

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Low v. Smith*, 2023 NSSC 195

Date: 20230531

Docket: SFHPSA - 115522

Registry: Halifax

Between:

Magen Rayann Low

Applicant

v.

Jay Hugh Smith

Respondent

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Judge: The Honourable Justice Cindy Cormier

Heard: May 18, 2022; June 28, 2022; and October 31, 2022 at,
Halifax, Nova Scotia, Canada

Counsel for Magen Low: Iain Burton and Mary Brown
Counsel for Jay Smith: Shawn Scott; Ray Kuszelewski and
Damian Penny

Submissions: November 4, 2022 (father’s submissions); November 7, 2022 (mother’s objection “facts not in evidence”); November 9, 2022 (direction from court to mother’s counsel); November 16, 2022 (response from mother’s counsel as directed by court); November 30, 2022 (father’s response “facts not in evidence” and additional arguments); and December 9, 2022 (letter from the court advising that the father had until **December 30, 2022** to file any legal argument regarding “facts not in evidence” only). No response from the father.

Unsolicited unauthorized correspondence received from the father on February 10, 2023, was not considered.

By the Court:

1 History of proceedings

[1] On August 29, 2019, the Nova Scotia Supreme Court (Family Division) granted a Consent Inter Parties Order pursuant to the *Parenting and Support Act*, which prohibited the parties from taking the children, their son born in December 2016 and their daughter born in December 2018, out of Nova Scotia, Canada. The father had filed for divorce in Utah, USA but failed to personally serve the mother. Neither party filed an application pursuant to the *Hague Convention*.

[2] On August 7, 2020, the Nova Scotia Supreme Court (Family Division) granted an Interim Order (II) (Family Proceeding) ordering the father to return the children to the mother's care by August 9, 2020, and ordering a week on/week off shared parenting arrangement. The parties continued to be prohibited from removing the children from Nova Scotia, Canada. They sought a hearing.

[3] On January 14, 2021, following a contested hearing, a decision was rendered granting the mother sole custody and decision-making responsibility for the children and the father specified parenting time in Nova Scotia, Canada only. Clause 10 of the Order (Family Proceeding) arising from the hearing, specified:

Review

Magen Low shall be permitted to bring the matter back for a Review to limit Jay Smith's parenting time, should Jay Smith's parenting time with the children as set out herein not go well, or should Jay Smith continue to say inappropriate things to the children or continue to influence the children against Magen Low or against Nova Scotia.

[4] On July 19, 2021, approximately six months after the contested hearing, the mother filed a Notice of Variation Application, seeking to vary the final order: the Order (Family Proceeding) granted on January 14, 2021 and issued March 5, 2021. The mother sought to terminate the father's parenting time, alleging the father had continued to verbally abuse her and to influence the children against her after the Court's specific direction to stop. The mother also asked the Court to grant an order enforcing child support payments by the father.

[5] In February 2022, the father filed two Amended Response to Variation Applications. The father sought primary care of the children and an order authorizing relocation of the children. The father also claimed undue hardship, arguing that the costs of exercising his parenting time in Halifax Nova Scotia Canada were approximately \$7,700.00.

[6] On May 12, 2022, the mother filed a Notice of Motion for an order to strike parts of the affidavits the father had filed on February 3, 2022, and April 26, 2022, and an order to strike the entirety of the affidavit of Sarah Redd filed on April 29, 2022. Portions of the father's affidavits and Sarah Redd's affidavit were struck.

[7] The matter was initially scheduled to be heard on May 18, 2022. The father had not finished cross-examining the mother on May 18, 2022. The father continued his cross-examination of the mother on June 28, 2022, and on October 31, 2022. The father's evidence was presented on October 31, 2022.

[8] The parties were invited to file updated affidavits with any new information arising between May 18, 2021, and October 31, 2022. Pending continuation of the matter on October 31, 2022, I made several remarks including but not limited to:

1. Child support is not linked to parenting time and vice-versa;
2. The parties appeared to agree that requiring the mother to facilitate telephone contact with the father and children every second day was not working very well. Therefore, both parties should be prepared to make suggestions/come up with solutions on that point;
3. I expected all conversations with the children to be "child focussed";
4. It did matter what the parents said in the presence of the children, and how the parents treated each-other at all times;
5. The father should always give the mother as much notice as possible in advance of any of his specified summer parenting time. The

parties' reached an agreement the father would notify the mother by May 31, 2022 regarding the father's specified summer parenting time.

6. Until further order of the Court, the existing court order was to be followed, for instance: when the father exercised his parenting time during the school year, the children should be attending their school classes and previously scheduled activities;
7. The parties may wish to make representations about parallel parenting and with respect to the existing three-month cap on the father's parenting time; and
8. In the event I did not find it was in the children's best interest to terminate all of the father's contact with the children or order supervised parenting or in the event I do not allow the children to relocate to Utah with the father as he had requested, both parties should consider advancing arguments in the alternative.

[9] In October 2022, the mother revised her trial position. She was no longer seeking to terminate the father's parenting time and she was open to the father having some limited parenting time with the children in Salt Lake City, Utah, USA. Among other additional parenting clauses, the mother sought an order

requiring the parties to communicate through an online application such as My Family Wizard.

[10] At the conclusion of evidence on October 31, 2022, the mother made oral submissions and the father filed written submissions. The mother's counsel argued that certain facts included in the father's submissions on November 4 and November 30, 2022, were not in evidence. I agreed, and those facts were not considered.

