that to her knowledge, no staff person had contacted the RCMP or child protection services to report him. The Minister’s records indicate that referrals were received from school staff on or about January 18, 2018 and February 7, 2018.

[58] On or about April 26, 2018, N.I. reported to a representative of the Minister of Community Services – Child Protection that at the end of March 2018, an incident occurred at the children’s Scouts meeting. N.I. stated that both he and a

Scouts leader called the police following the incident. N.I. acknowledged that in addition, an incident had previously occurred at a Scouts meeting held in October 2017.

He explained that at the Scouts meeting held at the end of March 2018:

...this leader came up to him “confrontational and aggressive” and told him to leave stating she had “no time for this bullshit,” and he stood up for himself and then things hit the fan. That he swore and then left the building, but the Scouts leader followed him screaming.

...

He was embarrassed and left the school. He could not remember if the kids were present while he was yelling and swearing at the Scouts leader. He stated it was all a blur and he couldn't remember if the kids witnessed the incident.

...

He admitted that there is conflict when exchanging the kids. He stated that the conflict with C.B. sometimes involves yelling and screaming “as she looks for reactions out of him to use against him in court.”

He is an emotional person, gets upset easily, and he yells but does not yell in front of the kids. N.I. stated the kids may have heard him yell out of frustration and that he often yells out of frustration. N.I. stated he will explode and get angry because he is scared of someone taking the kids away...

...

He stated he was seeing a psychologist for anxiety and childhood abandonment issues. He indicated he had “distorted thoughts which makes a reality, such as someone taking the kids away.” He stated that he was learning how to not react to situations, and he was putting the kids first.

N.I. indicated he had signed an agreement with his therapist to prevent anyone from contacting her about their work together.

[59] N.I. suggested the incident was all a “blur” to him and that he could not remember if the children witnessed his behaviour. With respect to the actions N.I.

did acknowledge, he blamed C.B., suggesting that C.B. was trying to get a reaction out of him. I find N.I.'s testimony with respect to the incident in March 2018 is a minimization of what likely occurred at that Scout meeting.

[60] On June 27, 2018, N.I. complained to a representative of the Minister of Community Services – Child Protection, that C.B. “always got involved with his time with the children” and that she goes into “ghost mode” when she has the children. N.I. stated that on the other hand, he does not go to the children’s baseball games when they are with C.B., as “C.B. gets him all riled up.” He indicated that he tries to walk away but “C.B. triggers him,” suggesting he gets triggered because C.B. always has her telephone with her during the children’s baseball games.

[61] N.I. denied pushing C.B. while she dropped R off after his baseball game; however, he acknowledged he did “get between C.B. and the car door.” Whether N.I. pushed or blocked C.B., his behaviour was unacceptable and even more concerning because it occurred in the presence of the children. None of N.I.’s explanations or rationalizations for his heated outbursts, for example: he stood up for himself; someone triggered him; he was trying to enforce rules and expectations; suggesting he is not his children’s friend but their father, are satisfactory explanations for N.I.’s failure to maintain control of his emotions.

[62] On August 2, 2018, N.I. reported to a representative of the Minister of Community Services - Child Protection his concern about some of C.B.'s personal emails which N.I. had opened on C.B.'s tablet, while R had possession of the tablet for R's use at N.I.'s home. N.I. acknowledged he worked in "IT" and suggested he found "emails with sexting and naked pictures," which R could have gained access to as they were not password protected.

N.I. reported in part:

...

He knows he shouldn't have been snooping, but he wanted to make sure the children are safe and not exposed to things online. He admitted to contacting C.B. about this as he found it concerning.

...

N.I. expressed concern that C.B. is always on her phone.

...

He advised he cannot go to his child's baseball games anymore because he gets so frustrated watching C.B. texting. He suspects she may be sexting while the kids are in her care and at baseball games. He felt this was not normal behaviour.

...

N.I. advised he needed help and was always portrayed as the bad guy because of how he reacts...

The Minister requested N.I. not have any contact with C.B. or engage with C.B. in front of the children. N.I. advised that C.B. applied for a peace bond against him but her application was denied.

[63] On August 3, 2018, N.I. texted C.B. stating in part:

I'm sure you will hear about this when they call you to ask you to explain why our son has access to your sexting lifestyle and why you send naked pics of yourself to strangers while being a parent.

Good luck.

In the meantime, I'll be working with child protection to get our son the help he needs. If you can tear yourself from your phone and get off your back... maybe, you can help.

N.I.'s exchange with C.B. was completely inappropriate and unnecessary.

[64] On August 8, 2018, N.I. contacted a representative of the Minister of Community Services – Child Protection, to share that "...He felt a lot of blame was put on him."

The Minister's representative advised N.I. that it was concerning that both parents did not follow the department's direction, however, the children had identified that N.I. was the one yelling and escalating during the altercations. N.I. denied there was an altercation with his mother on the weekend but admitted there was a verbal escalation when C.B. came to his house to pick up the children instead of meeting N.I. at the Tim Horton's where they were supposed to meet.

The Minister's representative requested N.I. contact a representative of the Minister of Community Services – Child Protection if C.B. initiated any further contact with him. N.I. expressed concern about the difficulty he would experience arranging for a third party to facilitate access exchanges.

[65] In August 2018, N.I. advised a representative of the Minister of Community Services – Child Protection that he would agree to no longer have any contact with C.B. in the presence of the children, to attend a co-parenting course, and to attend counseling/anger management.

However, N.I. also stated in part:

...

Sure, me getting anger management classes may help but isn't that avoiding the root issue of me being upset my kids are or seem to be neglected while in the care of their mother?

I'm not sure any anger management classes will ever remove the passion I have for that matter stop me from getting upset. It's almost like there is some vision of me just not caring about my children's safety.

I'd rather see C.B. getting parenting classes than me getting anger management classes as this would address my concerns and to me the root issue of my stress.

...

N.I.'s comments alleging C.B.'s day to day parenting of the children was the real problem, relying for instance on what I find to be a 'trumped up' suggestion that C.B. was exposing the children to adult behaviour, suggests to me that N.I. was either unable to identify what a real risk to his children was or that he was being vindictive toward C.B.

[66] In the evening on August 16, 2018, N.I. reported to a representative of the Minister of Community Services – Child Protection, emergency duty:

...

C.B. had shown up at the baseball field and was also watching the game. He indicated that he had not engaged in any conversation or contact with C.B. but that he was unsure what to do.

N.I. was directed to leave with the children but he objected to the Minister's direction, feeling it was inappropriate to do so. The Minister's representative "conveyed to N.I. the Agency direction requesting that he and his children leave the sporting event immediately" and that N.I. not have any contact with his ex-partner, C.B.

[67] The above noted incident was unquestionably difficult on both children, but perhaps more so for R who was forced to leave his playoff baseball game before it concluded. C.B.'s decision to attend R's baseball game, contrary to agency direction and to her agreement not to attend the children's events when they were in N.I.'s care, demonstrates her sense of entitlement to be at the children's events. It was wrong of C.B. to attend the baseball game under those circumstances, and I do not accept that she misunderstood the agency's expectation. However, the catalyst for imposing the restriction on C.B. was clearly the Minister's concern about N.I.'s reactions to C.B. It was N.I.'s lack of ability to control his reactions to C.B. which was creating a situation where C.B. was being excluded from important moments in her children's lives, and the children were being denied the benefit of having both parents at their extracurricular events.

[68] On or about August 26, 2018, N.I. reported to a representative of the Minister of Community Services – Child Protection, that R had been injured and he had attended the emergency department as he had no other way to get updates about R's injury. N.I. reported that he spoke with R and left when C.B. threatened to contact child protection services. N.I. expressed concern that the day after R's injury, C.B. dropped R at daycare and R's babysitter contacted C.B. to pick R up because she could not provide R the care he needed. N.I. explained that subsequently C.B. contacted N.I. and arranged for R to be placed with N.I. as it was hard for R to walk and N.I. could carry him into N.I.'s house. N.I. expressed concern about C.B.'s ability to care for R, reporting that she had put R in the shower with his cast.

[69] Not an ideal situation, and the evidence does support a conclusion that C.B. was somewhat ill equipped to care for R whose entire leg was in a cast and that R had legitimate concerns about how everything was going to work out if he stayed with his mom after he was initially placed in his full leg cast; however, I find it understandable that C.B. might struggle with the situation and need to rely on others to assist her with R, and specifically on N.I. who was better able to care for R under those circumstances. I find R was likely grateful to have his father's support at that time. Unfortunately, N.I. has attempted to use this unfortunate

situation as evidence of C.B.'s overall inability to care for R. Regardless, N.I.'s willingness to step in on this occasion and to provide support to R when C.B. was unable to provide the same level of support was the right thing to do. I note N.I. also provided additional support to R on other occasions such as when R was scheduled to attend a new school.

[70] On or about August 27, 2018, N.I. contacted a representative of Minister of Community Services – Child Protection, and he suggested that C.B. had not advised child protection services about the 'full story' of the sexting between her and another man on her email. N.I. forwarded some further emails to the Minister's representative.

[71] There is no evidence that either R or E ever gained access to C.B.'s personal email account. The adult images in C.B.'s possession may have been difficult for N.I. to find, but I do not accept that there was ever a bona fide concern that C.B. would expose her children to adult images or behaviours. I do not think N.I. had any real concern either. N.I.'s choice to follow up with a representative of the Minister of Community Services – Child Protection, providing photographic evidence to the Minister's representative to support a finding that C.B. had minimized the adult nature of the photographs, suggests N.I. was intentionally trying to upset C.B., and/or N.I. was retaliating for perceived wrongs. I do not

accept that N.I. believed there was any real risk that the children would gain access to the adult content. N.I. saved copies of C.B.'s personal adult photos later sending them to C.B. and to others and his behaviour supports a conclusion that N.I. wanted to harass C.B., to get even with her, and/or to discredit her.

[72] On September 27, 2018, N.I. expressed concern to a representative of the Minister of Community Services – Child Protection that E's guidance counselor had told him E had disclosed C.B. was saying she "can't afford the children anymore and that daddy is stealing money from her." N.I. also expressed concern that R had been sick two days in a row and when N.I. asked what was going on R stated: "he is scared and doesn't want to get anyone in trouble," and then R shared that his "mom opened a letter and started crying." R reportedly overheard his mom saying, "she can't afford?" and that N.I. was stealing money from her. C.B. later suggested to Minister's representative that she was speaking on the telephone in her bedroom about financial issues and the children must have overheard her. I accept R's disclosure and I conclude that C.B. did inappropriately complain to R about N.I. and she did not take care to ensure that the children did not overhear her discussing her personal financial issues with others, and attributing her difficulties to N.I.

[73] On October 11, 2018, N.I. advised a representative of the Minister of Community Services – Child Protection that he was arrested for breaching a no contact order. He stated:

The children recently met a man C.B. was seeing personally. N.I. stated that he was concerned that C.B. was introducing the children to men so early and that he thinks this could affect them emotionally. N.I. said that C.B. meets these men on fetish websites, and he is concerned that they are not appropriate... N.I. was crying while talking about this.

...

He stated that he texted C.B. about her introducing the children to another man, and she reported it to police.

...

No further evidence was provided to support N.I.'s belief that the children were at risk emotionally or otherwise due to C.B.'s personal relationships.

[74] N.I. advised a representative of the Minister of Community Services – Child Protection that:

he was worried about the environment his children are in and what C.B. is exposing the children to.

The Minister's representative noted that N.I. did not provide details about any risk to the children. The Minister reviewed N.I.'s information and determined that his concern "does not relate to child protection concerns." They found the information "does not suggest that the children are exposed to messages/chats" or that they are exposed to any inappropriate sexual acts by C.B. and her friends/associates.

[75] On November 14, 2018, N.I. reported to a representative of the Minister of Community Services – Child Protection that after N.I. identified that the children needed weather appropriate clothing, and he advised C.B, that C.B. texted R to attempt to arrange to drop off his snow pants. N.I. stated that on November 13, 2018, C.B. had dropped R’s snow pants off at N.I.’s house, and if “I were do to the same, I would be in the back of a police cruiser.” N.I. advised that he had contacted the police. C.B. responded to N.I.’s concern indicating she could not recall dropping off any clothing although she did recollect an incident when she was dropping R’s mask off to the children’s babysitter to avoid contact with R and N.I. In any event, the fact that N.I. felt it was necessary to contact the police because C.B. contacted R and arranged to drop off a necessary item to R, especially after N.I. raised the concern that R did not have the item, raises serious concerns about N.I.’s judgement and the parties’ ability to co-parent.

[76] On February 27, 2019, N.I. contacted a representative of the Minister of Community Services – Child Protection alleging that C.B. sent him an anonymous message through a notification tool. He expressed concern that:

she will find ways to not follow the no contact order via now anonymous and disruptive texts like an STD anonymous notification tool... I need this to stop, and CPS has done a great job of helping ensure this stuff stops but these type of anonymous messaging tools create opportunities for her to mess with my life all while hiding behind a keyboard.

There is no independent evidence that C.B. sent N.I. a message, but if she did, her behaviour was inappropriate.

