

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Paulin v Pennell*, 2022 NSSC 297

Date: 20221025

Docket: SFH No. 1201-072844

Registry: Halifax

Between:

Michel Paulin

Petitioner

v.

Brittany Pennell

Respondent

Judge: The Honourable Justice Theresa M. Forgeron

Heard: June 9 and 10; September 6 and 7; and October 14, 2022, in
Halifax, Nova Scotia

Oral Decision October 14, 2022

Written Release: October 25, 2022

Counsel: Michael Paulin, Petitioner
Brittany Pennell, Respondent

By the Court:

Introduction

[1] Michel Paulin and Brittany Pennell are separated spouses and the parents of three children: 10-year-old Brielle; six-year-old Kean; and five-year-old Adriannah. Unfortunately, the parties were unable to resolve the parenting, property, and support issues flowing from their separation.

[2] The parenting issues were the most contentious. For his part, Mr. Paulin seeks a shared parenting regime and joint decision-making. He says shared parenting is in the children's best interests and represents the *status quo*. From his perspective, the children gained many benefits from spending an equal amount of time with each parent. Shared parenting should therefore continue.

[3] In contrast, Ms. Pennell says that a primary care model is in the children's best interests. She believes that the children experienced difficulties with the current shared parenting schedule. She says that the children want to spend more time with her and her family. She states that the *status quo* is not working because she is better equipped to meet the children's needs from a health, educational, social, and cultural perspective. In addition, she states that Mr. Paulin was abusive in his communication and approach.

[4] Further, the parties disagree on how their principal asset, the family home, should be divided. Since separation, Mr. Paulin lived in the matrimonial home. He wants to buy out Ms. Pennell's interest. He submits that the children need their home and that he is unable to secure other comparable living options given his limited income and disability.

[5] In response, Ms. Pennell states that an equal division can only be achieved if the home is sold. She notes that Mr. Paulin had over two years to refinance and buy out her interest. He did not do so. From her perspective, the only available option is to sell the home so that their bills can be paid.

[6] Finally, the parties do not agree on child and spousal support. Mr. Paulin seeks the set-off amount in the event a shared parenting plan is granted. He also seeks spousal support but failed to provide details about quantum or duration. In contrast, Ms. Pennell seeks child support and is opposed to the payment of spousal support. She disputes Mr. Paulin's entitlement and further states that she has no ability to pay.

Issues

[7] In this decision, I will analyze the following issues:

- What parenting regime is in the best interests of the children?
- What parenting schedule is in the best interests of the children?
- What is the appropriate division of the parties' assets and debts?
- What is the appropriate amount of child support?
- Should spousal support be ordered, and if so, in what amount and for what duration?

Background Information

[8] The parties began a common law relationship in July 2008. Their children were born in 2012, 2015, and 2017. The children self-identify as Mi'Kmaq and Acadian. The children are exposed to both of their heritages. They are part of the French school system and participate in many indigenous cultural activities.

[9] At the commencement of their relationship, Mr. Paulin worked as a mechanic. Due to a workplace injury, he became disabled and now receives non-taxable workers compensation benefits. During the relationship, Ms. Pennell left her job as a long-term care worker and returned to university to upgrade her education. She is now employed as the regional coordinator of Mi'kmaw Education Services with the Halifax Regional Center for Education.

[10] Despite their many relationship difficulties, the parties eventually married on September 28, 2019. The marriage was short-lived. Separation occurred on July 10, 2020 after Mr. Paulin dysregulated and contacted the mental health crisis team. Ms. Pennell left with the children and moved into her sister's home.

[11] Soon after separation, child protection authorities investigated several protection referrals. The referrals involved possible substance abuse by both parties; Mr. Paulin's mental health; and Mr. Paulin's use of physical discipline. After completing its investigation, the Department of Community Services closed its case without court involvement.

[12] On September 18, 2020, Mr. Paulin filed for divorce. On November 5, 2020, Ms. Pennell filed an Answer. Further, each party filed an interim motion which resolved by consent. First, a production order was granted so that the Department of Community Services would release its file. Second, on November 12, 2020, counsel advised that the parties agreed to an interim shared parenting arrangement.

[13] The matter was scheduled for hearing after an unsuccessful settlement conference. The divorce trial was held on June 9 and 10, 2022 and September 6 and 7, 2022. During the trial, each of the parties testified and tendered documentary evidence. Submissions were also provided. The court adjourned for

oral decision which was rendered on October 14, 2022.

Analysis

[14] What parenting regime is in the best interests of the children?