2 Issues

1. Custody – decision making.
2. Parenting - Clause 10 of the Order (Family Proceeding) authorized a review of the father's parenting time. What changes should be made if any?
 - a. What specified parenting time should the father have?
 - b. What parameters should be included with respect to the father's parenting time?
3. Has there been a change of circumstances since the decision was rendered on January 14, 2021?

- a. Is it in the children's best interest for the court to grant an order allowing the children to relocate to Salt Lake City Utah USA with the father? Relocation as a change of circumstances.
4. Should the father's income continue to be imputed?
5. Should the father's child support be reduced to account for his costs of travel to see the children in Nova Scotia or in Utah? Has he proven Undue Hardship?
6. Should the parties be required to file updated financial information, related to the father's Undue Hardship Application?

3 Background

[11] The parties both grew up in Nova Scotia. The parties' first child, a son, was born in Nova Scotia, Canada in December 2016. The father was granted a special work Visa which allowed him to work in the United States. In or around 2017, the parties and their son moved to the United States. The parties married and their second child, a daughter, was born in the United States in December 2018.

3.1 2019

[12] In May 2019 the mother left the father and she returned to Halifax, Nova Scotia, Canada, with the parties' two children. The children were approximately five months old and two years and five months old at that time.

[13] On August 29, 2019, the parties appeared for a hearing before the Honourable Associate Chief Justice Lawrence O'Neil of the Nova Scotia Supreme Court (Family Division). The court record shows:

1. The father stated that on July 28, 2019, he had filed for divorce from the mother in Utah, USA, but he was unable to serve the mother. He confirmed he did not file a *Hague Convention* application.
2. The father confirmed he had a place to live in Nova Scotia, Canada but he planned to be in Saudi Arabia for three weeks, or until September 25, 2019, and then he would be back in Montreal, Canada until April 2020. The father stated that the children's paternal grandmother was in Salt Lake City, Utah, USA, and she planned to retire and be in Montreal, Canada.
3. The mother did not agree with the father's representations. She suggested that on multiple occasions she had asked the father to move back to Nova Scotia. She further stated that the father had been

looking for a job for over a year and wanted to travel with his job.

The mother claimed the father would only be in Montreal, Quebec, Canada for a few months and then he would travel, suggesting the father's lifestyle was not a stable lifestyle for the children.

4. The Honourable Associate Chief Justice O'Neil found both parents had relocated to Canada. The father confirmed on the record that he would not be taking the children to Salt Lake City, Utah, USA but he wanted to take them to Montreal, Canada part of the time.
5. When the Honourable Associate Chief Justice Lawrence O'Neil advised the parties he was considering granting an order prohibiting the parties from taking the children outside of the Halifax Regional Municipality, Nova Scotia, Canada, the father suggested he wished to take the children to visit their paternal grandfather (Frank Smith) in Cape Breton, Nova Scotia, and that the mother often travelled outside of the Halifax Regional Municipality, Nova Scotia, Canada.
6. A Consent Inter Parties Order was granted stating that the children "may not be removed from Nova Scotia by either party in the absence of a further order of this Court." The parties were directed to contact the Court for a future date if required.

[14] Contrary to the Consent Inter Parties Order granted by the Honourable Associate Chief Justice O’Neil in August 2019 which prohibited the children from leaving Nova Scotia without a further order of the Court, between October 2019 and approximately March 2020, the parties agreed the children would spend approximately equal time with the mother in Halifax, Nova Scotia, Canada and the father in Montreal, Quebec, Canada. The mother acknowledged that to accommodate her school workload, she had occasionally asked the father to keep the children longer than they had originally agreed as she had fewer supports in Nova Scotia at that time.

3.2 2020

[15] In or around the father’s birthday in March 2020, the father took the children to visit family in Salt Lake City in Utah for approximately six weeks. Although the mother acknowledged she initially acquiesced to the father’s request to take the children to the United States, she stated that before the father left with the children she had asked him not to take them due to her concerns about covid restrictions.

[16] Despite the mother’s concerns, which included covid restrictions, the father travelled to the United States with the children in or around March 2020 for approximately six weeks. The father did not return the children to the mother’s care at the time the parties had initially agreed. The mother’s concern about the

children's return was exacerbated by the pandemic and her claims that the father's behaviour and attitude towards her was having a negative impact on the children. I accept her evidence.

[17] On July 21, 2020, the mother filed an emergency request stating:

1. She had not seen the children since the father "unilaterally picked them up, put them in his car and drove away" on July 20, 2020, and she was concerned the father may leave the province and/or the country with the children and file for divorce in the United States without notice to her.
2. She did not know where the father and the children were staying and she was concerned they were staying with the children's paternal grandfather, Frank Smith, who she believed had been "convicted of child molestation."

[18] On August 7, 2020, the matter came before me for the first time and the father's legal counsel advised me that the father was residing in Cape Breton, Nova Scotia, and he was seeking a month on/month off parenting arrangement. The mother sought a week on/week off parenting arrangement in Nova Scotia.

[19] This court has repeatedly found that very young children have a different sense of time as compared to older children and adults. That it is in their best interests to have frequent and regular contact with their primary caregiver(s) in order to develop and / or to maintain a healthy bond, and to assist with maintaining a sense of stability, security and safety.