[77] Regardless of whether C.B. sent the notification or arranged for the notification to be sent to N.I, N.I. could have chosen to delete the message and not react. In addition, given that N.I. had previously accessed C.B.'s personal email, copied her private images, and circulated those images to the Minister's representative and to her sister and others, all without her consent, I am somewhat concerned that N.I. would not recognize the parallel between the situations and still feel it was appropriate and necessary to contact a representative of the Minister of Community Services – Child Protection to complain about C.B.'s alleged behaviour. Again, if C.B. was responsible for N.I. receiving the notification, then it was not an appropriate thing for C.B. to do. I find that retaliation by either party is not in their children's best interests.

[78] On April 17, 2019, a representative of the Minister of Community Services – Child Protection telephoned N.I. to discuss concerns raised about him yelling at the children. N.I. reportedly explained:

that he is the children's parent and not going to be there to just be friends. That he doesn't feel he yells at the children. N.I. did admit to being upset when they were moving a dresser upstairs. He explained that he wanted to set rules and expectations.

Parents must have many tools which they can use when parenting their children.

There are many ways to try to enforce rules and expectations, -- yelling and screaming at children does not come highly recommended. Other approaches may require more forethought and skill but are more likely to help children learn valuable interpersonal skills and develop self esteem.

[79] April 24, 2019, N.I. spoke to a representative of the Minister of Community Services – Child Protection in response to concerns raised by the Minister’s representative:

1. N.I. admitted to giving C.B. “the finger” while driving by her and that the children witnessed him doing it. He indicated he did it out of frustration and his behaviour was not appropriate.
2. With respect to R’s disclosure about N.I. breaking the banister, N.I. acknowledged seeing R at the top of the stairs past R’s bedtime and suggested that he was startled by R and that he did question why R was not in bed. N.I. denied yelling at R, and he also denied breaking the stair banister. I accept R’s report that N.I. yelled at him and that based on N.I.’s behaviour, R believed his father broke or may have broken the banister.
3. N.I. acknowledged he was screaming, yelling, and cursing on the telephone at his home but stated he was in his room with the door closed when he was having the conversation. N.I. implied that he believed the children could not hear him. It is not plausible that the children were unable to hear N.I. yelling. Either N.I. was minimizing the situation or he has very little awareness of the impact his actions have on his children.

The evidence supports a finding that, in the heat of the moment, N.I. is oblivious to how his reactions may impact on the children.

[80] On June 19, 2019, N.I. contacted a representative of the Minister of Community Services – Child Protection, alleging that the day before their last court appearance, C.B.’s friend, T.M. had contacted N.I.’s girlfriend warning her against him. N.I. forwarded the screenshots to the Minister’s representative. N.I. suggested this was the “fourth girl C.B. and/or now her friends had reached out to”. I accept N.I.’s evidence that C.B. and/or her friends were texting N.I.’s girlfriend(s) and I find their behaviour to be inappropriate.

N.I. stated:

he had “been doing his hardest not to react...but posting online about me and the case I feel to be against the court order and now having her friend contact my girlfriend.”

I find that C.B. did not always make sound decisions regarding her co-parenting relationship with N.I. I do recognize there are many examples of times when C.B. did not encourage a positive co-parenting relationship with N.I.

[81] Although it should not be necessary for the courts to do so, and it is not necessary with parents who are able to behave in a manner which most often promotes their children’s best interests, in this case I am granting an order prohibiting both parties from posting on social media any information regarding this matter or about the other party. I am also granting an order prohibiting either

party from facilitating the dissemination of information about the other party by any means whatsoever.

[82] In July 2019, N.I. spoke with a representative of the Minister of Community Services – Child Protection, reporting:

...he applied for the child tax credit the Friday before ‘the incident’. C.B. had received a letter about his application. She then escalated and called him a ‘cunt’ and other colourful names.

The weekend in question, both children had ball games at the same time. It was a busy weekend and they agreed C.B. would take R to his game and he would take E as C.B. did not believe that either child should miss a game. He initially planned to cancel E’s game, but C.B. did not agree with this. They went to separate games and he wanted to meet afterwards to get R and she told him to ‘grow up’.

He texted C.B. during R’s game and she stated it was going into overtime and going late. She then told him she was taking R to ice cream, and he asked her not to because N.I. wanted to be able to continue his Sunday tradition with the children. C.B. took R for ice cream anyway.

The parties usually meet at Tim Horton’s for custody exchanges, and they met there on that date. E and him were waiting in the car, but E asked to go sit on the grass to watch the cars, so that’s what they did.

C.B. parked beside him, and she went to go get E. The lawyers had previously recommended the parties stay in their vehicles at access exchanges and let the children switch cars so C.B. and he would not need to interact.

C.B. went into his car which surprised him. He tried to verbally correct her and she did not listen.

C.B. always tried to get involved with his time with the children and she goes into ghost mode when she has the children.

C.B. texts him stating she plans to take the children away from him.

...

...then the police showed up at his house recommending third party drop offs. N.I. advised he couldn’t afford to do this. Police told him a hug was not worth it sometimes and felt the situation was inappropriate on both ends.

He does not go to the children’s baseball games when they are in C.B.’s care because she gets him all riled up.

He tries to walk away from her when she triggers him.

She is always on her phone during baseball games with the kids.

...

C.B. bullies him and she knows what buttons to push to upset him.

...

He denied pushing C.B., but he admitted to getting in between her and the car door.

...

Everything was on tape at Tim Hortons and the police were getting the footage.

...

He felt she always called police before the weekends he has the kids.

...

The children gravitate towards C.B. and he understood this as she is their mother.

Last Friday R got hurt and went to his mother to comfort him. R and him then talked about it and put ice on where it hurt. C.B. then got R worried stating it may be broken...

...

N.I. went through similar things when he was younger with the police always at his home.

...

He knows he should not react, but sometimes he could not help it.

...

He was previously working with a psychologist, but legal fees were significant, he couldn't afford it and he would rather spend any extra money he has on the children.

The Minister's representative asked that C.B. and N.I. only communicate if there is an emergency involving the children and that custody exchanges occur through a third party.

[83] On June 29, 2020, a representative of the Minister of Community Services – Child Protection, interviewed N.I. regarding an alleged incident which happened on or about June 24, 2020. N.I. stated:

In April 2020, C.B. withheld their children from him, alleging he was not following Covid 19 guidelines.

That he has a “unique” relationship with his brother.

That his brother thought R was missing and N.I. woke in a panic at 7:30 am, to then find out that R was at his “aunt’s camp.” His brother was smoking cannabis at 8:00 am and he “found it inappropriate.” He later thought his brother was yelling at his daughter who was returning from a bike ride with his brother’s daughter, that this provoked him, and he’d had enough. N.I. admitted that he yelled at his brother and he “scared a lot of people.” He stated that his family members removed the children and took them to a different camp. He stated that his mother did not want him to take the children and go home as he was angry. That he “cried on his way home with his children.” That he told his children why he was angry and that C.B. kept them away from him. That he had not threatened to kill his brother, rather he had threatened to punch him.

Although N.I. did make some admissions to the Minister’s representatives, I find that N.I. still minimized the incident which occurred at his family’s camp in June 2020. On cross-examination of both N.I.’s brother and eventually his mother, I find that they gave a more complete picture of the incident, with testimony more in line with R’s and E’s disclosures.

[84] Although at trial N.I.’s mother, C.I., was initially reluctant to acknowledge that much of anything happened at the lake in June 2020, later in her testimony, C.I. acknowledged there was a very heated argument between N.I. and his brother. She reported there was an argument and that N.I. left the trailer screaming and

cursing and R “possibly saw it.” Further, N.I. “probably” said “get in the fucking car,” but that she did not witness N.I. packing items into the car. She acknowledged that the children were frightened and that she “heard words being said” as both her sons were threatening each other.

[85] In June 2020, a representative from the Minister of Community Services – Child Protection reviewed the information obtained from the children’s interviews with N.I. when he had denied raising his voice or yelling at either of his children. I do not accept that N.I. did not yell or speak in a harsh raised voice when telling the children to get in his car during the incident at the lake. I also find that N.I. yelled at multiple people very angrily and within earshot of his children.

[86] On July 8, 2020, N.I. advised a representative of the Minister of Community Services – Child Protection that he had learned he would not be able to access counseling services through his employer, that he would need to pay privately, and he could only attend counseling once or twice per month. The Minister’s representative recommended N.I. participate in the IWK Strongest Families program, but N.I. later advised that he was told the program was only for the parent who had care of the children.

[87] On July 22, 2021, N.I. wrote to C.B. through the Our Family Wizard program, stating in part the following:

I'm interested in how R's irrational fear help is going? Have you been able to help R to understand what that difference between fear and irrational fear is about? Maybe you could use the example of thinking his father was going to kill them and then himself...or the time you posted online about a father you thought killed his daughter, as an example of irrational fear.

Although I do have concerns about C.B.'s repeated suggestion that N.I. is suicidal,

I also have significant concerns about how N.I.'s reactive behaviour would likely

have fed into any fears C.B. or the children may have had about N.I.'s mental

health

1.1.4 C.B.'s reports

[88] In July 2017, C.B.'s counselor reported to a representative of the Minister of Community Services – Child Protection, that C.B. disclosed that:

On June 27, 2017, N.I. took a bunch of relaxer pills and sent out a text message to C.B. saying that he was going to kill himself. He also made a Facebook post indicating he was going to commit suicide. That she called 911 and police found N.I. at a gravesite passed out. That N.I. was taken to emergency, assessed, and released.

C.B.'s counselor noted that N.I. subsequently engaged in counseling services and she was not concerned about N.I. being suicidal.

[89] C.B.'s counselor advised the Minister's representative that, although C.B. described N.I. as a good father who loves his children very much, C.B. had disclosed that N.I. yells at her in the presence of the children. The counselor expressed concern about the children's mental and emotional health. The Minister did not investigate the referral.

[90] In September 2017, soon after C.B.'s counselor raised a concern with C.B. about N.I. yelling at her, C.B. suggested to that they change their parenting arrangement and N.I. have care of the children five nights out of fourteen. N.I. sought to continue a 50/50 shared care arrangement.

[91] In January 2018, the RCMP contacted a representative of the Minister of Community Services – Child Protection to report that C.B. had complained to them that E had missed a class that day as she “was crying too hard” and she spent time doing other fun things at school instead. C.B. advised police that E told her teacher that her father, N.I., “is mean to her and her brother R.” C.B. reported to the police that when she contacted N.I. to discuss the issue with him, he became upset with her. The RCMP noted that they were advised that no bruises or marks were observed on the children and C.B. did not report any other changes in E's behaviour.

[92] On June 8, 2018, C.B. reported to a representative of the Minister of Community Services – Child Protection that while she was attending E's dance recital, she attempted to give R ten dollars for admission to the performance, and N.I. grabbed R and pulled him away stating “get the fuck away from my kid” in the presence of both children. N.I. then threw the money at C.B.'s feet and called her a “fucking whore.” C.B.'s action, giving money to R presumably without

checking in with N.I. first could be construed as interfering with N.I.'s parenting, but regardless of C.B.'s choice, N.I.'s reaction was completely inappropriate under any circumstances.

[93] On or about June 24, 2018, C.B. reported to a representative of the Minister of Community Services – Child Protection, that:

the parties were exchanging the children at a Tim Horton's and N.I. yelled at E for speaking with C.B. N.I. then stated: "it's not your fucking week" and threw E into his truck. He then pushed C.B. and she subsequently contacted the police.

...

The agency recommended that C.B. and N.I. not have any contact in the presence of the children and that they use a third party for pick ups and drop offs. The Minister of Community Services – Child Protection initiated a new investigation.

[94] On June 27, 2018, C.B. contacted a representative of the Minister of Community Services – Child Protection, and she stated in part:

...she was not attending her child's baseball game that day because N.I. would be there and she is scared of him. She advised that she and N.I. have a history of family violence and he has pushed, hit her, grabbed phones from her, etc.

...

She stated that N.I. was no longer paying child support because she had called the police.

...

C.B. advised she would not attend the children's events at this time if he was there. She advised N.I. was hateful and other parents and children often see his behaviour towards her including yelling and swearing.

[95] When the representative from the Minister of Community Services – Child Protection contacted C.B. she reported in part:

N.I. had contacted her the previous week, losing it because Community Services was involved. Yesterday he had begged her to join him to take R to Brigadoon...she advised N.I. swore in front of the children yesterday and he was toxic. She advised N.I. does not get how their relationship and conflict is impacting the children and N.I. felt he knew everything.

The Minister's representative advised C.B. that the Department was asking the parties not to have any contact except for emergencies (i.e children in the hospital) and that arrangements be made so that custody exchanges happen through a third party...

[96] On July 26, 2018, the Minister of Community Services – Child Protection, decided to open a file in relation to the parties and their children.