Position of Mr. Paulin

[15] Mr. Paulin seeks a shared parenting arrangement. He believes shared parenting is in the children's best interests for reasons including the following:

- The children have adjusted to the equal parenting time schedule that was in place for about two years. The children should not be forced to adjust to a new arrangement. The *status quo* would provide stability and consistency.
- The children benefit from spending an equal amount of time with each parent, especially given the children's French and Mi'kmaw heritages.
- He loves the children, and they love him. There is no reason why he should not have the children 50% of the time.
- Prior to separation, he was the primary caregiver. He was the parent who stayed at home while Ms. Pennell worked. He was the parent who met most of the children's health, educational, and social welfare needs. As a result, he has a strong bond with the children.

[16] In addition, Mr. Paulin denies that he abused substances, or that he was abusive to Ms. Pennell, or that he physically or emotionally harmed the children when disciplining. He states that he seldom drinks and does not use illegal drugs.

[17] Mr. Paulin did, however, acknowledge making inappropriate comments to and about Ms. Pennell. Mr. Paulin says that his inappropriate comments do not negatively impact his shared parenting request. He said that he used inappropriate language for two reasons. First, he was hurt after discovering that Ms. Pennell was unfaithful. Second, Ms. Pennell's boyfriend was aggressive with him.

[18] Further, Mr. Paulin states that he learned de-escalation skills when he undertook mental health counselling after the parties' separation. He states that he and Ms. Pennell have and can communicate in a healthy fashion.

Position of Ms. Pennell

[19] Ms. Pennell says it is in the children's best interests to be placed in her primary care for the following reasons:

- She was the parent who was primarily responsible for the children's educational, medical, cultural, social, and emotional well-being. She is

better equipped to meet the children's needs than is Mr. Paulin.

- Mr. Paulin was abusive to her and the children during the relationship.
- Mr. Paulin continued to be violent after separation by calling her demeaning names and making negative comments about her gender and race. She should not be required to communicate with Mr. Paulin in such circumstances.
- The children have not adjusted well to the interim shared parenting arrangement. They frequently are anxious and unsettled. The children want to spend more time with her and her family. Before separation, the children spent significant amounts of time with her family participating in cultural activities which Mr. Paulin no longer attends.
- Mr. Paulin frequently requests last-minutes changes to the shared parenting schedule so that he can attend to personal matters. A primary care model of parenting would reduce Mr. Paulin's need to amend the parenting schedule and would provide consistency and stability.

Law

[20] Section 16 of the *Divorce Act*, RSC, 1985, c. 3 (2nd Supp) provides me with the jurisdiction to grant a parenting plan based on the best interests of the children. The *Divorce Act* provides an extensive list of best interests factors, including those which touch on a child's physical, emotional, psychological, educational, cultural, and social well-being; a child's need for security and stability; the strength of each party's parenting ability; the quality of the parent-child relationship; the history of caregiving; the child's views and preferences; the willingness of each party to support the child's relationship with the other; and the impact of family violence on a child's best interests. When analyzing these factors, I must apply a comparative and balanced approach: ***DAM v CJB***, 2017 NSCA 91.

[21] The Supreme Court of Canada recently reviewed best interests considerations in the context of a parenting dispute involving relocation. In ***Barendregt v Grebliunas***, 2022 SCC 22, Karakatsanis, J noted that the best interests inquiry is highly contextual given that many factors may "impinge on the child's best interests": para 97; and that ultimately, the court must determine parenting issues in the context of the particular child and in the particular circumstances of the case: para 123.

[22] In ***Barendregt***, Karakatsanis, J also discussed the "interpretative overreach" that often occurred when courts applied the maximum contact principle. Karakatsanis, J noted that the maximum contact principle is more appropriately referenced as the "parenting time factor", which is more neutral, and which focuses on the child's best interests as determined through a child-centric

analysis:

[135] These interpretations overreach. It is worth repeating that what is known as the maximum contact principle is *only* significant to the extent that it is in the child’s best interests; it must not be used to detract from this inquiry. It is notable that the amended *Divorce Act* recasts the “maximum contact principle” as “[p]arenting time consistent with best interests of child”: s. 16(6). This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, the “maximum contact principle” is better referred to as the “parenting time factor”.

[23] In addition, in *Barendregt* Karakatsanis, J provided much needed clarification on the significance of family violence in the best interests analysis, noting the difficulty of proof and confirming that children exposed to family violence are at risk of lifelong emotional and behavioural problems:

[141] In this case, the acrimonious relationship between the parties — featuring abusive conduct during the marriage, at separation, and at trial — was a significant factor in the trial judge’s relocation analysis. On appeal, the father argues that such “friction” is “not unusual for separating couples”: R.F., at para. 35.