[20] I granted an Interim Order (II) (Family Proceeding), ordering that the father return the children to their mother's care by August 9, 2020. Thereafter, the parties were ordered to abide by a week on / week off parenting arrangement with transfers occurring on Sundays. Per the Consent Inter Parties Order granted and issued on August 29, 2019, I continued the term preventing the children from being removed from Nova Scotia by either party.

[21] On September 22, 2020, the parties appeared before me. Although the parties' parenting arrangement was "week on/week off, the father had chosen to take the children from the Halifax Regional Municipality to live in Cape Breton during his parenting weeks. As a result, the mother was uncertain whether she could register the parties' son in pre-primary or public school, or their daughter in daycare as the children were not consistently living in the Halifax Regional Municipality.

[22] This Court has regularly found that a shared parenting arrangement requires the parties live relatively close to one another geographically, and that there be cooperation between the parties. Predictability, consistency, stability and security at home, at school, and in the community is the expectation in a shared parenting arrangement which focusses on a child's best interests.

[23] The father expressed a preference for the children being home schooled by him in Salt Lake City in Utah for extended periods. He believed that his plan was in the children's best interests. When asked about his connection to Salt Lake City in Utah, the father advised that he was a Canadian citizen who had grown up in Nova Scotia Canada, and he had moved to Salt Lake City in 2017.

[24] The father confirmed he was not a citizen of the United States, and he did not own property in the United States. He explained that his mother had married an American citizen and moved to Utah as had several of his siblings. The father explained he had a special Visa which allowed him to work in the United States and that the parties had lived in an apartment in the United States together with their children.

[25] The father's legal counsel's previously stated that the father was unemployed, however, he was employed as a gymnastics coach with USA

Gymnastics World, in Salt Lake City, Utah. The father claimed that he had been living in Cape Breton, Nova Scotia with family since July 6, 2020, and although he owned a home in Dartmouth, Nova Scotia, his home in Dartmouth “was not liveable.”

Custody

[26] When I granted the mother sole custody of the parties’ son and daughter in January 2021 I specified but I did not limit the mother’s authority: to register the children in school and in daycare without the father’s consent; the right to obtain Canadian passports for the children without the father’s consent; the right to apply for the parties’ daughter to be registered as a Canadian citizen without the father’s consent; and the right to apply for other government documents for the children including social insurance numbers, without the father’s consent.

[27] While giving my oral decision in January 2021 I quoted from a decision by the Honourable Justice Jollimore, *Lacroix and Densmore*, 2015 NSSC 299, wherein J. Jollimore which states in part:

In *Rivers*, 1994 CanLII 4318 (NS SC) at paragraphs 50 to 53, Justice Stewart identified a series of questions to be considered in determining whether joint custody is in a child’s best interests. Her decision was in the context of a corollary relief proceeding under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, but I believe that the same considerations are relevant to a determination under

the *Maintenance and Custody Act*. I've re-stated Justice Stewart's questions below.

- (a) Has each parent maintained a meaningful relationship with Logan?
- (b) Does each parent have parenting capabilities that are adequate to meet Logan's needs?
- (c) Will the parents be able to make decisions together about Logan?
- (d) Are the parents able to co-parent despite any conflict between them, isolating their feelings about each other from their relationship as parents, and Logan's needs?
- (e) Will Logan be involved in conflict between the adults?
- (f) Will a joint custody arrangement cause disruption and discontinuity to Logan's developmental needs?

[28] Although each of the parties had a meaningful relationship with the children, The parties could not make decisions together because they did not have any common ground and because of the father's negativity toward the mother and towards Nova Scotia in general. It was more likely than not that the children had been and would continue to be caught up in the middle of the conflict between the parties. This Court has routinely found it is not in children's best interests to be exposed to conflict between their parents and that exposure to conflict can cause long lasting emotional harm to children.

3.3 Parenting

[29] I found that the father's continued negativity toward the mother and toward her choice to reside in Nova Scotia was having or was very likely to have a detrimental impact on the children's emotional health. Despite the mother's

request that I terminate the father's contact with the children, I instead placed further limitations on the father's parenting time as a first step in trying to address the father's negative behaviours toward the mother.

3.4 The father's specified parenting time in Nova Scotia

[30] I awarded the father the following in-person specified parenting time in Nova Scotia: one week in Nova Scotia over the Christmas break, to include December 24 and 25 in even-numbered years; one week in Nova Scotia over the spring break (March break); and four weeks in Nova Scotia over the summer holiday. As a cautionary measure, I specified that the father's parenting time could not result in the children spending more than one week without meaningful in-person contact with their mother.

[31] Due to the father's demonstrated lack of insight about the effect his negativity toward the mother was having on the children, his inability to control his emotions, and his failure to put forth an age-appropriate/child focused plan for the children, a plan which considered the children's sense of time and their need for frequent and consistent contact with both parents, if the parents were going to choose a shared parenting regime, the order prohibited the children from travelling to Salt Lake City in Utah with their father.

[32] In addition, because of the children's young ages, and because of my concern about the father influencing the children negatively against their mother, her supports, and their community in Halifax Nova Scotia, I found that while the father was exercising any in-person parenting time with the children in Nova Scotia, it was in the children's best interest to continue attending their day care, their school, and their activities, and to have meaningful in-person contact with their mother at least weekly.