[97] On August 2, 2018, C.B. reported to a representative of the Minister of Community Services – Child Protection, that:

N.I. had looked through her email on her tablet which R was using at N.I.'s home. N.I. reportedly objected to intimate electronic messages he was able to access on C.B.'s tablet. C.B. reported that N.I. was sending pictures to her stating she was a 'slut' and that 'he was taking my kids away from me, saying I can't keep my legs closed'.

C.B. provided the Minister with various text messages sent to her by N.I. on or about August 1, 2018. Examples of the comments from N.I. sent to C.B. by text included but were not limited to: your gross; stay the fuck away from me; slut; you're going to lose your kids because of what you are doing right now; I'm literally shaking; this is what you ruined our family for, this shit; you're not fit to be a parent; you need to be single and alone so you can live this lifestyle you want; And fyi. I don't what you back; your gross. Stay the f away from me and my kids; got no money for the kids but can spend gas driving all over N.S. to fuck guys...

C.B. expressed concern about her safety and the safety of the children who were with N.I. at that time.

[98] The police attended at N.I.'s home to retrieve C.B.'s tablet. C.B. later advised:

there are times they both go to R's baseball games and recently he came over and grabbed her drink and drank it. She tries not to engage with him, but it is difficult when he impulsively comes towards her.

[99] A representative of the Minister of Community Services – Child Protection, requested that C.B. and N.I. not have any contact in the presence of the children and that all contact, including access exchanges, go through a third party. C.B. advised that she had received four more messages from N.I. saying if she 'doesn't respond to him that he will call CPS to deal with the situation.' The Minister requested C.B. contact an agent if N.I. initiated any further contact with her. C.B. agreed all access exchanges would occur through a third party.

[100] On August 9, 2018, C.B. contacted a representative of the Minister of Community Services – Child Protection to clarify "whether or not she should go" to E's last baseball game that evening although the children were in N.I.'s care. She was reminded that the Minister had requested and the parties had agreed C.B. would not have contact with N.I. in the presence of the children. The Minister's representative advised C.B. against attending.

[101] C.B. later reported to a representative of the Minister of Community Services that R had asked her to attend his "playoff game," and she attended

although it was N.I.'s night with the children. C.B. explained that while she was at R's baseball game:

E came over to C.B. and asked her to help her in the bathroom. Which C.B. did. As she walked to the bathroom, N.I. called E over, E said just wait daddy I need to poop. He at that time got up and called someone. After E was done at the bathroom, C.B. walked over to her seat and continued to watch the game.

E came running over to C.B. in hysterics because N.I. was pulling R from the ball game and E was not allowed to talk to C.B... and N.I. wouldn't let R even say goodbye to C.B.

[102] On August 20, 2018, a representative of the Minister of Community Services – Child Protection contacted C.B. and once again asked that C.B. not attend any of the children's functions when they were in N.I.'s care. C.B. explained that R had asked her to attend his baseball game stating "he was making the choice and wanted her to be there."

[103] The Minister's representative advised C.B. that N.I. was directed to leave the baseball game by the Minister's representative and that the incident had a negative impact on the children. C.B. agreed she would not "escalate the situation." C.B. was reminded she was being asked not to have contact with N.I. when he had the children in his care.

[104] On or about August 21, 2018, R broke his leg while in C.B.'s care. C.B. contacted a representative of the Minister of Community Services – Child Protection, and she stated that:

N.I. attended at the emergency department and stated to C.B. “what the fuck happened?” He then advised C.B. that if she wasn’t such a “slut” sexting men, then the incident wouldn’t have happened.

Obviously, the comments attributed to N.I. were entirely inappropriate and in addition, N.I. had been directed not to have contact with C.B. while the children were in her care.

[105] On August 29, 2018, a representative from the Minister of Community Services – Child Protection, spoke with C.B. regarding N.I.’s concerns that she had not fully disclosed the extent of adult content in her emails. C.B. clarified that the incident N.I. was referring to specifically happened when R accidentally walked in on both C.B. and N.I. having sex, and this was before E was ever born. The Minister’s representative was satisfied with C.B. “committing to not sexting or having sex in front of the children.”

[106] On October 9, 2018, C.B. reported to a representative of the Minister of Community Services – Child Protection that N.I. “showed up at her work.” C.B. also reported that N.I. was dating someone and “she is messaging C.B.’s friends ‘shit’ about her.”

[107] C.B. contacted a representative of the Minister of Community Services – Child Protection, to inquire about attending N.I.’s home and picking the children up as she believed N.I. would be charged with a breach and he may be detained and unable to care for the children. The Minister advised C.B. they would not be

providing any direction regarding whether the children should be with their father or not.

[108] On January 9, 2019, C.B. reported to a representative of the Minister of Community Services – Child Protection that the children spent most of the holiday period with her. C.B. expressed concern that N.I. ‘was still not paying support and she is on the verge of bankruptcy’ and is bothered that N.I. wants to ‘share primary care,’ suggesting that she is the one who takes the children to all their appointments and ‘the one time she asked N.I. to take R to the IWK for a dental appointment he did not follow the instructions and allowed him to eat before the appointment.’ The Minister’s representative advised that the agency was not taking a position on who had care of the children.

[109] On January 14, 2019, C.B. reported to a representative of the Minister of Community Services – Child Protection that “overall things have been good” and that N.I. continued not to have contact with her. The Minister reminded C.B. that it may be necessary for the children to reside with someone else if there was further conflict between the parties.

C.B. also advised in part that:

E is very sensitive and lately has been getting upset every time she is told ‘no’ and will cry. E is working on this with W.G. C.B. feels that the anger management course N.I. took was ‘useless’ and that it will only take a matter of time before he

returns to his old ways. She shared that the children told her he will still yell at them to get ready in the mornings and when they are unable to find things.

[110] On January 21, 2019, C.B. reported that E's friend's mother stated to her:

that while at a Mooseheads game, E stated she saw her dad's penis and it was "big and squishy." C.B. acknowledged "E might have seen her dad getting out of the shower but she was concerned that E used the term squishy." E was interviewed and no disclosure was made. N.I. denied any inappropriate sexual behaviour with E. The police file was closed.

[111] On March 31, 2019, C.B. stated she was:

upset that the charges were dropped last week...N.I. posted shit on a singles' group about her and another guy and about his charges being dropped...C.B. reported she contacted the cops yesterday because she was on the way to the babysitters and had to jump on the snow bank away from N.I. driving and he screamed "fucking slut" at her...E is always crying about her dad giving them the finger, but he says he's sorry so E thinks it's ok. R will tell her straight up that he is not happy there and that the other week N.I. told him that he was going to throw his Nintendo out the 'fucking' window.

I accept C.B.'s report: about N.I.'s continued online posting about C.B.; his continued offensive gestures toward C.B. ("the finger"); his continued choice to yell at the kids; and his threat to throw R's toy away. I also accept that both R and E were confused by their father's behaviour and his subsequent efforts to apologize to them.

[112] On June 13, 2019, C.B. contacted a representative of the Minister of

Community Services – Child Protection expressing concern about missing out on

R's baseball games while he is in N.I.'s care. C.B. stated: "I deserve to be part of his ball games too."

[113] On July 3, 2019, C.B. reported to a representative of the Minister of Community Services – Child Protection that she had raised an issue with N.I. about R requesting his own room, and N.I. did not respond positively. C.B. advised that the children's counselor was reportedly working with the children on sleeping in separate rooms and that their counselor identified that neither child had raised any recent concerns.

[114] On August 14, 2019, the children's counselor advised a representative of the Minister of Community Services - Child Protection that she had spoken with C.B. that day and C.B. had stated:

N.I. called her a fucking bitch in front of the kids at pick up that week and the kids do not want to return to N.I.'s next week.

The children's counselor advised that she had a session with the children subsequently and neither child disclosed hearing N.I. make the suggested comment to C.B. and the counselor reported that she had advised C.B. that the children did not corroborate her suggestion that they had heard N.I. call her a 'fucking bitch.'

[115] On September 9, 2019, C.B. reported to a representative of the Minister of Community Services – Child Protection, that:

It was shared in a community Facebook group that N.I. and another home owner got into a screaming match at the school and this was in front of other children...C.B. also reported that E was dropped off at the school by herself around 8 am and the duty teacher wasn't there till 8:15 C.B. stated that E doesn't seem bothered by it...N.I. is posting about her on Instagram...the children say that they don't want to go to their dad's and will cry, but they will go.

[116] On October 10, 2019, C.B. expressed concern to a representative of the Minister of Community Services – Child Protection regarding dropping off R's costume for the school Halloween dance. C.B. was encouraged by the Minister's representative to problem solve how she could drop the costume off without having contact with N.I. or interfering with N.I.'s time with R or involving R in any way, such as dropping the costume at R's school when she knew N.I. would not be there.

[117] On October 25, 2019, C.B. advised that she dropped R's costume off at N.I.'s home and N.I. told the children they were not allowed to go over and hug her. She expressed her opinion that "this man can't tell them what to do."

However, in an affidavit, C.B. stated that she dropped R's costume part off at the babysitters who lives near N.I., believing N.I. and the children were not at home, but they were at home, and the children saw her but N.I. refused to allow the children to interact with her.

[118] On October 29, 2019, C.B. contacted a representative of the Minister of Community Services – Child Protection expressing concern about R wanting to speak with his counselor, and alleged:

N.I. 'went against the order and words spoken to the children that I don't appreciate'. Later C.B. explained that when she was dropping something off at the daycare N.I. was present, and he would not allow the children "to come over to talk with her". C.B. also reported that she saw the children with N.I. at the farmer's market, and "he turned E away from her and would not let them say hi." C.B. alleged: the children were continuing to report the same information about N.I. cursing and yelling; that N.I. posted on social media again; that the children don't want to go see their father; and that N.I. keeps breaching the no contact order and not following the rules. C.B. stated that she believed R was no longer sharing anything because he was not in counseling.

[119] On November 14, 2019, C.B. expressed frustration to a representative of the Minister of Community Services – Child Protection that N.I. had failed to keep her informed about R's injury. She explained that:

the school had contacted her suggesting R's arm might be broken. That she had contacted the third party to offer her assistance in picking E up, and N.I. refused her help. She was later advised by a third party that R's arm was not broken, and that E had been picked up. C.B. expressed concern that N.I. was failing to keep her advised when "her children are hurt, and she needs to know who is picking them up from school". She suggested that kids were asking to participate in counseling and that they are afraid of their father.

I am not concerned about N.I.'s choice to have a third-party contact C.B. to provide her with an update about the children. I am also not concerned with N.I.'s choice not to accept C.B.'s offer to pick a child up and to choose to make his own arrangements during his parenting time.

[120] An agent of the Minister of Community Services – Child Protection, interviewed C.B. on June 25, 2020. The following is a summary of relevant portions of the agent's interview with C.B:

C.B. advised she was only withholding access because her children are telling her that they do not want to go and that they are fearful.

That N.I. is a “mass manipulator” and that he has made 3 – 4 attempts at ending his life in the last three years. She stated that there is no co-parenting and no communication between the two of them.

C.B. showed the agent notebooks that were restarted by her because N.I. would not keep it to the children.

She is paying out of pocket for R’s counseling as R does not want N.I. to know he is attending counseling.

That N.I. texted R stating: “I’m sorry, I love you R”, she was concerned that it would be a “murder/suicide”, involving her children and N.I. and C.B. was concerned N.I. would come to her home.

The Minister’s representative advised that C.B. should make an application to the Nova Scotia Supreme Court, Family Division if she was not following the current court order regarding parenting.

1.1.5 Third party reports

[121] In April 2018, Dr. G, the children’s doctor, reported that, “C.B. and N.I. tend to argue in front of the children often” and that based on her contacts with the parties she observed that the children are exposed to “too much fighting and conflict by their parents.”

[122] On August 7, 2018, the Minister of Community Services – Child Protection decided they would proceed with an application to the Nova Scotia Supreme Court Family Division, for a supervision order. The Minister determined:

The major presenting problems of family violence, risk of emotional harm, and emotional neglect – inadequate parenting skills will be substantiated under 22(2)(b)(g) and (i). C.B. has disclosed a history of family violence and R and

C.B. both disclosed an incident where N.I. had pushed C.B. in front of the children. **Despite N.I. denying this, the ongoing conflict between C.B. and N.I. and their descriptions of one another being manipulative and bullying including name calling and harassment also constitute family violence. Neither parent has followed through with the Department's direction requesting no communication during custody and exchanges and no contact and lack of insight to their own actions and the impact it has on the children (my emphasis).** Emotional neglect – Inadequate parenting skills will not be substantiated regarding R accessing inappropriate photographs on his iPod as he did not make a disclosure and C.B. has since removed her email from his iPod and deleted the inappropriate emails so he no longer has access to it.

[123] On August 15, 2018, a representative of the Minister of Community Services spoke with the children's babysitter, T.B. The Minister advised T.B. that **“the level of conflict between the parents was impacting R and E, (my emphasis)** and the Department had requested they have no contact at this time and any contact occur through a third party”. In response TB indicated:

...

N.I. and C.B. had been yelling at each other to discuss things between her driveway and N.I.'s.

...

N.I. is not a nice person via email and he had been angry at her in the past.

...

The children were frequently crying about their home circumstances at that time.