[142] Since *Gordon*, courts have increasingly recognized that any family violence or abuse may affect a child’s welfare and should be considered in relocation decisions:

[143] **The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator’s parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives:** Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. **Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it:** S. Artz et al., “A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth” (2014), 5 *I.J.C.Y.F.S.* 493, at p. 497.

[144] Domestic violence allegations are notoriously difficult to prove: P. G. Jaffe, C. V. Crooks and N. Bala, “A Framework for Addressing Allegations of Domestic Violence in Child Custody Disputes” (2009), 6 *J. Child Custody* 169, at p. 175; A. M. Bailey, “Prioritizing Child Safety as the Prime Best-Interest Factor” (2013), 47 *Fam. L.Q.* 35, at pp. 44-45. As the interveners West Coast LEAF Association and Rise Women’s Legal Centre point out, family violence often takes place behind closed doors and may lack corroborating evidence: see S. B. Boyd and R. Lindy, “Violence Against Women and the B.C. *Family Law Act*: Early Jurisprudence” (2016), 35 *C.F.L.Q.* 101, at p. 115. **Thus, proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact or support.**

[145]...

[146] The recent amendments to the *Divorce Act* recognize that findings of family violence are a critical consideration in the best interests analysis: s. 16(3)(j) and (4). The *Divorce Act* broadly defines family violence in s. 2(1) to include any violent or threatening conduct, ranging from physical abuse to psychological and financial abuse. Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child. *[Emphasis added]*

[24] Further and for the parties' benefit, I will review three evidentiary principles that I applied to my analysis. First, this is a civil proceeding which requires proof on the balance of probabilities. There is no presumption of innocence in civil cases: *FH v McDougall*, 2008 SCC 53, para 42. To reach a factual conclusion, I must scrutinize the evidence to decide whether it is more likely than not that an event occurred. I must determine whether the evidence is sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test: *FH v McDougall*, paras 44 to 46. There is no heightened burden on any party.

[25] Second, Mr. Paulin does not have a legal or strategic advantage because of the interim agreement in favour of shared parenting. An interim shared parenting agreement is not determinative of the final parenting plan; an interim shared parenting plan does not provide Mr. Paulin with a tactical advantage at trial: *Marshall v Marshall* (1998), 168 NSR (2d) 48. Proof of a change in circumstances is not required.

[26] Third, given the conflict in the evidence, I must make credibility determinations. When so doing, I applied the law reviewed in *Baker-Warren v Denault*, 2009 NSSC 59, as approved in *Gill v Hurst*, 2011 NSCA 100. In addition, I made inferences in keeping with the comments of Saunders, JA in *Jacques Home Town Dry Cleaners v Nova Scotia (Attorney General)*, 2013 NSCA 4.

Decision

[27] I will now review the best interests factors using a child-centric and comparative approach, based on the evidence which the parties provided.

A. History of Caregiving

[28] Caregiving involves two aspects. In *Burns v Burns*, 2000 NSCA 1, Roscoe, JA held that a custodial or primary care parent is one who assumes two distinct parenting functions. A primary care parent generally assumes primary responsibility for making important decisions about the child's health, safety, education, and overall welfare. Second, a primary care parent generally assumes primary responsibility for the countless less significant, but obligatory, daily

arrangements required by the child, such as clothing, hygiene, activities, and other mundane affairs.

[29] Who was the primary care parent to Brielle, Kean, and Adriannah? First, I find that Ms. Pennell was generally the parent who assumed primary responsibility for making important decisions about the children's health, education, culture, and general welfare, although I recognize that Mr. Paulin occasionally assisted. Ms. Pennell nevertheless was the parent who made and kept most of the medical and dental appointments, who enrolled the children in activities, and who managed most of the children's educational needs. For the most part, Ms. Pennell maintained this decision-making responsibility after the parties' separation.

[30] One of the reasons why Ms. Pennell assumed the decision-making role is because she is more organized than Mr. Paulin. Conversely, Mr. Paulin is not as organized and does not always complete tasks as required in the children's best interests. For example, during the August 3, 2021 court conference, I directed Mr. Paulin to apply for CPP disability benefits for himself and the children no later than September 21, 2021, and to file a complete copy of his application with the court and Ms. Pennell. Despite stating that his financial circumstances were difficult, and despite my directions, Mr. Paulin did not apply for CPP disability benefits until just before the divorce trial began in June 2022. Mr. Paulin did not provide a copy of his CPP application to either Ms. Pennell or to the court.