[33] Upon review of the entirety of the trial record from January 14, 2021, I was reminded of my reasons for including clause 12 in the Order (Family Proceeding), which required the father to ensure the children attended school/day care or other regularly scheduled activities, during his parenting time in Nova Scotia. It was not because I thought it might be detrimental to these very young children to miss a few days of school – it was in response to the father's negativity and an effort to maintain continuity and security for the children.

[34] The clause was included as an effort to encourage the father to show support for the children's lives here in Nova Scotia. I felt it was necessary to offset the negativity the father had instilled in the children about their mother and life in Nova Scotia generally while the parties had shared care on a month on/month off

basis between October 2019 and March 2020, and the father took the children to the United States for six weeks around March 2020.

[35] Anticipating circumstances may arise which would result in the father travelling to Nova Scotia at times other than the times specified in the order, I added an additional clause specifying that **with the agreement** of the parties only, the father could have additional reasonable parenting time in Nova Scotia for up to three months in total. The three-month cap was meant to be include the specified parenting time he was already entitled to.

[36] The clause allowing the parties to reach agreement to allow the father's in-person parenting time to take place in the United States was also subject to the three-month cap for all the father's in-person parenting time. I had hoped that incentive to reach agreement with the mother would encourage the father to change his negative behaviours toward her.

[37] In addition to in-person parenting time, because the father had left Nova Scotia to return to live in the United States and because of the young ages of the children, I authorized the father to have reasonable video calls with the children every 2nd day. I specified that the frequency of the calls should be reduced as the children got older.

[38] I recognized that it would take a tremendous amount of coordination, effort, and cooperation to facilitate frequent calls with these young children and the father. I anticipated there may be problems with the telephone calls due to the father's negativity toward the mother and toward Nova Scotia generally.

[39] Due to my significant concerns, I included a clause in the order which allowed the mother to return to court if the father continued to "belittle the mother and/or to diminish her relationship with the children." I also recommended the parties use of a program such as OurFamilyWizard to manage the parties' communication. I expected the mother to encourage the relationship between the children and their father, but only to the extent that it was in the children's best interests for her to do so.

[40] I recognized the order placed a considerable amount of power in the mother's hands and I cautioned her about making sure she was respectful toward the father by providing him with relevant information about the children's development. I directed the mother to provide the father with a monthly update about the children.

[41] My direction to provide a monthly update was not included in the Order (Family Proceeding) following trial in January 2021, and at least up until May of

2022, the mother did not follow my direction. A provision was included in the order recognizing the father had the “right to obtain third party information and records pertaining to the children directly from service providers.”

3.5 Child Support

[42] At trial on January 14, 2021, the father’s income was imputed at \$40,000 US dollars or **\$53,076 CAD**. He was ordered to pay the table amount of \$758.00 to the mother each month for the care of their son and daughter. The father was ordered to pay \$560 in special or extraordinary expenses: \$280 for their daughter and \$433 for their son, for a total payment of \$1,318 per month.

[43] In January 2021, the issue of any additional special or extraordinary expenses that may be claimed by the mother for the children and the issue of the father’s expenses for travelling to see the children and his undue hardship application were left outstanding. The parties agreed to attempt to negotiate those issues.

[44] I found it was in the children’s best interests for the Court to consider the cost of childcare, medical insurance, dental insurance, medical care over \$100 per year, and to also consider to the issue of the father’s travel related costs for exercising his parenting time.

4 Megan Low's (the mother) position in May 18, 2022

[45] On May 18, 2022, the mother confirmed she continued to seek an order terminating the father's parenting with the children. She explained that the father's relationship with the children was:

taking positive experiences away from the children, it was causing emotional disturbances in their lives, and I just don't currently believe it's healthy for the children.

In October 2022, the mother changed her position requesting a detailed order which would allow the father specified parenting time, including limited specified parenting time for the children with the father in Salt Lake City Utah USA.

5 Jay Hugh Smith (the father)

[46] The father argued it was in the children's best interests to be permitted to relocate to Salt Lake City in Utah for various reasons, including but not limited to the following: the opportunity to spend time with and be cared for by the father and his extended family vs the mother's lack of family support; the father's availability or his family's availability for the children and his ability to home school the children and provide a very healthy environment vs the children attending public school and day care and the mother working long hours or attending school while the children were in the care of her partner, his family, or babysitters; because Salt Lake City in Utah offered more opportunities for the children than Nova Scotia

Canada; and because the father could offer the children a better quality of life including more opportunities to experience culture and to travel.

[47] The father expressed concerns about the children's circumstances while they were living primarily with their mother including but not limited to the following concerns: denial of his parenting time; the mother's failure to encourage and facilitate contact with his extended family in Utah and elsewhere; an incident which occurred on August 12, 2021 after which the mother's partner was ordered to have no further contact with the father; the mother no longer adhering to the religious practices they had shared as a family; inappropriate discipline/abuse of the children by the mother's partner; the children's schedules generally including the lack of time they spend with the mother; the time they spend with the mother's partner; how early the children go to sleep; the mother had failed to provide him with regular updates about the children as directed by the court in January 2021; the mother's diagnosis of General Anxiety Disorder and the possible impact on her parenting; and the mother's partner's history of care of his child from a previous relationship.

6 Witnesses

6.1 Mr. Blanchard (the mother's partner) May 18, 2022

[48] Mr. Blanchard testified on May 18, 2022, and although he was not inclined to elaborate very much, he did answer the father's questions in a straightforward manner. I found him to be a credible witness.