...

N.I. and C.B. have tried to involve her in the drama in their relationship in the past, but it puts her in a poor position, and she rather not get involved.

...

R gets very upset. He went over to T.B.'s home and cried sometimes because of the conflict between his parents. R also worried a lot... R struggles with conflict. Recently he yelled at some of the children when they were arguing and said: “I cant take fighting, I hear it all the time” and became very upset.

...

R doesn't have any positive coping skills and will yell when he is upset and triggered.

[124] On October 18, 2018, the Minister of Community Services – Child Protection reviewed the parties' child protection involvement and determined that the children would be interviewed in relation to the most recent referral information. Further, the assigned worker would speak to both parties to advise them **“that if there was another incident of contact or a breach of the order that a risk management will take place regarding the possibility of a third-party placement.” (my emphasis)**

[125] The Minister's records reflect that N.I. became involved in an anger management program offered through the John Howard Society. C.B. attended counseling with M.B.B., E attended counseling with W.G., and R attended counseling offered through the IWK.

[126] On April 16, 2019, a representative of the Minister of Community Services contacted T.B., the children's babysitter. She reported that E did not share any concerns with her, but that R had reported that:

his weekend was fun, but then told her that there was sometimes that were not fun, and he wanted to share them...there was a lot of yelling and dad yelled because they weren't in bed...dad broke the banister in the home because he was angry...there was a lot of yelling.

[127] On May 29, 2019, the Minister of Community Services – Child Protection determined that the investigation in relation to N.I. presenting as “mad” while

caring for the children was concluded and “concerns are substantiated pertaining to emotional harm.” (my emphasis)

[128] On May 30, 2019, the Minister of Community Service – Child Protection determined that concerns regarding the risk of sexual abuse or exposure to sexual perpetrator was not substantiated. **The concerns regarding the referral in April 2019, risk of emotional abuse/harm was substantiated pursuant to section 22(2)(d) and (g) of the *Children and Family Services’ Act*.** (my emphasis)

[129] On August 20, 2019, a representative of the Minister of Community Services – Child Protection, the parties, and their support persons attended a case conference. All present agreed to the following:

No posting on social media or communicating through social media with each other;

Not having contact at pick up and drop off, focusing on the third party or using school/child care;

Not using R as a go between with texting and communicating; and

Communicating through email or with a third party still in place.

[130] On September 11, 2019, the children’s babysitter T.B. advised as follows:

The children were doing well. The parents were planning for R to stay home by himself after school, but his anxiety was too high. He is continuing to come for afterschool care and is her helper. R also has a phone now too. There were no issues over the summer. N.I. took time off work to help R adjust to his new school and R is less anxious.

[131] On September 14, 2019, as noted at paragraph 29 of this decision, R’s counselor reported that R initially focussed much of the session on his parent’s

behaviour, rather than on himself. She reported that R was clear that “he wishes to spend time with his father” ... “he was also clear that, at times, he becomes concerned about his father’s reactions towards him.”

[132] On October 7, 2019, the Minister of Community Services – Child Protection confirmed C.B. was attending counseling, R and E had completed their counseling, and there was a need to follow up with respect to N.I.’s counseling. The Minister was recommending the “Children in the Middle course but neither parent had signed up,” or co-parenting counseling which the Minister understood neither party had engaged in. I believe it is in the children’s best interests for their parents to participate in the “Children in the Middle” course and to participate in co-parenting counseling either individually or together, and I am ordering them to do so.

[133] On November 25, 2019, the Minister of Community Services – Child Protection determined that **there continued to be ongoing custody and access issues between the parties**, (my emphasis) but they would be closing their file with the recommendation that an Interim Order under the *Parenting and Support Act* would include the following provisions:

- (a) No posting on social media or communicating through social media with each other;

- (b) Not having contact at pick up or drop off, focussing on the third party or using school/ child care. This can also take place at a public location where the parties do not have to leave their vehicles;
- (c) Not using the children as a go between with texting and communication;
- (d) Communicating only through third party via email;
- (e) Parents are to notify each other by phone for medical emergencies only and make appropriate arrangements for the children if needed. Updates regarding the medical emergency can be provided through their third parties; and
- (f) Should the respondents see each other at a public location, both parties should be open to the children communicating with the other party (i.e. saying hello or giving a hug). The parties themselves do not need to communicate.

[134] On July 7, 2020, the Minister of Community Services' intake social worker contacted the previous long term social worker who had been assigned the file when it closed in December 2019. The previously assigned worker commented as follows:

She had concerns about N.I.'s "approach to things and that he did sound aggressive initially" but N.I. "had completed counseling and that he had "come around".

She described R as a sensitive child that may at times think N.I. is yelling at him. That R can "hyperfocus" on things like raised voices.

She was not concerned that N.I. was suicidal.

C.B. wanted primary care of the children and "that she has challenges in accepting accountability."

She understood there were ongoing communication challenges between N.I. and his brother.

[135] N.I. stated that while child protection services investigated the matter, they had asked that his parenting time with the children be supervised. N.I. indicated he was permitted telephone and social media contact with the children, but C.B. did not facilitate that contact. N.I. reported sending text messages to his son R and that R did not respond. C.B. did file some examples of text message she stated R sent to his father.

[136] On July 21, 2020, the Minister of Community Services – Child Protection reviewed their involvement with the parties. The Minister determined that the children had expressed that they are afraid of their father when he yells but "denied the threats or significant mental health." N.I. was described as cooperative with the Minister, agreeing to take a positive parenting class. The Minister determined that the MPPS (Major Presenting Problems) were not substantiated, that there was a verbal dispute without threats, and that N.I. appeared to be utilizing the skills he obtained through his previous involvement with the Minister. The Minister

determined that “once confirmation of services was received, that the file would be reviewed for closure.”

[137] An interim hearing was held on August 7, 2020. I rendered a decision changing the parenting schedule to a week on week off schedule during the summer months. Due to the children’s apparent concern about their father, I included a term in the Third Interim Order allowing for a period of reintegration. The Third Interim Order specified that when the children would normally have been scheduled to be in N.I.’s care, that they would be at his mother’s home on an interim basis, and that once the children were demonstrating some level of comfort about seeing their father, that N.I. could join the children at his mother’s home.

[138] Specifically, the Third Interim Order read in part:

1. The parties’ parenting arrangements shall move to a week on week off for the remainder of the summer before school starts in September 2020, with the transitions to occur on Fridays.
2. The children will be dropped off at the home of C.I, N.I.’s mother, for N.I.’s parenting weeks.
3. C.B. shall be responsible to arrange for a third party other than herself to drop off and pick up the children at the home of C.I. during N.I.’s parenting weeks.

4. If the children are comfortable, N.I. may join the visit.

...

The order also specified that the children would attend counseling and both N.I. and C.B. would attend parenting courses. The matter was scheduled to be reviewed in November 2020.

1.1.6 Behaviours suggestive of alienation

[139] On April 24, 2018, a representative of the Minister of Community Services – Child Protection contacted T.B., the children’s babysitter, who observed that C.B. spoke about adult issues in the presence of the children, including “talking about fighting and being scared of their father to them often.” I find that it is usually inappropriate to highlight or to speak with children about another parents’ negative behaviors or in a negative manner about the other parent’s qualities or actions. In this case, it may have been necessary for C.B. to advise their children that some of their father’s actions, referring only to those which occurred in the children’s presence, were inappropriate, giving their mother the finger for example. In any case, T.B. did not testify and I am somewhat unclear about the exact nature of the discussions.

[140] If a child has witnessed a parent react in an emotionally abusive manner toward another person, it may be necessary for an adult (and possibly the other

parent) to speak to the child in an age-appropriate way about the other parent's abusive reactions or the abuse the child has witnessed. It may be necessary for someone to explain to the child that it is not ok for an adult to behave in an abusive manner, and it is not the child's fault that the adult did so. I am unclear what C.B. has stated in the children's presence or under what circumstances and therefore I am unable to find that C.B.'s behaviour was intended to alienate the children from N.I. for any improper purpose.

[141] On July 16, 2020, N.I.'s mother, C.I., contacted a representative of the Minister of Community Services – Child Protection, and she reported in part:

C.B. contacted her on June 29, 2020, and C.I. initially spoke with R. R requested C.I. speak with C.B. and C.I. agreed. C.B. then "went off" and that "she was raging." C.I. took the position that C.B. "should not be speaking about the children's father like that in front of them and that they live in a trailer so they can hear what is being said".

C.I. stated that the relationship between C.B. and N.I. "is dysfunctional on both ends and that if this is the behaviour that was going on in the presence of the children then it's a damn shame."

C.I. denied that N.I. was suicidal. C.I. stated that she was concerned about N.I. because of the "fear of the children being taken away, and that he is having 'mental issues' because of the fear of losing them."

C.I. stated that it has "been a game between them and that they have ongoing issues with their house and mortgage...she stated that C.B. would not settle finances until they settle the children..."

I accept N.I.'s mother's statements about her interactions with C.B. although I do recognize C.B. had a different recollection of the telephone call. I find that it would have been best if C.B. spoke with C.I. in a more collaborative manner. I

find that it was not in the best interests of the children to overhear their mother speak about adult issues with their paternal grandmother.

[142] On Sunday August 14, 2020, the children were dropped off at N.I.'s mother's house by C.B.'s friend and her mother. N.I.'s mother was reportedly advised while in the presence of the children:

You know N.I. isn't allowed to see the kids, it's a Court Order unless R wants to see him.

C.B. has suggested that N.I. did not advise his mother C.I. in advance of the visit that according to the Third Interim Order, there would be a need to determine the children's level of comfort before N.I. should attend at his mother's home to have contact with the children.

[143] The determination of the children's level of comfort with N.I. should have been something the adult's assessed by observing the children and by making decisions in the children's best interests. Ideally, this would have been done in consultation with both parties and, if appropriate, the children's therapists. It was not appropriate to give the children decision making authority, but their feelings did need to be assessed and addressed.

[144] C.I. advised N.I., who in turn advised a representative of the Minister of Community Services – Child Protection, that on or about August 14, 2020, on the

first day the children were scheduled to go to their paternal grandmother's home, during N.I.'s first schedule parenting week with the children following the incident in June 2020, C.I. reported:

That, the very evening on the day the children arrived at CI's home, she advised them that she would have to work the following day. That when R asked where they would go while she worked, C.I. stated she "suggested only" that the children could stay with N.I. at his home while she was at work, and she would go to N.I.'s home to stay with them in the evenings. C.I. advised that E told her that another person was going to care for them while N.I.'s mother was at work.

That subsequently R called C.B. and when he was done speaking with his mother, C.B., that R looked upset. C.I. asked R what was wrong, and R stated that his mother had told him that he needed to speak with his grandmother, C.I. about how he was feeling. R then stated that he did not wish to see N.I. Both R and E stated they did not need N.I. as their father and R asked why he could not see N.I. "once a weekend."

That later that evening R left C.I.'s home and C.I. saw him walking up her driveway with his backpack while speaking on the telephone. When C.I. asked him where he was going, he advised that he was going to meet C.B. C.I. stated, "no you are not," and started walking towards R. R began running, C.I. started running after him, and E followed. The children continued running and C.I. was unable to catch up with them. C.I. called C.B. to ask her if she knew where the children had gone, and C.B. confirmed that she did.

That C.I. located the home the children had run but C.I. was denied entry into the home. C.B. and her mother D arrived at the home to pick the children up. C.I. questioned C.B. about E's comments about using gummies (melatonin) for sleep and C.B.'s mother D interjected, reportedly starting to yell at C.I. and when C.I. began to move toward her vehicle R reportedly ran over to her, hugged her, and kept stating: "I am sorry nanny. I am sorry nanny."

That when N.I. arrived at the home (while keeping some distance), C.B. yelled "he is not supposed to be here." N.I. reported that he had come to check on the children because he "was terrified when my mother had called and told me they had run away from her home." He explained that he spoke to the police officer who was present at that scene, to reassure himself, that he did not approach the home, and he then left. He stated that before he received a telephone call from his mother, that he had no intention of going to his mother's home unless his children agreed they felt comfortable.

C.B. did ensure the children were dropped off at N.I.'s mother's home in accordance with the terms of the Third Interim Order. I find that N.I. failed to ensure his mother was able and willing to follow the terms of the Third Interim Order or to have a back up plan.

[145] The Third Interim Order, which was granted in August 2020, was intended to help reduce to conflict between the parties by reducing the number of exchanges and by giving everyone time to work through their emotions after the incident in June 2020, when N.I. had behaved in an extremely abusive manner toward members of his family of origin while the children were present. The term of the order specifying that the children would initially spend their father's parenting time at their paternal grandmother's home was intended to secure N.I.'s parenting time and ease the children's reintroduction to N.I.'s care, with a review scheduled in November 2020, approximately three months later.

[146] The Third Interim Order was intended to provide N.I. and his extended family with an opportunity to reassure the children that they would be safe with N.I. and with his extended family members and that N.I. would respect their feelings following the incident in June 2020. In other words, it was intended as an acknowledgement that what had happened was not ok, and that the family would

work together to ensure and reassure the children that nothing like that would happen again.