[31] With respect to the second aspect of caregiving, I find that both Mr. Paulin and Ms. Pennell were engaged parents who shared housekeeping and the day-to-day childcare responsibilities. Ms. Pennell took maternity leaves and even when employed, she spent significant time with the children and performing housekeeping tasks. After Mr. Paulin became disabled, he too spent more time with the children and completed housekeeping tasks.

[32] Each party is able to navigate the daily minutia of their children's lives. They each ensure that the children are nutritionally fed, that their hygiene is maintained, and that they are properly rested. Both will ensure that their homes are safe and clean.

[33] In summary, although each party is able to meet the day-to-day needs of the children, Ms. Pennell is better equipped to make decisions given her organizational skills and assumption of this responsibility, both before and after separation.

B. Safety and Security, including Family Violence

[34] Mr. Paulin categorically denies being violent. Ms. Pennell, however, proved that he was violent both before and after separation. Mr. Paulin demeaned Ms. Pennell in-person and when communicating via text. From time to time, Mr. Paulin used excessive physical force on the children as a form of discipline. When upset,

frustrated, or feeling isolated, Mr. Paulin can dysregulate. When dysregulated, Mr. Paulin lashes out and frequently blames and targets Ms. Pennell. When dysregulated, Mr. Paulin cannot control his emotions, even during times when the children are in his care.

[35] I provide two examples to support my conclusions:

- During direct examination, although denying family violence, Mr. Paulin did acknowledge that “in the beginning”, he may have said “a few words” in anger and in response to the confrontational attitude of Ms. Pennell’s boyfriend. Texts messages do not support Mr. Paulin’s narrative. For example, a Christmas text exchange reveals Ms. Pennell suggesting Mr. Paulin focus on the children and to stop texting her. In response, Mr. Paulin repeatedly used profanity-laced expletives to attack Ms. Pennell. In other texts, Mr. Paulin used racist and gender-based obscenities to strike at Ms. Pennell.
- I accept that the photograph of the red mark on one of the children’s body was formed as a result of Mr. Paulin physically striking the child.

[36] In addition, I do not accept that Mr. Paulin successfully mitigated the impact of family violence. Mr. Paulin did not produce independent evidence that he successfully addressed family violence in a therapeutic setting, such as through the introduction of counselling records or a report. Further, Mr. Paulin showed little insight into the issue when testifying. He consistently minimized his own actions while blaming Ms. Pennell and her boyfriend for his reactions. In addition, Mr. Paulin did not appreciate how violence negatively impacted the children.

[37] Further, I find that Ms. Pennell proved that family violence is a factor that impacts the children’s best interests and the structure of the parenting plan for three reasons:

- When Mr. Paulin dysregulates, the children become fearful of their father. The children do not know how to process and react to Mr. Paulin’s moods and maladaptive parenting style. No child should be placed in the position of having to navigate their parent’s dysregulation.
- When the children observe their father’s maladaptive approach to problem solving, they are confronted with harmful role-modelling. The children should never have to observe their father’s negative treatment of their mother. The children should not be disciplined in a physical or a manner destructive to their emotional well-being.
- Ms. Pennell should not be required to communicate with Mr. Paulin unless he treats her with respect. Abusive and denigrating name-calling has no place in parenting communication.

[38] After analysing issues surrounding safety, security, and family violence, I conclude that Ms. Pennell is the stronger parent because she provides a safe home for the children, she does not engage in physical or emotionally charged discipline, and she does not dysregulate when she is upset or frustrated.

C. Children's Needs

[39] Under this heading, I will examine the children's physical, educational, cultural, medical, emotional, and social welfare needs:

- *Physical Needs:* As I explained previously, each party can appropriately meet the children's basic physical needs.
- *Educational Needs:* Each party can meet the children's educational needs. Both parents are concerned about the children's education, although Ms. Pennell attended more parent teacher meetings than did Mr. Paulin. The children's education is in French. Mr. Paulin is bilingual. He often speaks to the children in French and helps with homework. Ms. Pennell also helps with the children's education and homework.
- *Cultural Needs:* The children self-identify as Mi'kmaq and French. They are proud of their heritage. Before separation, both parties regularly attended cultural events associated with the children's Mi'kmaw heritage. Although the children did not attend Acadian cultural activities, their education is in French. Since separation, Mr. Paulin does not feel comfortable attending Mi'kmaw cultural events. Thus, the children only receive exposure to their First Nation's culture when in their mother's care. However, because the children currently spend an equal amount of time with both parents, the children are missing out on many activities and cultural events that they consistently attended before separation.
- *Medical Needs:* Ms. Pennell is better equipped to meet the children's medical needs because she generally makes and attends their appointments. Ms. Pennell also provides instructions to Mr. Paulin should the children require medication or medical attention. Unfortunately, Mr. Paulin often did not reach out to Ms. Pennell about the children's health.
- *Emotional Needs:* Because of family violence, I find that Ms. Pennell is the parent who is better able to meet and support the children's emotional needs. Ms. Pennell prioritizes the children. In contrast, at times, Mr. Paulin is unable to recognize or act on the needs of the children, such as when he dysregulates.
- *Social Welfare Needs:* Ms. Pennell recognizes the children's social welfare needs. She was the parent who enrolled the children in activities. In addition, she ensures that the children visit with their friends and extended family. She allows the children to attend sleepovers with friends and