6.2 Ms. Low (the mother) May 18, June 28, and October 31, 2022

[49] The mother presented with some hesitation at times, particularly when asked questions about whether she had facilitated contact for the children with the father's extended family, whether she had contacted the father's new partner, and whether she had provided the father false or incomplete information about the children's child-care provider's status. However, the mother generally answered questions in a forthright manner, and she was prepared to acknowledge that despite the father's negativity she could have done some things differently, and she did revise her original position.

6.3 Joseph Cuffari

[50] Joseph Cuffari did not file an affidavit and he had no personal knowledge about the relationship between his step-granddaughter F and Mr. Blanchard, the mother's partner. He provided the court with a copy of a report from his step-granddaughter's therapist who supported the child's decision not to see her father,

Mr. Blanchard. The therapist was not called as a witness, and Mr. Cuffari did not provide a copy of the parental assessment which had reportedly recommended the child, F, transition to Mr. Blanchard's care.

6.4 Deborah Griffiths-Cuffari

[51] Similarly, Deborah Griffiths-Cuffari did not file an affidavit. Aside from her evidence that she felt Mr. Blanchard could have approached the child in a more positive manner when trying to convince the child to spend time with him, Ms. Griffiths-Cuffari provided very little evidence with respect to any personal knowledge she may have about the relationship between her granddaughter F and Mr. Blanchard.

[52] The circumstances surrounding the child's alleged disclosure to Ms. Griffiths-Cuffari raises serious concerns about the reliability of the child's disclosures. For many reasons, I am not prepared to consider Ms. Griffiths-Cuffari's evidence about the out of court statements of the child F. I understand the matter was investigated by child protection services and police. No evidence was submitted regarding any concerns raised by the authorities who investigated the matter.

6.5 Jay Smith (the father)

[53] The father presented as reluctant to answer questions which would place him in a negative light. At times the father would answer no, only to change his testimony once presented with documentary evidence proving he in fact had done or he had said what he had denied saying or doing. I found the father's evidence regarding the children's paternal grandfather, Frank Smith, and questions about possible charges and/or convictions related to offences against youth, to be evasive. It appears from the court record that in 2019 the father specifically spoke on the court record about his plans to take the children to see their paternal grandfather, Frank Smith, in Cape Breton. I find that on balance of probabilities the father took the children to see Frank Smith in 2019 and the father has taken the children to see Frank Smith since that time.

[54] I am ordering that the children no longer have any contact, direct or indirect, with Frank Smith until the Court receives an affidavit from Frank Smith specifying whether he has any restrictions on having contact with children and attaching his criminal court record and a child abuse register check. The matter can then be reviewed by the Court. All evidence points to a finding that at trial the father was evasive, and I generally prefer the evidence of the mother when the parties evidence differs.

7 The Minister of Community Services – Child Protection

[55] The parties acknowledged involvement with the Minister of Community Services – Child Protection. The father confirmed he had made multiple calls to report the mother and/or alleged disclosures from the children about the mother's partner's method of discipline. Both parties acknowledged the children were interviewed by child protection services and that no concerns were expressed by the authorities about the family.

[56] The parties have remained in an almost constant state of conflict since the spring of 2019. The father has continued to make unkind comments about the mother's choices and to make formal reports to the authorities. The father has denigrated the mother's work at a nursing home, stating in a derogatory manner that she "wipes bums" for a living and cautioning her to wash her hands to ensure the children don't get sick.

[57] The father has posted negative comments about the mother on social media, including but not limited to negative remarks about her mental health diagnosis. I accept the evidence that the father has often made negative remarks about the mother and her partner, in the presence of the children and otherwise. I accept the mother's testimony that at times the father has tried contacting her up to 40 times a day and she felt harassed.

[58] The reliability of evidence purporting to come from the children is a complex issue.

1. One problem with the father's evidence about what the children reportedly told him or he and someone else overheard the children say to other children, is that I question the father's credibility. I am not convinced the children disclosed the information the father has relayed to the Court and if the children did disclose concerns about the mother or her partner, the circumstances surrounding the disclosure suggest their comments were most likely not reliable.
2. If in the past the children have told their father they did not wish to live or visit with their mom, I am not convinced the comments made by the children were reliable. There is significant evidence indicating the father has influenced the children's perceptions about their mother and Nova Scotia.

[59] I have little confidence that the father has been able to or would be able to control the feedback (negative comments and body language etc.) shown to either child if either child shared a concern with the father about their mother or about her partner. Due to the father's negativity toward the mother and her partner while in the presence of the children and otherwise, and due to his desire to find fault with

both the mother and her partner, there is a high likelihood both children may be influenced to change a comment or response to please their father.

[60] Unfortunately, due to the father's overall negativity toward the mother and her partner, if either child had disclosed or does disclose a concern to the father about the mother or about her partner, it would be very difficult to believe that the father would be able to put his feelings aside and refrain from asking the children leading or even misleading questions about the incident or event. This is truly an unfortunate situation as I am unable to rely on the father's reports about what the children allegedly told him or may tell him or have told another person closely associated with the father.