[147] C.I.'s decision to suggest that after the children were at her home for one day they should consider staying with their father while she worked was based on a lack of knowledge about the terms of the order. N.I.'s failure to properly advise C.I. of the terms of the Third Interim Order and his failure to plan accordingly contributed to the breakdown of the children's placement with his mother, C.I. N.I.'s apparent lack of awareness of the need to make amends with his children and the need to gain his children's trust and respect back suggests to me that N.I. did not recognize the impact his behaviours have on his children. C.B. did her part by ensuring the children arrived at his mother's home in good spirits and with an open mind. The end result was not due to C.B.'s interference but due to N.I.'s lack of awareness and planning.

[148] In January 2021, N.I. reported to a representative of the Minister of Community Services – Child Protection, that he had received notice from E's school that he was being removed from E's file at C.B.'s request. Upon further inquiry by N.I. through a third party (his brother), C.B. responded as follows:

I had a conversation with the school to let them know of the situation and that E has anxiety about her father living so close to the school. I stated that the last time we went to court that the order stated **if the children are comfortable with a visit they shall have a visit with their father. (emphasis mine)** E is still scared

to go to school now. She does not want to see him and is scared he will show up. So the conversation was that of, if something happens in an emergency, I need to be contracted(sic) and not N.I. as E was not comfortable with him around her and we didn't want her to run away again. That is what they should have in the file. And yes, they should have a copy of the last order. Which clearly states that if the children are comfortable, N.I. may join a visit.

The Third Interim Order states that "If the children are comfortable, N.I. may join the visit," and referenced the children being placed at their grandmother's home during N.I.'s parenting time on an interim basis. I feel it is important to reiterate that the determination about the children's level of comfort requires a consideration of more than just the children's feelings but also an examination of all the circumstances.

[149] It was always my expectation that all the adults involved would do all they could to support the children feeling comfortable and secure with N.I. and his family of origin. As always when considering the wishes of each child, the court and the parties should be focussing on each child's individual needs and each child's circumstances. I do not feel it is helpful to provide a child with a veto or suggest to them that they are entitled to make a final determination. Children can and should certainly be involved in coming up with ways to address presenting issues from their perspective but with appropriate guidance and, if necessary, an assessment of the basis for each child's continued position. For instance, I can think of no reasonable explanation why the children would be permitted to decide

to refuse to except gifts from N.I. or members of his family of origin. It appears to me that a child of E's or R's age should understand that despite their feelings about N.I.'s past reactions or his parenting style, that it would be hurtful and in fact rude not to accept his gifts. Of course, that is assuming that N.I.'s gifts do not come with any expectations attached given the history of this matter.

[150] I find each child should be involved with a therapist and ideally, unless the therapist finds it necessary for certain sessions, C.B. should not be attending the children's therapy sessions with them. As noted previously, I have also found that both C.B. and N.I. should attend their own therapy designed to assist them in acquiring the skills necessary to co-parent effectively.

[151] N.I. advised a representative of the Minister of Community Services that a week after he received notice from E's school about being removed as a contact, he then received a letter from the Government of Canada stating:

he was no longer deemed to be in a 'shared parenting setup' and that he owed \$1400 with respect to a Canada Child Benefits overpayment.

In every situation, children have a right to child support from both parents commensurate with each parent's income earning ability. Whether there is a finding that there has been a denial of parenting time or a finding of alienation, a court must consider where the children were physically residing at the relevant

time and therefore which parent was covering the children's expenses and should be receiving child support.

[152] If the children were residing with C.B. primarily, for whatever reason, then there was no longer a shared parenting arrangement and N.I. was required to pay the full table amount of child support according to the Provincial *Child Support Guidelines* for that period. In addition, N.I. would no longer be entitled to a share of the Canada Child Benefit for that period.

[153] If C.B. has care of the children, it is her responsibility to ensure she is receiving the appropriate amount of child support to provide for the children's expenses. Child support is the right of the child. There are very few circumstances when it would be in the children's best interests for a parent to waive a child's right to the maximum amount of child support commensurate with the ability of both parents to earn an income or to waive receipt of any benefits available for the children.

[154] N.I. advised a representative of the Minister of Community Services – Child Protection that on April 8, 2021, he received a note from C.B. stating that he was late with the child support payment and that if payments were made on time, that it “would decrease conflict.” I find that if C.B. made that comment to N.I. then it was insensitive of her to do so.

[155] However, the children have not been in N.I.'s care since late June 2020, and there is no suggestion that C.B. was indicating she was more likely to allow N.I. contact with the children if N.I. paid his child support on time. Up to trial in February 2022, I understood N.I. had not had any in person contact with the children since the end of June 2020.

[156] The parties may have different positions regarding whether this court should retroactively recalculate child support and from which date, but I believe both parties understand that this court will make that determination. N.I. should be paying his child support on time and he should expect that C.B. may find it difficult to financially support the children if he does not. Failure of either party to meet their financial obligations to the children is not in the children's best interests.

1.1.7 Denial of parenting time

1.1.7.1 Alleged denial of parenting time without justification in September 2017

[157] N.I. advised a representative of the Minister of Community Services – child protection, that in September 2017, shortly after he advised C.B. that he wished to maintain a 50 / 50 arrangement, C.B. denied him his parenting time as scheduled and she contacted the police. He indicated that subsequently they resumed their previous parenting arrangement.

[158] C.B. provided copies of text messages between the parties, claiming R was refusing to go to N.I.'s that weekend and expressing concern that N.I. initially suggested the children would not be going to Beavers.

[159] The parties had initially agreed on a shared parenting arrangement.

However, as stated above, I believe C.B. began reconsidering whether a shared parenting arrangement was in the children's best interests based on conversations she had with her therapist at that time. I find it is more than likely that C.B. began reconsidering her position based on concerns raised by that therapist about N.I.'s verbal abuse toward C.B.

[160] I accept that C.B. was acquiring a new level of awareness that the conflict between her and N.I. was not good for the children. I find it is more likely than not that the conflict between R's parents was the root cause of R's reported reluctance to go with N.I. that weekend, and the suggestion that N.I. was reluctant to take R to his program, probably reinforced R's position. I suspect C.B. was also unhappy that if N.I. did not take the children to their program, she would not see them. I recognize there was a definite imbalance in that C.B. often advertently or inadvertently inserted herself in the children's life during N.I.'s time. However, from the children's perspective, they wanted to attend their programs and see their mother. I am not prepared to find that C.B. denied N.I. his parenting time without

justification or that a fine should be imposed against C.B. under these circumstances.

1.1.7.2 Alleged denial of parenting time without justification in October 2017

[161] N.I. reported to a representative of the Minister of Community Services – child protection, that on or about October 9, 2017, when C.B. learned he was dating a woman, C.B. contacted his new intimate partner “warning” her about him, which he believed contributed to the end of that relationship. N.I. acknowledged he was unhappy with C.B. for several reasons including but not limited to: C.B.’s request to change the parenting schedule; C.B. withholding the children from him one weekend; C.B.’s report to the police; and of course, as noted above, because of C.B.’s conversation with his former intimate partner “warning” her about him.

[162] As an example of his efforts to avoid conflict, N.I. explained that while the children were still with him, he requested C.B. drop the children’s rain jackets off on his steps and text him after she had done so, rather than come into his home.

N.I. reported that in response to his request C.B. arrived at his home around 10:00 p.m., and she entered his home without his consent. He explained that he became upset because he believed C.B. was “attempting to wake the kids as a way to scare them and eventually take them back home with her”.

[163] N.I. acknowledged that he did “raise his voice and threw his arms in frustration”. N.I. “denied he raised a fist to the applicant”. Instead, he suggested it was C.B. who “lunged at him as if she was going to punch him” and that C.B. “stayed on his deck for a few minutes yelling at him...”, stating to him that he would “pay for this”. I find that both parties likely behaved inappropriately at that time. C.B. denied N.I.’s allegations suggesting she behaved in an aggressive manner.

[164] N.I. reported that on or about October 10, 2017, he dropped the children off at their Scout’s meeting where C.B. was involved as a leader, and when he returned to pick the children up C.B. stated loudly “what, you are not going to let me kiss and hug my kids”. He explained that he was embarrassed by her comments and he “said a few choice words under his breath that were overheard by a parent standing nearby”. He stated that the children did not hear him.

[165] I find C.B.’s decision to express her dissatisfaction with N.I.’s behaviour in a public forum with the children present was inappropriate. That C.B.’s ongoing efforts to insert herself into N.I.’s parenting time was not supportive of his relationship with the children and likely did nothing to help the parties co-parenting relationship. Regardless, N.I.’s response to C.B. intruding on his time with the children was inappropriate. In addition, I find that it is more probable

than not that N.I. did not only say “a few choice words under his breath”, but that he reacted by yelling and cursing at C.B., within earshot of other children and other parents, if not his own children.

[166] N.I. explained to a representative of the Minister of Community Services – child protection, that on October 12, 2017, he attended R’s school after he learned R had reported he had a “sore belly”. When N.I. arrived at the school he noted that R was with one of C.B.’s close friends, TL who had been called instead of the agreed upon contact person TB, the children’s babysitter. C.B. has stated that the parties never agreed TB would be the contact person. N.I. noted that on that occasion R ran up to him, hugged him, and then R decided to return to play. N.I. reported that he spoke with the school principal who stated to him that no referral had been or would be made by a school staff person.

[167] The Minister of Community Services – child protection, records indicate that on October 12, 2017, the guidance counselor from R’s school made a referral to a representative of the Minister of Community Services – child protection. The guidance counselor indicated that R had advised her that:

he was “scared to go to his father’s home because his dad yells”. That R and E had to cover their ears because N.I. was screaming loudly.

The guidance counselor also referenced an alleged incident she had heard about at a Scout meeting. The referral was not investigated by the Minister and therefore

N.I. was not likely aware that a staff person had expressed concerns about R until he received copies of the Minister's business records.

[168] N.I. reported that on October 13, 2017, when he was scheduled to have parenting time with the children, the children's babysitter advised N.I. that C.B. had picked the children up earlier that day. N.I. stated that when he contacted C.B. to inquire about her picking the children up on his scheduled day, she reportedly stated that she had "filed a petition to have full custody", and he alleged that she then "falsely advised him that two court dates had been scheduled for that month." C.B. did file a Notice of Application with the court which is date stamped October 17, 2017. N.I. explained that he contacted the police who declined to intervene. He noted that their shared parenting arrangement recommenced following that weekend and from his perspective the parties' relationship appeared to improve until December 2017.

[169] I am not prepared to find that C.B. denied his parenting time with no justification. On October 10, 2017, N.I. had behaved in a manner that more than likely caused the children to be afraid of him. R expressed fear of his father to his guidance counselor on October 12, 2017. It is more likely than not that C.B. believed she was acting in a protective manner and or was angry and frustrated with N.I. and not without good reason. That she was reluctant to return the

children to N.I.'s care was not entirely without some justification. However, ideally parents will come to court with "clean hands" and allow the court to consider both parents' points of view rather than making any decisions unilaterally.

1.1.7.3 Alleged denial of parenting time without justification in March 2018

[170] In March 2018, C.B. refused to allow N.I. to pick the children up after the Scout's meeting. I find that N.I. behaved in a manner that caused the children to be afraid of him and that as a result the children were either justifiably reluctant to return to his care or C.B. was justifiably reluctant to return the children to N.I.'s care.

1.1.7.4 Alleged denial of parenting time without justification in April 2018

[171] In April 2018, C.B. unilaterally changed the parties' agreed upon parenting schedule. An Interim Order was granted in April 2018, confirming the parents' previous shared parenting arrangement. Given the history of this matter and the disclosures from the children in mid April 2018, including the children expressing fear of their father's reactions towards others and more specifically R expressing fear of his father's reactions toward him, I am not prepared to find that C.B. denied N.I.'s parenting time without some justification.

1.1.7.5 Alleged denial of parenting time without justification in April 2020

[172] N.I. stated that in April 2020, C.B. alleged he was not following health restrictions and she withheld the children from him. N.I. denied the allegation that he was not following health protocols. N.I. also alleged that C.B. was not following the health restrictions. C.B. has responded to the allegation and explained that N.I. was aware of her concerns and most specifically her concerns given that both she and R are immunocompromised.

[173] I find that: due to C.B.'s and R's special needs as they are immunocompromised and the real perceived risk posed by N.I.'s girlfriend who worked in health care; due to the history of high conflict between the parties; the evidence supporting a determination by this court that N.I. was unable to provide the children with a safe, predictable environment; and considering both R's and E's expressed concerns, I am not prepared to find that C.B. denied N.I.'s parenting time without justification.

[174] I am not suggesting N.I. was not forthright about following health protocols as best he could. In addition, I find it is entirely possible C.B. embraced the health protocols which gave her an opportunity to put a parenting arrangement in place which she felt best met the children's needs and their best interests. That she saw an opportunity to address her other concerns as noted above. I have found that

C.B.'s other concerns are justified and therefore I am not prepared to find that there was no justification for the denial of N.I.'s parenting time.