family, as they did before separation. Conversely, the children neither have sleepovers nor do they attend sleepovers with their friends when in their father's care. Neither do the children visit their friends when in their father's care. The father does not have extended family in the area and his extended family do not often visit. Thus, when the children are in the father's care and not in school, they spend their time with Mr. Paulin, and usually to the exclusion of other people.

[40] In summary, although both parents are able to meet the children's physical, educational, and cultural needs, Ms. Pennell is better equipped to meet the children's medical, emotional, and social welfare needs.

D. Children's Relationship with Parents

[41] Mr. Paulin and Ms. Pennell dearly love their children and the children love them. Ms. Pennell has strong parenting skills. For the most part, she focused and prioritized the children's needs. To help Mr. Paulin improve his parenting skills, he is to attend therapeutic counselling to successfully achieve the following objectives:

- To acquire a better understanding of the impact that parental conflict has on children and to learn skills to ensure that the children are not placed in the middle of the parental conflict.
- To gain insight into the changing development needs of the children, including their need to have friendships with children their own ages.
- To become attuned to the needs and feelings of the children based on their unique temperaments, their lived experience, and their stage of development.
- To gain skills to manage anger, frustrations, and fears in a healthy fashion; and to effectively manage his negative feelings towards Ms. Pennell.
- To gain skills on how to discipline the children in a supportive and corrective fashion without using physical or emotionally damaging means.
- To gain skills to communicate respectfully with Ms. Pennell in a child-centric fashion.

E. Relationship with Extended Family

[42] The children have a stronger relationship with their maternal family than they do with their paternal family. Before separation, Mr. Paulin's family did not spend meaningful time with the children because they live in another province and do not speak English. Now that the children are conversant in French, they are

able to communicate with their paternal family. The children's relationship with Mr. Paulin's family is developing in a positive fashion.

[43] In contrast, the children always had a strong relationship with the maternal side of the family. They visited often. They engaged in the same cultural activities. The children's lives are heavily intertwined with Ms. Pennell's extended family.

F. Parenting Time Factor

[44] Both parents acknowledge that the children need a positive and loving relationship with the other parent. Mr. Paulin's suggestion that a positive and loving relationship can only be achieved by a shared parenting arrangement is not correct. Mr. Paulin's relationship with the children will be supported even if a shared parenting arrangement is not adopted. Further, the parenting plan that I adopt must be based on the children's best interests, rather than on an erroneous presumption that a shared parenting plan is in the children's best interests.

G. Child's Views and Preferences

[45] I have no independent evidence of the children's views and preferences. I recognize, however, that Mr. Paulin and Ms. Pennell love and cherish their children. The children love and cherish each parent. I also recognize that the children require meaningful relationships with each parent, but without being drawn into adults matters and without being subjected to inappropriate displays of anger by their father.

H. Summary of Best Interests Factors

[46] After completing a child-centric and comparative analysis of the relevant best interests factors, and after examining each party's ability to meet the needs of the children, and after assessing the quality of the relationship between the children and each parent, I find that it is in the children's best interests to be placed in the primary care of Ms. Pennell.

[47] **What parenting schedule is in the children's best interests?**

[48] The following parenting schedule is in the children's best interests.

A. Primary Care, Decision-Making, and Communication

[49] The children are placed in the primary care of Ms. Pennell.

[50] Provided Mr. Paulin speaks in a respectful and child-centric fashion, Ms. Pennell will seek his opinion about important decisions that impact the health, education, culture, and social welfare of the children. If after meaningful and timely discussions, the parties are unable to reach agreement, Ms. Pennell will have final decision-making authority.

[51] All parenting discussions will be in writing and must be respectful and child focused. Except in the case of an emergency or urgent situation, the parties will use a Parenting App to discuss issues surrounding the children. If Mr. Paulin does not communicate in a respectful and child-centric fashion, Ms. Pennell is no longer required to communicate with Mr. Paulin.