[61] The parties acknowledge that in August 2021 an incident occurred between the father and the mother's partner and the children were present and upset. The father stated that after that incident he "felt something was off" with the mother's partner and subsequently the father reported disclosures by the parties' eldest child mostly about the mother's partner. Neither party called child protection services or the police to testify about their investigation of the incident which occurred in August 2021. I am aware there is a no contact order prohibiting the mother's partner from having contact with the father. I understand the matter will be in criminal court in June 2023.

[62] Young children can be suggestible if they receive information, for instance, that a person is bad or has done something wrong. The children are very aware that Mr. Blanchard did something wrong that day and possibly not aware that their father could have mitigated the situation if he had stopped filming as he was asked to do.

[63] The parties both acknowledged that the children were interviewed by child protection, and they had an opportunity to raise concerns about their living situation and they have not. The alleged out of court statements made by the child(ren) to the father (or to other persons who reported it to the father or to the father's relative) have been excluded from the evidence in this matter.

8 Evidence

8.1 Alleged denial of the mother's parenting time

[64] The mother referenced a time in March 2020, around the father's birthday, when she had taken the children to see the father in Montreal, Quebec and the father had asked her if he could take the children to Salt Lake City in Utah to see his family. She stated that although initially she may have agreed, she then asked him not to, the mother stated:

I remember, I can remember, I can remember myself requesting that you do not travel due to covid. I asked you to please stay in Canada as we did not know if you'd be able to get across the border to get home. I worried that would be a

problem and I asked you to not go. I may have said I would write a note, but afterwards, that's what we discussed and this was before you crossed the border.

The father suggested that due to the mother's mental health diagnosis she overacted to situations which may have included him taking the children to the United States against her wishes and returning them to her late while the world was in the middle of pandemic. The father's argument is not convincing.

[65] The father asked the mother whether there was a court order in place in May, June, or July 2020, and the mother responded by stating:

I apologize, I do remember actually why I was concerned, because right before that was when you had taken the kids without my permission to the States and I didn't get them back for six weeks, and it went back and forth with you agreeing to come and not showing up and it was, yes, I was absolute, absolutely terrified that you would do that again.

[66] The father highlighted the period between October 2019 and March 2020 (or May 2020), when the parties both disregarded a court order and the children spent approximately the same amount of time (one month on/one month off) in Halifax, Nova Scotia and Montreal, Quebec (and some time in Utah, USA), when the mother at times asked the father to keep the children a little longer while she was busy with her schoolwork. However, the father fails to recognize that his evidence about the children not wanting to return to see their mother near the end of that period clearly raises concerns about how the parenting arrangement impacted on their bond with their mother.

[67] In addition to the father taking the children to the United States without the mother's permission in or around March 2020, the mother stated, that "many other times" the father had taken the children from her without her permission. When asked to provide an example the mother stated:

Sure, we had visits planned for a park. You were supposed to come and play with the children for an hour. When I turned around, you had picked the children up and were running to your car and you took them without my notice, my knowledge, notice, and were running down the road, I was running after you. It was awful. I had to call the police and you took them from me and did not tell me where you were going.

[68] The mother's description of this event evoked an image of the mother clearly being traumatized while the father ran away with the parties' children. The children witnessed their mother's reaction to the father taking them without her consent on that day. The father's choice demonstrates a clear lack of concern for any emotional harm he may cause or harm to the children's relationship with the mother.

[69] The father asked the mother about her contact with the children while he had the children in his care the summer of 2021. The mother acknowledged that despite stating in her affidavit that the father had not permitted her to have contact with the children during that period, on one occasion the father had answered the telephone and she had a short call with him which was "completely fuzzy."

8.2 Alleged denial of the father's parenting time

[70] The mother's partner, Mr. Blanchard, acknowledged that on one occasion he did hang up the telephone when he determined that the father "was being mean" about the mother when speaking to one of the children (February 11, 2020?). He also agreed there have been times when the mother has hung up the telephone when the father was speaking with the children.

[71] The father asked the mother to explain why she has hung up the telephone, the mother stated in part:

I believe from everything that I've done that I'm trying to keep the relationship healthy, which is why I have ended calls, which is why those things have happened. I'm trying to keep the relationship healthy and positive. I don't want the kids to hear them, anyone speaking negatively about anyone. I don't want any negative feelings, I don't want negative speaking, and that's why I do those things.

[72] The father asked the mother about an occasion when she hung up on him while he was facetimeing with their daughter who was in the bathtub at the time.

The mother responded:

Sure, yeah, I can describe the events. On this day, you were facetimeing with the children. (the daughter) was actually in the bathtub, so she didn't have any clothes on, and you were at work, and started to kind of show the kids to, you know, your gymnasts, telling them to say hi, and this is kind of when I told you that's not appropriate. (the daughter), (the daughter)'s naked, please don't show, show the video to anybody else.

...

I believe it's inappropriate to show a child naked when you can't sensor anything and you don't know who is viewing it, absolutely.

...

In my opinion, the video, you couldn't control how (the daughter) was going to move and who was going to see what, and I just didn't think it was appropriate to have a video in a bathtub showing to other people. I just didn't think it was a good time to be on a phone call. I do realize-

[73] Parents are expected to protect their children from harm, including emotional harm. When the father spoke to the children about their mother in a condescending manner, the mother has at times ended the call. Although having to end the father's call with the children is not ideal, I find the mother had legitimate concerns about the father's comments about her to the children or in the presence of the children.