1.1.7.6 Alleged denial of parenting time without justification in June 2020

[175] N.I. reported that in June 2020, C.B. withheld his parenting time with the children following an argument he had with his brother at a cottage at Higgins Lake, following which N.I. reportedly packed the children and his car up, and returned with the children to his home. I have found that N.I. behaved in a manner which caused the children to be afraid and that C.B.'s concerns were justified. Therefore, I find that the denial of parenting time was justified.

[176] I would also note that N.I. has acknowledged the Minister had suggested he had supervised parenting and C.B. has stated that a representative of the Minister of Community Services requested the children reside with C.B. until their investigation of the alleged incident was concluded.

1.1.7.7 Ongoing denial of parenting time without justification after the Third Interim Order was granted

[177] N.I. reported that throughout August 2020, Zoom calls or telephone calls were intended to be scheduled on Mondays, Wednesdays, and Fridays and on the weekends if possible. He reported that he was only able to speak with the children on August 31, 2020.

[178] N.I. has suggested C.B. actively interfered with his relationship with the children. He reported that in addition to a denial of in-person parenting time, C.B. did not facilitate any further contact between N.I. and the children through any electronic means. In addition, N.I. claimed that C.B. sent an email through a third party stating, “nothing about Zoom meetings was court ordered, nice try” and she also stated, “second, I took this week off last minute to be with the kids before school started...my plans are not changing around a zoom meeting.” I find C.B.’s tone in her email is concerning and certainly does not support a finding that she was considering the children’s best interests rather than her own convenience or preference.

[179] I find it extremely concerning that C.B. would suggest she was not prepared to consider every viable way she might be able to help the children repair their relationship with their father even if the option was not included in a Court Order. In addition, her response shows very little empathy toward N.I. who was obviously anxious to speak with his children. Although R clearly stated in his Wishes of the Child Assessment that he was not open to speaking to his father via Zoom, his stated wish is not determinative.

[180] Based on my review of some of the entries included in the printout from the Our Family Wizard program, N.I. apparently believes there has been a conspiracy

and that everyone else is to blame for his children refusing to have contact with him. I have concerns that N.I. has not behave in a child focussed manner during the few Zoom calls initiated with the children or while communicating with R virtually. C.B.'s concerns and / or the children's concerns about Zoom calls are justified and I believe it will be necessary to have a professional person assist in re-establishing contact and therefore the denial of contact by Zoom call facilitated by C.B. and the children without the assistance of a professional is justified.

[181] Zoom calls or in person contact through Veith House would provide the best assurance that the children and N.I. have appropriate unbiased support during the period of reintroduction. Veith House facilitators could provide the children with a level of comfort and N.I. an opportunity to open a child focussed dialogue whereby he is not dependent on C.B.'s good will and he has the children's full attention.

[182] C.B. reported there were difficulties with a Zoom called arranged on August 31, 2020, which resulted in N.I. text messaging R stating: "you've been brainwashed by your mom..." and that on September 7, 2020, N.I. was sending text messages including the following:

- Your choice is not a finally(sic) decision bud, and when does daddy get to have a choice
- Daddy sent mommy money for school supplies and to pay for your sneakers. I'm sure she told you. Also paid your cell phone.

- Trust me R. Daddy is being very patient about this but you cant keep doing what your(sic) doing or things will change.
- I know your mommy isn't gonna teach you this as she has a hard time seeing anything but her choices as possibly
- You've gotten too comfortable with hating me things are gonna change bud trust me
- Your choices are soon gonna be overruled as your choices don't matter until you're 16, Until then, I am your father and you will respect me

[183] C.B. reported further efforts to assist the children to engage including downloading an app for E on September 9, 2020, and an attempt to engage the children on September 30, 2020.

1.1.7.8 Unreasonable denial of parenting contact without justification in December 2020

[184] In December 2020, N.I. attempted to arrange to drop off Christmas gifts for the children and he was advised through legal counsel that:

The children have expressed they would not wish to receive any gifts at this time. We have tried to use Christmas as an opening point for their family but have not had success yet.

I have already commented that it is of concern to me that C.B. would try to justify giving the children a choice whether to except any gifts from N.I. or his family.

[185] It appears C.B. eventually did relay gifts from N.I. to the children. There is an entry in Our Family Wizard where C.B. suggests to N.I. that certain of the gifts he provided for the children did not fit the children and C.B. offered to drop the gifts off for him to exchange or to drop the gifts in a donation bin if he did not

want them back. Rather than responding in any productive way, in June 2021,

N.I. responded as follows:

ironically enough, for Christmas gifts that I bought for the kids I'm not surprised that they're too small."

It takes two people to keep the conflict going and I would suggest that in the alternative, N.I. do his part to keep communication positive, despite his personal feelings.

1.1.8 Ability to work together to co-parent

[186] N.I. explained that he worked with C.B. through a third party to arrange to pay for E's medication, and to pay half the cost of E's new boots. N.I.'s continued efforts to work with C.B. are commendable and he should continue to strive to improve "the parties' ability to communicate in a timely, meaningful, and respectful way, as co-parents of R and E.

1.2 Legislation

[187] The applicable legislation is the *Parenting and Support Act*.

[188] Section 2 which defines "custody" as meaning:

the responsibility and authority for the care and upbringing of a child and for the making of decisions regarding the care, supervision and development of the child.

[189] Section 2 also defines "parenting time" as:

the time when, under an agreement or a court order, a parent or guardian is with the child.

[190] Section 10, among other things, provides that an order for child support shall be in accordance with the Provincial *Child Support Guidelines*.

[191] Sub-sections 18 (1) and (5) provide as follows:

18 (1) On application by a parent or guardian..., the court may make an order respecting

- (a) custody;
- (b) parenting time;
- (c) a parenting arrangement dealing with any of the areas set out in subsection 17A(3);
- (d) a parenting plan made under Section 17A; and
- (e) any other matter the court considers appropriate.

[192] Sub-section 18 (5) indicates that in any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

[193] Sub-section 18 (6) provides a list of circumstances that are to be considered when determining a child's best interests and reads:

- (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;
- (c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

- (d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;
- (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;
- (g) the nature, strength and stability of the relationship between the child and each parent or guardian;
- (h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;
- (i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child; and
- (j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on
 - (i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and
 - (ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[194] I have considered all of the circumstances listed above, and I have found the circumstances listed in paragraphs (a), (b), (c), (f), (g), (h), (i) and (j) to be particularly applicable to the circumstances of this case.

[195] Regarding the effect of family violence, sub-section 18(7) provides:

When determining the impact of any family violence, abuse or intimidation, the court shall consider (a) the nature of the family violence, abuse or intimidation; (b) how recently the family violence, abuse or intimidation occurred; (c) the frequency of the family violence, abuse or intimidation; (d) the harm caused to the child by the family violence, abuse or intimidation; (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and (f) all other matters the court considers relevant.

[196] And, notably, sub-paragraph 18(8) provides:

(8) In making an order concerning custody, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

1.3 Parenting - N.I.'s position and arguments

[197] N.I. took the position that C.B. has either intentionally “alienated” the children from him or she and others have discouraged the children from seeing him through her (their) behaviour. N.I. is seeking:

1. An Order fining C.B. for failing to adhere to the Court Order, pursuant to *section 40 of the Parenting and Support Act*.
2. That the children be placed in his primary care on an interim basis, given C.B.'s history of failing to comply with a Court Order. That this order would be reviewable once the children “have established a relationship with me as to whether shared parenting is in their best interests.”

[198] I am not prepared to find that C.B. failed to adhere to a Court Order without cause.

[199] I find it is not in the children's best interests to be placed in N.I.'s care primarily and in addition, that it is not in the children's best interest for the parties to return to a shared parenting arrangement.

[200] N.I. has suggested that the Minister of Community Service – child protection, became involved in august 2018 “as a result of ongoing verbal conflict between the parties,” and that services were offered and completed. I would note that the Minister of Community Services records – child protection, suggest they opened a file following a referral suggesting N.I. had pushed C.B.

[201] N.I. emphasized that the Minister of Community – child protection, terminated their court involvement in December 2019, and that the court should place some weight on the Minister’s decision to leave the shared parenting arrangement in place pursuant to the Second Interim Order granted in May 2018. His position was that the agency ‘ended its involvement as there were no longer child protection’ concerns with either parent. However, the Minister did determine there was ongoing custody and access issues and that specific terms were included in the *Parenting and Support Act* order in an effort to decrease conflict between the parties in the presence of the children.

[202] N.I. suggests that C.B. ‘ensured that the shared parenting arrangement ended in June 2020, C.B. “despite the three years of status quo’, and she did so without approval from the Court. He stated that she ended the shared parenting arrangement by relying on the report of an ‘argument between N.I. and his brother, which she was not present for.’ As noted previously, I rely on the children’s account of what happened in June 2020, and on the evidence provided by N.I.’s brother and his mother when they were cross-examined. The preponderance of the evidence, and N.I.’s own admission included above at paragraph 83, and reproduced in part here suggest N.I. created a hostile environment:

...

N.I. admitted that he yelled at his brother and he “scared a lot of people”. He stated that his family members removed the children and took them to a different camp. He stated that his mother did not want him to take the children and go home as he was angry. That he “cried on his way home with his children”. That he told his children why he was angry and that C.B. kept them away from him. That he had not threatened to kill his brother, rather he had threatened to punch him.

...

N.I. reacted in an entirely inappropriate manner and blamed his brother for provoking him. He acknowledged he “scared a lot of people” but does not appear to recognize the significant effect his actions have had on his children. Instead suggesting the children are overreacting and succumbing to baseless fears about him.

[203] As noted above, in August 2020, the parenting arrangement was varied to a week on week off schedule and the children were placed with N.I.’s mother as an interim measure. As noted above, the term was intended to assist with a gradual re-introduction of the children to N.I.’s care following concerns expressed by his children after the heated argument between N.I. and his brother in June 2020.

There was a plan in place to gradually re-start his parenting time. As noted previously, I find that due to a lack of planning by N.I., which I find was due to his refusal to acknowledge the children’s feelings, the family placement at his mother’s home broke down on the first day.

[204] N.I. has stated that C.B. refused to allow N.I. to see the children. That C.B. has also: refused to accommodate ongoing electronic access; threatened to donate his gifts; and has stated to others that she anticipates having “sole custody” of the children. As noted above, I find it will be necessary to have a professional facilitate any reintroduction of the children to N.I. I have concerns about N.I.’s ability to interact with the children in a child focussed manner and I also have concerns about C.B.’s ability to fully support and encourage the children to address the breakdown in their relationship with N.I.

[205] N.I. took the position that “any argument that he should not be granted parenting time with the children as they will just run away, should be given no weight”. He pointed out:

that children are unwillingly placed in environments they are resistant to regularly in Department of Community Services matters and these orders are enforced. For this court to acquiesce to the children’s wishes would mean that those wishes are determinative of this matter and place these children squarely in the middle of conflict.

My decision about what parenting arrangement is presently in the children’s best interests is based on a full review of the evidence, including a consideration of the children’s wishes at various times throughout this litigation.

[206] N.I. has argued it is in the children’s best interests to have a meaningful relationship with both parents. He has stated that C.B.’s actions since separation

have demonstrated her inability and unwillingness to support the children's relationship with N.I. N.I. argued that C.B.'s actions since separation have made "co-parenting untenable". I conclude that both parties are responsible for creating an environment where co-parenting is untenable, and that it is in the children's best interests that both parties participate in co-parenting counseling.

[207] N.I.'s position is that "until such time as C.B. is able and willing to co-parent the children with him, the children should be placed in his primary care to allow the children to receive appropriate treatment." It is N.I.'s position that it is not appropriate to allow the children's wishes to dictate the parenting arrangements and schedule." I conclude that it is not in the children's best interests to live primarily with N.I. I am not convinced that N.I. has recognized the need for him to change his parenting style to respond to his children's expressed needs. I find N.I. has not acknowledged any need for real change and he has failed to consider the effect removing the children from their mother's care would have on the children.

[208] I do agree with N.I. that the children should not be placed in a position to make final decisions which adults should be making for them. The problem in this case is that I do not believe C.B. or N.I. have even a basic ability to constructively work together. In addition, I find they both may lack the necessary parenting skills to effectively support the children with this very complicated process, and that is

why I have suggested there is a need for professional involvement. Of course, there is an expectation that the parties will do their best to use the skills and information they have already received while participating in counseling previously. That they will utilize those tools while working with Veith House staff.

[209] N.I. argued that the “best interests of the child” test is the only test, that the test is broad, and that in making an order the court should give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of that child. Also recognizing that “to the extent that contact conflicts with the best interests of the child, it may be restricted. But only to that extent.” I agree with N.I.

1.4 Parenting - C.B.’s arguments

[210] C.B. took the position that N.I. has behaved in a manner which resulted in the children being afraid of him and “distrusting him”. C.B. has suggested N.I. has an anger management problem “that he still has not taken effective steps to address”. C.B. denies the allegation N.I. has made suggesting she has “alienated the children” from N.I.