B. Regular Schedule

[52] Mr. Paulin will have parenting time with the children based on a two-week rotating schedule:

- During week 1, Mr. Paulin will have the children in his care from Sunday at 10:00 am until Wednesday when he delivers the children to school. If there is no school, the children will be transferred to Ms. Pennell by 9:00 am. The children will be in the care of Ms. Pennell for the balance of the week.
- During week 2, Mr. Paulin will have the children in his care from Sunday at 10:00 am until Tuesday when he drops the children off at school. If there is no school, the children will be transferred to Ms. Pennell by 9:00 am. The children will be in the care of Ms. Pennell for the balance of the week.

C. Holidays, Special Occasions, and Vacation

[53] The regular schedule will be suspended for the following holidays, special occasions, and vacation:

- **February Family Day Weekend.** The children will be in the care of Ms. Pennell during the February Family Day Weekend of the even numbered years and in the care of Mr. Paulin during the odd numbered years. The weekend commences after school closes on Friday and ends at 4:00 pm on the following Monday.
- **March Break.** The children will be in the care of Ms. Pennell for the first half of the March break which is from Friday after school until Wednesday at 4:00 pm. The children will be in the care of Mr. Paulin for the second half of March break from Wednesday at 4:00 pm until the regular schedule resumes.
- **Easter.** The children will be in the care of Mr. Paulin during the Easter holiday of the even numbered years and with Ms. Pennell during the odd numbered years. Easter commences after school on Thursday and ends at 4:00pm on Easter Monday.
- **Mother's Day:** The children will spend Mother's Day with Ms. Pennell

who will return them to Mr. Paulin's care at 7:00 pm.

- **Long May weekend.** The children will be in the care of Ms. Pennell during the long May weekend of the even numbered years and with Mr. Paulin during the odd numbered years. The long May weekend commences after school on Thursday and ends at 4:00 pm on the holiday Monday.
- **Father's Day.** The children will spend Father's Day with Mr. Paulin commencing at 7:00 pm on the Saturday of the Father's Day weekend.
- **Summer Vacation:** Each party will have fourteen consecutive days with the children for summer vacation. If he so chooses, Mr. Paulin will have the children on August 15 of each summer as part of his vacation period. Ms. Pennell will have the children in her care for the July 2023 summer games. Mr. Paulin will provide Ms. Pennell with written notice of the fourteen days that he chooses for summer vacation no later than April 1 of each year. Ms. Pennell will provide Mr. Paulin with notice of the fourteen days that she chooses no later than May 1 of each year. Each party will provide the other with details of all travel arrangements made for the children's vacation, including particulars where the children will be staying and contact numbers. The party exercising vacation time will initiate a call to the other party every night at 7:00 pm (Nova Scotia time) so that the children can speak to the other parent while on vacation.
- **Labour Day.** The children will be in the care of Mr. Paulin during the labour day weekend of the even numbered years and with Ms. Pennell during the odd numbered years. The long weekend commences at 4:00 pm on Friday and concludes at 4:00 pm on Monday.
- **September 30 and October 1.** The children will be in the care of Ms. Pennell from 10:00 am until 7:00 pm for Truth and Reconciliation Day and Treaty Day.
- **Thanksgiving:** The children will be in the care of Ms. Pennell during the Thanksgiving day weekend of the even numbered years and with Mr. Paulin during the odd numbered years. The long weekend commences after school on Friday and ends at 4:00 pm on the holiday Monday.
- **Halloween.** The children will be in the care of Mr. Paulin for Halloween of the even numbered years and with Ms. Pennell for Halloween of the odd numbered years. Halloween is from after school until 9:30 pm on October 31.
- **Christmas.** On the even numbered years, Ms. Pennell will have the children in her care all day on December 23 until 2:00 pm on December 25, while Mr. Paulin will have the children in his care from 2:00 pm on December

25, until December 27 at 2:00 pm. Thereafter, the parties will revert to the regular schedule. The parties will alternate this schedule during the odd numbered years.

D. Changes to Parenting Schedule

[54] The parties may adjust this parenting schedule as they deem in the children's best interests, provided such agreements are placed in writing and acknowledged by both parties.

E. Relocation of Permanent Residence

[55] The children's permanent residence will not be changed without court order or the parties' written agreement. Nothing in this provision prevents the children from vacationing outside the province.

F. Alcohol and Drug Use While in a Caregiving Role

[56] Neither party will use drugs, cannabis products, or alcohol while in a caregiving role, except each party is to take prescribed medication according to the prescription.