[74] When the mother asked the father not to show a live video of their daughter while she was in the bathtub, the father could easily have complied. His effort to compare curated pictures of children in the tub which the mother posted online and a live video feed of a child in a tub do not convince me the mother was being unreasonable with her simple request.

[75] The mother acknowledged that in or around April 1st 2021, through legal counsel the parties agreed to a schedule of calls for the father with the children. The calls were scheduled at 6:30 am Halifax time which is 3:30 am in Utah. On the

occasions a call was missed, and the father would be waiting for the call at 3:30 am.

[76] The father asked the mother why the children were required to take their telephone calls from him while in their bedroom. The mother explained:

First, one of my main concerns is that you're not supposed to have any contact with Mark. Our house is rather small right now. We're renovating the basement, but we're only in, you know, the top floor of our house, which is quite small. If the kids go anywhere else, Mark and I are making supper, cleaning up, it's noisy, we have a baby, we just feel that their room is their space, it's a quiet spot, they have their things, they can show you, they can talk to you. That's why their room is their call spot.

[77] The father asked if there was ever a time when one of the children wanted to show him something outside their bedroom, and they were not permitted to do so or were yelled at for leaving their bedroom? The mother responded:

No. Sorry, no, I don't yell at the children, especially not on their phone. I do ask them to go in their room, that's something that we do ask them, because Mark and I are both doing many things outside their room and you and Mark aren't supposed to have any contact and you have accused him in the past of contacting you over the phone, so I try to keep you two, you know, as separate as I can. Like I said, our house isn't big. There's not really many places for us to go while they're on the phone, so I feel like their room is their most comfortable, safe spot for them to have their conversations.

As noted, the mother's choice is perfectly acceptable. Also, the children having to take the telephone calls in their bedroom may help limit distractions which would interfere with the father's ability to interact with the children.

[78] I understand the mother now facilitates calls or she has suggested calls take place in the evening. I understand that the father was initially concerned about the children presenting as sleepy for evening calls after they had taken melatonin to help with their sleep. Both parents must take responsibility to ensure the children's video chats with the other parent are a positive experience for the children and their parent. Especially given the no-contact order and the father's efforts to find fault with the father and her partner, I find nothing wrong with the mother deciding the children must take their call with their father in their bedroom.

[79] The mother acknowledged that on one occasion she responded as follows to the father:

I'm sorry, but can you please leave me alone. I did a night shift last night and I'm trying to sleep, but you keep disturbing me. I'll call you when I can call you.

[80] The mother did not deny there were times when the father requested a call on his day, and she responded: "please send child support." On one occasion the mother wrote to the father:

If we're following the Court order in which I have to call you every second day, then your part is paying me \$1,300 every month on the first.

[81] The mother acknowledged there were times she did not respond to the father's messages, indicating she may have been working, or sleeping, or

unavailable. The mother stated there were other times she would not allow communication between the children and the father because of the “abusive text messages and my (her) worry that you (the father) may say something negative to the children as well.” I find that at times the father “harassed” the mother and was verbally abusive toward her and she has sometimes avoided the father’s calls/text messages, which is understandable. I find there is a need for structure with respect to the father’s contact with the children and the mother.

[82] The mother acknowledged they had missed “many” calls, but she was not certain of the dates. The mother agreed that at one point she acknowledged that the telephone calls to the children were not working because of her work schedule and as a result she arranged for the children to contact the father while they were at their babysitter’s home.

[83] When asked why the babysitter was no longer facilitating the telephone calls for the children the mother responded partly as follows:

It got to the point where she was letting me know that she was uncomfortable making the calls because she wasn’t sure what was allowed and what wasn’t, and what was appropriate and what wasn’t. She felt stuck in the middle.

...

...Carla reached out to me letting me know that she felt it was too much for her to deal with, trying to figure out like, she’s uncomfortable letting me know things were not to be said. Like, the things were not okay to say, she felt uncomfortable being stuck in the middle of that. So, it didn’t end up working.

...

She just found it too uncomfortable. So, she gave me a letter that stated that she felt too uncomfortable with the hostility between you and I. The phone calls, contacting her, and also because it just wasn't working out with me giving notice for when I needed a sitter. There were two big reasons why she let us go.

[84] The father suggested that if the mother was in his place and she had been denied her telephone contact with the children that she would be upset and frustrated. The mother agreed.

8.3 Sufficiency of notice to exercise father's parenting time

[85] When the father was asked about his trip to exercise his parenting time in Nova Scotia in 2021, he acknowledged he messaged the mother approximately two weeks before leaving for Nova Scotia, stating "coming soon to take four weeks" but he had not told the mother when he started driving to Halifax. He agreed that it took approximately four or five days to drive from his home to Halifax, Nova Scotia and that he only emailed the mother at midnight when he crossed the border into Canada, arriving that morning and requesting the children go with him.

[86] According to the *Parenting and Support Act* section 40 (3):

in determining whether a denial of parenting time, contact time or interaction was wrongful, the court shall consider all relevant circumstances, including whether there was:

(d) a failure by the **applicant (dad) to give notice** of when parenting time, contact time or interaction would be reinstated following advance notice that the time would not be exercised. (emphasis mine)

[87] The father had not been exercising his parenting time due to covid restrictions, and due circumstances preventing him from travelling following a car accident he was involved in. Subsequently, the father failed to provide the mother with meaningful advance notice of exactly when he intended to exercise his parenting time. The father's suggestion that the call he made two weeks earlier was sufficient is not reasonable. It is not open to the father to complain about the mother not being prepared to "turn on a dime" or change the children's plans on a moment's notice after he just showed up one morning.