[211] In her submissions, C.B. highlighted a quote from the children’s counselor, WG, which was reproduced previously in this decision, that:

although a child can learn coping skills in these circumstances the parents must learn ways to alter their responses toward each other and toward their children in order to move toward a calmer and less emotionally provocative day to day lifestyle.

C.B. argued:

There is no doubt that there is a major communication problem between the parties themselves. However, it is also clear that both children prefer an environment where the parent taking care of them is not, on a regular basis, screaming at them over his own internal anger management issues.

...

I do agree with C.B. that the problem that this family presents to the Court is “complex and deep seated.” I also agree that ignoring the anger issue, which I note was expressed at times by both parties, or minimizing it will not benefit these children.

[212] C.B. has suggested that “the only plan that makes sense”, would include the following: N.I. working with a psychologist to address his anger management issues with a report being provided to the Court; scheduling a review date if N.I. makes progress in treatment; and attempting to reintroduce the children, if possible but “not directly against their will”. She argued that no plan should be based on “force or coercion”.

[213] I am somewhat concerned about what C.B.’s notion of “force or coercion” may be. Given that C.B. apparently struggled to gain the children’s agreement to even accept gifts from N.I., I am skeptical about how much assistance she can

provide. Within reason, the children should certainly have a voice. However, if a child refuses for instance a reasonable suggestion which presents little or not risk, then it will be necessary to address their refusal, and I agree that should be done in a productive non-threatening manner.

1.5 Analysis and conclusions regarding parenting

[214] It is common knowledge that each case turns on its own set of facts. When making decisions related to parenting, courts must consider each parties' present ability to ensure each child's best interests. In this case both parties are seeking primary care of the children.

[215] To be clear, N.I. has requested primary care of the children on an interim basis until: he has re-established a relationship with his children; he has some re-assurance that C.B. will be supportive of his renewed relationship with the children; and until the matter can be reviewed to determine if it is in the children's best interests to return to a shared parenting arrangement. He has made his request despite acknowledging parties' children have "tended to gravitate toward C.B." for support.

[216] Since September 2017, C.B. has at times suggested it would be in the children's best interests for her to have primary care of both children. Despite

C.B.'s stated preference for primary care, the parties shared the care of the children between May 2017 and June 2020.

[217] A "status quo" shared parenting arrangement of approximately three years should not be displaced without evidence that the arrangement is not in the children's best interests. A child's wishes alone would not suffice to displace the status quo. Children get a voice but not a choice. C.B. was wrong to suggest to R that he would have a choice after he turned 12 years old.

[218] In *Pennell v. Larkin* 2022, NSSC 233, the Honourable Justice Jesudason stated:

[68] When determining Braylen's best interests, parental preferences and rights play no role. Furthermore, determining best interests simply isn't a matter of scoring each parent on a generic list of factors. I must analyze the legislative best interests factors using a balanced and comparative approach: *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 SCR 3 and *D.A.M. v. C.J.B.*, 2017 NSCA 91.

[69] Here, Mr. Larkin seeks a shared parenting arrangement. When considering a request for shared parenting, courts in decisions such as *Hammond v. Nelson*, 2012 NSSC 27 and *Gibney v. Conohan*, 2011 NSSC 268 have provided additional considerations when assessing whether shared parenting is in a child's best interests.

[70] I won't list all of the factors but they broadly include things such as proximity of the parents' homes, availability of each parent, whether a reduction in transitions between households can be achieved through a shared parenting arrangement, disruption to the children, the level of conflict between the parties, each parent's motivation and capability to realize their parenting opportunity for the best interests of the children, and other factors.

[71] In *A.N. v. J.S.*, 2018 NSSC 146, Justice Beaton provided a helpful summary of some key considerations when faced with a request for shared parenting. She stated:

[8] Over the past ten years, the Court has produced a number of decisions identifying the conditions needed to support the implementation of a shared parenting regime. Reflecting the circumstances of many different families, these decisions, whether approving or rejecting in any given case the sought-after shared parenting construct, have recognized the importance of key characteristics: a shared parenting arrangement requires the Court to be confident that the parents are committed to, have demonstrated and will be able to continue with a high degree of integration, cooperation, respect and flexibility in and for their respective parenting styles. The parents' approaches need to leave the Court confident that the application of the requirements...to the particular circumstances, along with the ultimate assessment of what is in the best interests of the child(ren), can lead to a conclusion that a shared parenting arrangement is reasonable, realistic and workable.

[9] Central to the question of whether shared parenting will be ordered is a consideration of the parties' ability to communicate in a timely, meaningful and respectful way, an ingredients which is the backbone of the key characteristics referred to above, and crucial to their operation in a manner that best suits the needs of the child(ren). Courts are not looking for shared parenting arrangements of perfection – as borne out in decisions such as *Gibney v. Conohan* 2011 NSSC 268 and *Clarke-Boudreau v. Boudreau* 2013 NSSC 173 – however parents do need to satisfy the Court that it is realistic to expect they can put the child(ren)'s needs first and foremost in their communication and decision-making. [Emphasis added].

[219] There is clear evidence that both parties contributed to the ongoing communication issues and resulting conflict between the parties which existed between June 2017 and the trial in February 2022. Both C.B. and N.I. engaged in regular arguments in the presence of the children. In addition, the parties often discussed adult issues with the children, thereby failing to minimize the children's involvement in their conflict.

[220] I have also found that C.B.'s concern about N.I. having a pre-existing and ongoing anger management problem is supported by the evidence. Although N.I.'s

anger management problem is not the only issue in this matter, it was an important factor in coming to my decision.

[221] On or about April 24, 2019, in response to concerns raised about N.I. yelling, N.I. reported to a representative of the Minister of Community Services – Child Protection, “that he is the children’s parent and not going to be there to just be friends.” Although N.I.’s desire to spend as much time as possible with the children and his plan to set appropriate rules and standards for the children to follow suggest N.I. has good intentions, I find N.I. showed a lack of ability to problem solve in a calm manner. As a result, I find that N.I. failed to provide the children with an emotionally supportive environment within which N.I. could enforce appropriate rules and structure.

[222] The Courts have sometimes referenced various categories of parenting styles: authoritative (balances structure and independence); authoritarian (dictatorial and overbearing); permissive (no rules or structure); or uninvolved (no rules, structure, or affection). I accept that each parent’s style does not always fit neatly into the above noted categories, and some may overlap, but I feel the above noted categories help provide a framework when considering parenting styles. I accept that parenting is a difficult task and perfection is not expected from anyone.

In this case, effective parenting and co-parenting would require both N.I. and C.B. to allow room for interpretation, compromise, discussion, or change.

[223] Throughout the proceeding, both N.I. and C.B. responded to each other in unproductive ways, both at times lacking empathy for the other and for the children and at times lacking an awareness of the effect their conflict was having on the children. Unfortunately, in addition to the petty and immature choices both C.B. and N.I. made at times, N.I. also frequently expressed his frustration by: yelling, screaming, and cursing at individuals; hitting, slamming, or throwing items; and yelling at the children, thereby creating a chaotic and stressful environment for everyone around him.

[224] N.I. argued that case law such as *Jachimowicz v. Jachimowicz* 2006 NSSC 82, *Johnson v. Ross-Johnson* 2009 NSSC 210, *M.L.S. v. N.E.D.* 2017 SKQB 183, *C.(S.) v. C(A.S.)* 2011 MBCA 70 Man. C.A., *Yousufy v. Yousufy*, 2019 ONCJ 791 (CanLII), (referencing *Donald v. Leyton*, 2008 CarswellONt 1967 and *Johnson v. Ross-Johnson* 2009 (CanLii), 2009 CarswellNS 398); would support the order he is seeking for primary care of the children..

[225] N.I. also referenced other cases such as *A.M. v. C.H.*, 2019 ONCA 764, and the trial decision in *A.M. v. C.H.*, 2018 ONSC 6472, *Fiorito v. Wiggins*, 2015 ONCA 729, 69 RFL (8th), *M.M.B(V) v. C.M.V.*, 2017 ONSC 3991; *Foley v. Foley*,

2016 ONSC 4929; and *C.J.J v. A.J.*, 2016 BCSC(CanLii). C.B. referred me to the cases of *Ransom v. Dasti*, 2020 ONSC 4526; *De Melo v. De Melo*, 2015 ONCA 598, and others.

[226] I find that N.I.'s sometimes overwhelming and problematic emotional reactions to his children and others, which he suggested were responses to his frustration and often provoked by the behaviour of others, is unlike the one-off situations where a parent snaps or is rude to their child. This case is different in that R and E have repeatedly disclosed to third party professionals that they are afraid because of the environment created by N.I. There is evidence of an ongoing pattern.

[227] Parents who at times scream, threaten, deliberately physically impose on their children or others, and use their ex-spouse's or their child's fear as a method of control are behaving in an emotionally abusive manner. I find N.I. has shown a pattern of presenting to his children and to others, including C.B. and members of his family of origin, as a scary person. I find N.I. has instilled fear through shouting, throwing things, and the children's belief that they were unable to keep themselves physically and emotionally safe around N.I.

[228] Similar to the child in the case of *Ransom v. Dasti*, supra, I find that given R's age, 14 years old at trial in February 2022:

that he is a teenager, and given the history of this litigation, that “to attempt to force him to have contact with his father...would be not only futile, but harmful.” ... “He should not, given his age and maturity as well as the legitimacy of his feelings toward” N.I., “be forced to have contact” with him” ..., against his wishes.

R shall be encouraged to develop a plan to take steps to reconnect with his father.

I find that R would benefit from the support of a therapist and the trained access facilitators available through Veith House.

[229] I find that R’s situation is similar the child’s situation in *De Melo v. De Melo*, supra, where the Ontario Court of Appeal found:

This is a high conflict matrimonial case; that joint custody is not appropriate in such cases except in exceptional circumstances; that such exceptional circumstances do not exist here, where the parties have no effective means of communication; that the ages of the children (15 and 13 years of age) and the custodial arrangements since separation strongly militated in favour of an award of custody to the mother; and that court-constructed access arrangements should not be imposed on teenaged children who have repeatedly confirmed that they do not wish contact with the non-custodial parent and that they wish to maintain the existing custodial and access arrangements.

...

With respect to the issues of access, we note that the children’s opposition to court ordered access was rooted in their own experiences with their father. They made it clear that they do not wish to see their father at the present time and they wish no further involvement in litigation or court-ordered interventions. The evidence established that the children are of sufficient age and maturity so as to warrant judicial respect for their positions on these matters.

[230] Based on my review of R’s circumstances and all the evidence, I find it is not in R’s best interest for him to be placed in N.I.’s care primarily, or for the parties to return to a shared parenting arrangement. I find it would be least harmful at this time for R to remain in C.B.’s care. Although I know my findings will be

difficult for N.I. to accept, I do hope that with some finality, specifically some assurance that he will be remaining in his mother's care primarily, that one result will be that R is more likely to consider re-initiating contact with his father.

[231] I find that when N.I. and C.B. were managing a shared parenting schedule without as much conflict, that it was most likely due to the expectations and limitations imposed on both parties by service providers. In this situation, R has never had the benefit of a professionally trained supervisor to assist him and I feel it is in R's best interests to take advantage of services available through Veith House. There will be clear expectations enforced through Veith House and a report will be filed with the Court.

[232] However, the structure available through Veith House will not always be available to the parties, and as noted above, it will be necessary for both parties to seek assistance to develop a co-parenting relationship with a high degree of integration, cooperation, respect, and flexibility in and for their respective parenting styles. I find that both parties will require professional help with the task.

[233] Both N.I. and C.B. must avoid involving the children in any adult discussions about the parties' differences and difficulties. It is important that they both recognize that fixating on perceived wrongs and attempting to discredit the

other parent will not benefit their children. For instance, C.B.'s lack of compliance with the Minister's directions does not excuse N.I.'s inappropriate responses in the presence of the children, responses which have had a long-lasting impact on the children and their relationship with their father.

[234] It is important to remember that it was the risk of N.I.'s outbursts toward C.B. that support services professionals were trying to accommodate with the restrictions on the parties' contact. That those restrictions denied C.B. and the children the ability to see each other at the children's extracurricular activities during N.I.'s parenting time. N.I.'s sensitivity to C.B.'s intruding on his parenting time and about the children's tendency to gravitate toward C.B. were the reasons for the Minister's direction.

[235] I find that it is more likely than not that C.B. did go out of her way to "run into" the children while they were in N.I.'s care, including at the farmer's market on one occasion. I also accept N.I.'s evidence that when the children were in C.B.'s care, that C.B. would "ghost him." Both parties were at fault for the ongoing conflict, but it was N.I.'s extreme reactions to the conflict which caused the final and the complete breakdown of the children's relationship with N.I.

[236] Given my finding that N.I. has not provided sufficient evidence to suggest he can manage his sometimes volatile reactions or any evidence that he recognizes

his parenting style must change, I am not prepared to order that E be placed in her father's primary care. In addition, due to the lengthy history of conflict and the failure of past interventions to address the conflict, I find that at this time it is not in E's best interests to be placed in a shared parenting arrangement.