G. Contact by Technology

[57] The children will have reasonable contact with the other parent by telephone or technology at reasonable times.

H. Access To Professional Records and Information

[58] Each party has the right to communicate with all professionals involved with the children, and each has the right to obtain information and documentation respecting the children from all medical professionals, educators, and social welfare professionals without the prior consent of the other party.

[59] **What is the appropriate division of the parties' assets and debts?**

[60] The parties' assets consist of the matrimonial home, household contents, two vehicles, and Ms. Pennell's pension. There were no savings or investments. At the time of separation, the family debts included a mortgage, two car loans and a Mastercard balance.

[61] Although both parties recognize the appropriateness of an equal division of their assets and debts, they disagree about how the division should be accomplished. The matrimonial home is the most valuable asset. Mr. Paulin wants to retain the home while Ms. Pennell says that Mr. Paulin had two years to arrange to buy out of her interest. He did not. Ms. Pennell says it is now time to sell the home, pay off their debts, and move forward with their lives.

[62] I agree with Ms. Pennell. Mr. Paulin had ample time to arrange refinancing to buy out Ms. Pennell's interest. He was unable to do so. Both parties need their share of the equity in the matrimonial home. Ms. Pennell is the primary care parent and must have funds to purchase another home. Mr. Paulin will also need his share of the equity to find alternate accommodations. There is no evidence to support an unequal division of the only significant asset of the parties by delaying its sale.

[63] Therefore, the matrimonial home will be immediately listed for sale by the agent suggested by Ms. Pennell. The listing price will be decided taking into account the agent's reasonable recommendations. The real property appraisal dated August 2021 will be provided to the agent for consideration, although I recognize that market conditions may have changed since the appraisal was conducted.

[64] Both parties must co-operate with the listing and sale of the property. If there is a disagreement, then the parties are to follow the reasonable recommendations of the agent. Further, either party may file an emergency motion, on abbreviated notice, should any issue arise with the listing and sale of the matrimonial home that cannot be resolved with the agent's assistance.

[65] I retain jurisdiction to decide all issues which may arise in respect of the listing and sale of the matrimonial home. Should Mr. Paulin not cooperate, my authority extends to immediately changing who has exclusive possession and who has signing authority.

[66] In addition, Mr. Paulin must ensure that the matrimonial home is clean, organized, and in good condition for all showings.

[67] Once the matrimonial home is sold, the solicitor retained to handle the closing, will place the sale proceeds in trust and disburse them as follows:

- To pay out the outstanding mortgage encumbering the property, which had a balance in the approximate amount of \$183,204 as of September 2022.
- To pay out the usual adjustments on closing such as those related to property taxes.
- To pay out the realtor fees and legal account associated with the sale.
- To reimburse Ms. Pennell \$10,500 for the balance due on the Bank of Montreal Mastercard at the time of separation which Ms. Pennell paid after separation by funds obtained through a consolidation loan. This debt is a family or matrimonial debt.
- To reimburse Ms. Pennell for all mortgage payments, interest and principal, together with all insurance and property tax payments associated with the matrimonial that Ms. Pennell makes after October 1,

2022 while Mr. Paulin is living in the home.

- To equally divide the balance of the sale proceeds between the parties. From Mr. Paulin's share, the solicitor is directed to first pay Ms. Pennell \$4,000 which represents one-half of the value of the household contents, including the Chef's pot set, which Mr. Paulin retained. From Mr. Paulin's share, the solicitor is also directed to pay out any balance outstanding on the loan encumbering the Jeep driven by Mr. Paulin. Thereafter, the solicitor will transfer the balance of Mr. Paulin's share of the trust funds to him.
- Similarly, before Ms. Pennell is provided with her share of the sale proceeds, any balance outstanding on the loan encumbering the van driven by Ms. Pennell will first be paid from her share. Thereafter, the solicitor will transfer the balance of Ms. Pennell's share of the trust funds to her.

[68] The other assets and debts will be divided as follows:

- Ms. Pennell's pension will be equally divided at source from the date of plan entry until the date of separation in July 2020. The court will draft a pension division order with the usual provisions.
- Mr. Paulin will retain the 2016 Jeep Cherokee and will be solely responsible for the payment of the associated debt.
- Ms. Pennell will retain the 2018 Dodge Caravan and will be solely responsible for the payment of the associated debt.

[69] I will not order a division of the monthly debt payments made by Ms. Pennell during separation given the disparity in the parties' income, the shared parenting regime, and the limited amount of support paid by Ms. Pennell. I find that the post-separation debt payment stood in the place of maintenance.

[70] What is the appropriate amount of child support?

[71] In this decision, I ordered a primary care parenting plan. Mr. Paulin will therefore be required to pay child support according to the *Child Support Guidelines*. Mr. Paulin earns \$33,728 in tax free worker compensation benefits, that when grossed up, produces an income of \$38,304 for child support purposes. Thus, effective October 15, 2022, and continuing on the 15th of every month thereafter, Mr. Paulin must pay Ms. Pennell child support in the table amount of \$757.

[72] Further, I relieve Mr. Paulin from the obligation to pay s. 7 expenses, as they currently stand, because of the income differential and my spousal support calculation. I would have ordered an increased amount of spousal support if Mr. Paulin were required to pay more child support.

[73] **Should spousal support be ordered, and if so, in what amount and for what duration?**

[74] Section 15.2(1) of the *Divorce Act* provides the jurisdiction to grant a spousal support award. Mr. Paulin bears the burden of proof. The factors which I must consider are stated in s. 15.2(4) of the *Divorce Act*:

15.2(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

- (a) the length of time the spouses cohabited.
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[75] The objectives to be considered are set out in s. 15.2(6) of the *DA*:

15.2(6) An order made under subsection(1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[76] In *Bracklow v. Bracklow*, [1999] 1 SCR 420, the Supreme Court of Canada confirmed that entitlement to spousal support is grounded in one, or more, of the following three principles:

- Compensatory support to address economic advantages and disadvantages flowing from the marriage, or the roles adopted during the marriage.
- Non-compensatory support to address the disparity between the needs and means of the parties and arising from the marriage breakdown.
- Contractual spousal support, either expressed or implied.

[77] In *Strecko v Strecko*, 2014 NSCA 66 as confirmed in *MacDonald v MacDonald*, 2017 NSCA 34, the Court of Appeal held that although the *Spousal Support Advisory Guidelines* are not law, they are nevertheless a useful tool which

can enhance legitimacy and consistency. Therefore, my primary focus must be on the factors and objectives stated in the *Divorce Act*, while using the *SSAGs* as a useful comparative tool.

[78] In setting the appropriate spousal support order, I reviewed the factors and objectives of the *Divorce Act*, the parties' evidence and budgets, and the *SSAGs*. In so doing, I find that Mr. Paulin is entitled to spousal support. His claim has a strong non-compensatory component, although some factors support a compensatory claim for the following reasons:

- Both parties were employed when the relationship began.
- Ms. Pennell took maternity leaves and was the children's primary care parent.
- Mr. Paulin became disabled as a result of a workplace injury that had nothing to do with the marriage or the needs of the children. Mr. Paulin receives significant non-taxable WCB.
- Ms. Pennell improved her career trajectory by undertaking postsecondary education during the relationship. She currently earns about \$85,000 as the regional coordinator of Mi'kmaw Education Services.
- There is a significant disparity in the incomes of the parties.
- Ms. Pennell will have primary care of the parties' three children.

[79] Second, in reviewing the parties' budgets and the evidence, the following is noted:

- The parties' budgets are based on their current, but temporary living circumstances. Their household expenses will change once the matrimonial home is sold. The matrimonial home is too expensive for Mr. Paulin to maintain.
- Mr. Paulin will not pay income tax on the ordered spousal support payments because his WCBs are not taxable. Conversely, Ms. Pennell will be able to deduct the spousal support payments.

[80] The *SSAGs* suggest a monthly payment of \$335 to \$447 between 5.5 to 11 years. I award the mid-range of \$390 per month because Mr. Paulin's claim is primarily grounded in non-compensatory factors. In setting duration, I note that Ms. Pennell already made support-like payments for about two years because of her assumption of the mortgage and insurance payments after separation. Spousal support is therefore payable for another six years. Spousal support is payable the day following Ms. Pennell's monthly receipt of child support.

Conclusion

[81] The following relief is granted:

- A divorce based on the permanent breakdown in the parties' relationship as evidenced by their separation in 2020.
- A primary care parenting order.
- A parenting plan delineating parenting time and parenting responsibilities.
- An equal division of the matrimonial assets and debts, including the immediate listing and sale of the matrimonial home.
- Mr. Paulin's payment of child support in the table amount of \$757 commencing October 15, 2022.
- Ms. Pennell's payment of spousal support in the monthly amount of \$390, payable the day after Ms. Pennell's receipt of child support from Mr. Paulin. Spousal support is payable for another six years.

[82] The court will draft and circulate the divorce, corollary relief, and pension division orders.

Forgeron, J.