[237] In coming to my conclusion about E, I have considered all the evidence including E's comments which she made in July 2020, suggesting she would be open to contact with N.I. once per week with her paternal grandmother present, and to be able to "go somewhere else" or to effectively end the visit with N.I. if he yells or becomes angry. Having considered all the evidence, I find it is in E's best interest to also recommence contact with her father by way of supervised videocall contact or in person contact facilitated through Veith House once every two weeks.

[238] E's contact may be supported by a counselor or other professional support person if that is E's preference but requires an access supervisor only. C.B. shall not participate in E's access with her father or any therapy E participates in unless the therapist specifically finds it is necessary. C.B. shall not be present at E's access with N.I. whether by videocall or in person. If E attends the parenting time scheduled with N.I. at Veith House, then a review may be scheduled to coincide with the end of the access visits at Veith House, after six months as court time

permits. If E fails to attend the access visits at Veith House, the matter of her contact with her father may be reviewed after three months, as court time permits.

[239] Although it should not be necessary for me to do so, and it would not be necessary with parents who were mostly able to behave in a manner which promoted their children's best interests, as noted previously, I am granting an order prohibiting either party from posting any information regarding this matter or the other party on social media. I am also granting an order prohibiting either party from facilitating the dissemination of information about the other party by any means.

[240] My review of entries included in Our Family Wizard suggests there was little dialogue between the parties about how to proactively address the children's comfort level with their father and move forward with trying to reintroduce N.I. to the children. Perhaps the stalemate is due in part to the parties' opposing positions: with C.B. believing it was in the children's best interests to reside in her care primarily and N.I. asking that the children reside in his care primarily. I hope that after the parties have reviewed my decision, they will be able to work together to encourage the children to have a meaningful relationship with their father while being reassured that they will be residing with their mother primarily for the foreseeable future.

[241] In *Pennell v. Larkin* 2022, NSSC 233, the Honourable Justice Jesudason found that:

When determining Braylen's best interests, parental preferences and rights play no role. Furthermore, determining best interests simply isn't a matter of scoring each parent on a generic list of factors. I must analyze the legislative best interests factors using a balanced and comparative approach...

In this case, the primary issue influencing my decision regarding N.I.'s parenting time is his history of emotional reactivity and my finding that his parenting style is not compatible with his children's needs or their best interests.

[242] There is no doubt that C.B. has not always made the right decisions when co-parenting with N.I., and I do recognize that both parties have engaged in conflict with the other and both have at times behaved badly. However, the evidence supports a finding that N.I.'s heightened reactions and his parenting style have both had a significant impact on the children's relationship with N.I. The issue will not be resolved overnight.

[243] After reviewing the Our Family Wizard documents, I have concerns about the continued dialogue between the parties and their support persons. It is important for N.I. to understand that I have found that the children had legitimate reasons for being afraid of N.I. and for refusing to have contact with him.

Although C.B.'s behaviour did not always maximize N.I.'s relationship with the

children, I am unable to find that she was the major factor resulting in the children's alienation from N.I.

[244] I find it more likely that it was N.I.'s emotionally charged behaviour which was the single most important factor contributing to the breakdown in the children's relationships with N.I. N.I. may be reluctant to let go of his belief that C.B. is influencing the children and alienating them from him, or in the alternative, his suggestion that the children are overly sensitive and there is nothing wrong with his interactions with them, but I believe he must do so to meet the children where they are. Whether the children are overly sensitive to N.I. or not, they have repeatedly stated that they want him to change because they are afraid of him, and it is important that he listen carefully to what they are saying.

[245] Sometimes a finding that a parent has behaved in a manner which has created an environment of fear for their children is determinative of the issue and that parent's parenting time is terminated. In this case, R's assessor determined it would be important not to terminate the relationship, and I agree. Experts have often suggested to the courts that children benefit from efforts made to address relationship difficulties with a parent and that the skills they develop will be valuable tools they can use when they are navigating future relationships.

[246] I encourage the parties to be future focussed. I would suggest to N.I. that there is no cult...there is only the need for both C.B. and N.I. to accept responsibility for their behaviour and to truly engage and work at a co-parenting relationship.

2 Child Support

[247] N.I. argued he should not have to pay child support for the period when C.B. kept the children from his care without his consent, but in the alternative, if the Court considers a retroactive recalculation, it should not occur before June 2020.

[248] C.B. was initially seeking a retroactive calculation back to August 2017. In later submissions she stated that for 2017, she was not seeking a recalculation for the period between September and December but only between May 2017 and August 2017. The overall award she is seeking for the period between May 2017 and February 2022 is \$23,915.74.

[249] The *Parenting and Support Act* matter was initiated by C.B. in October 2017, when she filed a Notice of Application requesting the court address child support involving parents pursuant to section 9, payable from May 2017 forward, both table amount and special or extraordinary expenses.

[250] In post-trial submissions C.B. stated:

The parties agree on at least the mathematics of the retroactive child support issue...subject only to the proviso that the claim for \$3,733.23 for primary care

between September 2017 and December 2017 be removed from the equation leaving a balance claimed by C.B. for retroactive child support on an offset basis of \$23,915.74.

The parties agree on the current annual income of each of them for the purpose of calculation of prospective support.

[251] On September 12, 2018, C.B. contacted the Minister of Community Services

- Child Protection to express concern that N.I. had applied for half of the child tax benefit and she owed the government \$7,800.00. C.B. advised that since April 2018, she and N.I. had shared the custody of the children. C.B. initially argued that she had the children more than 50% of the time in 2017.

[252] N.I. explained that except for a couple of occasions: when he had hurt his back and was unavailable to care for the children for approximately a week; and when he had taken a trip to Ontario with his union, that he had always been available to care for his children. N.I. further reported that C.B. had been in hospital with an illness for approximately one week in November 2017, and therefore unable to care for the children.

[253] N.I. filed his response on February 2, 2018. In his post trial submissions N.I. acknowledged C.B.'s:

math is accurate if this court decides to award retroactive child support it is based on the de facto parenting arrangement unilaterally instituted by C.B. That being said, retroactive child support is discretionary in nature, as stated in oral submissions, it is N.I.'s position that there should not be a child support award in favor of C.B. that would essentially reward her for continually breaching the Second Interim Order.

The existence of a Third Interim Order not was not addressed in N.I.'s argument.

[254] N.I. asked that this Court consider the issue of child support as of June 2020, “the time at which there was a material change in de facto parenting arrangement following the Interim Consent Order (Support) in June 2019.” He argued that “prior to June 2020 there was a clear agreement between the parties of the appropriate amount of child support payable based on the shared parenting agreement.”

[255] N.I. argued that the Interim Consent Order (Support) issued June 18, 2019, awarding C.B. child support in the amount of \$220.40 per month (the set-off) in accordance with the shared parenting arrangement, and an equal sharing of child-care costs and extracurricular costs beginning June 1, 2019, should stand until at least June 2020. He argued that there was no provision in the Interim Consent Order (support) with respect to retroactively varying child support, and therefore it should not be considered. N.I. referenced the case of *T.E. v. N.S.*, 2021 NSSC 169 at paragraph 31.

[256] An Interim Support Order is usually just that – interim. The parties separated in May 2017 and C.B. filed her Notice of Application in October 2017. There was no undue delay filing her application or providing notice to N.I. N.I. should have known he had a responsibility to support the parties’ children commensurate with the parties’ ability to earn an income while considering any

additional costs of a shared parenting arrangement. The children will benefit from the support. There is no undue hardship. I find child support should be calculated retroactively to the date of separation in May 2017, while taking into account the parties agreement on child support reached in June 2019.

[257] N.I. noted that Justice Jesudason had previously made a finding of fact that the parties had a shared parenting arrangement between May 2017 and March 2018. I must determine whether the parties had a shared parenting arrangement based on the entirety of each year – not monthly. I find the parties had a shared parenting arrangement in 2017, 2018, 2019, and in 2020 up to August 2020.

[258] The parties separated in May 2017. N.I. has stated that in September 2017, at the same time C.B. began requesting the children live mostly with her, he realized he had been paying “double” the expected amount of child support. I note that the chart provided by C.B. does not acknowledge any support paid by N.I. until 2019, when N.I. began making payments pursuant the Interim Child Support Order granted in June 2019. I have proceeded with the understanding that the parties agreed with the values inserted in the chart C.B. filed with the Court on February 7, 2022. If this is an error, then it will be necessary to schedule a court conference to discuss the issue.

[259] C.B. initially claimed she had the children more than 60% of the time from August to December 2017, with her having the children 142 days and him having the children 93 days ($93/235 = 39.57$). Assuming the parties shared care of the children 50/50 in June (30 days) and July 2017 (31 days), this would add approximately 30 days to each parties' tally, bringing the number of days with C.B. to 172 and the number with N.I. to 123 ($123/295 = 41.69$). This results in C.B. having the children approximately 58% of the time in 2017. I find the parties had a shared parenting arrangement in 2017.

2.1 Conclusions

[260] May 2017 through August 2017: the parties had a shared parenting arrangement – given the agreement of the parties in June 2019 the set off applies retroactively. C.B. earned \$68,688.24 (952.22) in 2017, and N.I. earned \$91,356 (1244.41). I find that the parties had a shared parenting arrangement in 2017. C.B. is only seeking payment of the set-off amount for the period May 2017 through August 2017. N.I. owes **\$1,168.76 to C.B. for 2017.**

[261] January 2018 through December 2018: the parties had a shared parenting arrangement – given the agreement of the parties in June 2019, the set off applies retroactively. C.B. earned \$74,102 (1044.43) in 2018 and N.I. earned \$87,550.00

(1226.48). I find that the parties had a shared parenting arrangement in 2018. N.I. owes **\$2,184.60 to C.B. for 2018.**

[262] January 2019 through December 2019: the parties had a shared parenting arrangement – given the agreement between the parties in June 2019, the set off applies retroactively and prospectively. The parties have agreed C.B.’s income was \$72,188.48; (1018.48) in 2019; N.I. earned \$90.328 (1264.20) for a set off of \$245.72 = \$2,948.64 - \$1,322.40 = \$1,626.24 C.B. has asked for \$1,322.40 + \$151.92 = **N.I. owes \$1,474.32 to C.B. for 2019.**

[263] January 2020 through June 2020: the parties had a shared parenting arrangement – given the agreement between the parties in June 2019, the set off applies prospectively. C.B. earned \$79,557 (1118.35) in 2020; N.I. earned \$85,922.00 (1204.54). $\$7227.24 - \$6711.60 = 515.64 \times 6 = \$3093.84 - \$1322.40 = \1771.44 ; **C.B. has suggested N.I. has a credit of - \$538.92.**

[264] July 2020 through December 2020: the children were in C.B.’s care primarily and therefore N.I. must pay the *Guideline* amount. Previous agreements regarding sharing the cost of all extra items may be revisited by the parties at N.I.’s request to determine what expenses fit the definition of special or extraordinary (the parties may request a case conference to discuss the issue further if they are

unable to come to an agreement). N.I. earned \$85,922 (1204.54) in 2020 (1204.54) x 6 - \$1322.40 = \$5,904.84. **N.I. owes \$5,904.84 to C.B. for 2020.**

[265] January 2021 and July 2021: the children continue to be placed primarily with C.B. and therefore N.I. must pay the *Guideline* amount. As noted above as of July 2020, the treatment of special or extraordinary expenses would be different as the parties are no longer in a shared parenting arrangement . N.I. earned approximately \$85,922 (1204.54) in 2021 x 12 = \$14,454.48 - \$2,692.80 = **\$11,761.68.**

[266] January 2022 and February 2022 – the children continue to be placed primarily with C.B. and therefore N.I. must pay the *Guideline* amount. N.I. earned approximately \$85,922 (1204.54) in 2022 x 2; \$2,409.08 - \$448.80 = **\$1,960.28.**

[267] The total amount owed by N.I. to C.B. is **\$23,915.56.**

[268] There is an agreement that all property has been divided, subject to the \$25,000 held in trust, which is N.I.'s portion of the proceeds of the sale of the parties' home. C.B. argues that N.I.'s portion of the property division should be applied to any child support owed to C.B. by N.I. N.I. has argued it is not fair to withhold his portion of the proceeds of the sale of property for distribution as child support.

[269] The child support owed by N.I. to C.B. is payable forthwith. N.I. may choose to pay the debt in whatever manner he wishes.

[270] I did have a few questions about the figures used to calculate retroactive child support, including a question about C.B.'s income one year and a question about a possible error in calculation, both would result in only a small difference. If counsel and the parties are satisfied with the calculations, then I do not need to hear from counsel. If counsel wish to schedule a court conference to discuss the discrepancies or to discuss the issue of special and extraordinary expenses now that my decision on parenting has been finalized, please contact my assistant Jess Noonan at 902-424-3990.

3 Spousal Support

[271] The parties have confirmed that neither party is seeking spousal support.

4 Comments

[272] The applicant's counsel shall draft the orders. Should the parties wish to make submissions on costs they may do so within one month of receiving a copy of this decision from my office.

Cormier, J.