[88] The father could easily have told the mother when he began his trip to Nova Scotia, and he could have given her an estimate of when he was hoping to be admitted back into Canada. It was appropriate for the mother to have asked him not to tell the children he was coming until he knew he would be admitted to Canada, so as not to disappoint them as the mother suggested he had on other occasions when he said he would be travelling to Nova Scotia, or he would be attending their first day of school.

[89] The mother stated in part:

You sent this email in the middle of the night, I was awoken the next morning at 8:30 in the morning to multiple phone calls from you telling me that you're here and you're coming to get them. That is not the appropriate way to set

up a visit in my opinion. That is extremely hard for the children, **there's no planning, there's lead up, you could have very well let me know all these reasons in advance and you didn't.** Regardless of that, I did, with my boyfriend at the time plan your visit for a few days later from this day for you to come pick up the kids and we had planned for you to have two weeks with the kids, with a break in between with myself, which is what this Court ordered... (my emphasis)

[90] The father asked the mother to provide examples of behaviours he had exhibited that she found were inappropriate. The mother stated in part:

Sure. So, before the kids met with you, I had outlined a few things just for you to remember that weren't supposed to happen during that visit, or that were and weren't. For example, that the **children were supposed to go to soccer.** Also, one thing I request was **that the kids did not go to your father's house as he is a convicted child molester.** I've multiple times requested that the kids don't go there, but they did stay there I specifically asked that you bring the ...(inaudible)... shoes but I sent them in as many times and they haven't come back and they didn't come back again. You didn't send me an itinerary of where you were going to be staying which I asked, I did request, and you agreed to give to me, and you did not. During that week I was **verbally harassed by you** many, many times. During the initial exchange, **when I was driving away, you had the kids with you and you said loudly, yelled actually, at me through the window you're going down and laughed in my face.** I also received a text message from you during that visit that before you **admit to telling the kids things that you shouldn't be telling young children. You said you had to explain to the kids why they missed so many days and why it's affecting them.**

You also told me I should take the time to get some help because I desperately need it...let's see. You sent me another long text message about how I'm ruining the kids lives. **You made a public face, post on Facebook explaining all of our issues going on in Court,** which I believe is defamation on my part, it's something that shouldn't be posted on Facebook. **You also referred to Mark as a, a... many names that I, an animal, a freak, just you...sent a threat saying I'm going to have problems now as well.** You made in a post, part of the post had a comment saying the fact that **she's trying that just makes her look like she belongs in a mental institution.** This is public on Facebook. I also asked for an agreement not to cut the kids' as you cut (the son)'s hair off in the past. I also **received a text message saying you're going to love (the son)'s haircut.** His hair actually had not been cut but it was just supposed to try to bother me. **You also threatened to not return the children on the agreed day.** I did not confirm

original plans. And, due to all that, I just thought it was not a safe, healthy environment for the kids to be in. (my emphasis throughout).

I find the father's choice not to follow the court order was unhelpful, that many of the father's behaviours were inappropriate, and that many of his comments were inappropriate and / or emotionally abusive.

[91] The father asked the mother questions about his attempts to spend time with the children in March 2022, when he was unable to visit during the regularly scheduled school break in Nova Scotia. The mother suggested that the father did not comply completely with the Court Order stipulating that the father must ensure the children attended school and their other activities such as soccer and hockey. I find that the father has at times ignored the court order which was put in place to attempt to reduce conflict and to encourage the father to show an interest in and appreciation for the children's family, school, activities and their community in Nova Scotia.

8.4 Extended family contact for the children with the father's family

[92] The father asked the mother questions about her lack of effort arranging for his extended family to have ongoing contact with the children. At that point in the father's cross-examination, I encouraged the parties to focus on the more immediately relevant issue of ensuring the father's ongoing parenting time with the

children was a positive experience for the children, especially since the father was entitled to speak with the children every second day and could have involved his family especially since he has testified that he spends significant time with them every week.

[93] I noted that the parties' family members were not parties to the proceedings, and that there had been significant conflict between the parties. In those circumstances, I would not necessarily expect the mother to be facilitating the father's extended family's contact over and above the requirement to provide a call every second day for the father due to the young ages of the children.

[94] The father advised the Court that "over the years, his family, his siblings (older sister in 2001, younger sister in 2012, younger brother in 2013), and his mother (in 2003 or 2002)" had moved to Utah over a fifteen-year period. He advised his family members all married American citizens and had settled their lives there.

[95] At the time of trial in October 2022, the children's paternal grandmother was residing with the father. When asked if the children's paternal grandmother could participate on the telephone with the children when he exercises his telephone parenting time every second day, the father stated that she could not. He stated

that the children's paternal grandmother was not with him "24 hours per day" and it was unlikely that he and the children's paternal grandmother would be in their home at the same time due to their respective schedules. I do not accept the father's statement that he could not include his mother in any calls.

[96] The father acknowledged the mother was granted sole custody and decision-making responsibility for the children in January 2021. He acknowledged that the children have been living with Mr. Blanchard and with their half sister and aside from holiday time, the children had never spent in-person time or resided with his new wife, or his wife's children who reside primarily with her husband. He further acknowledged that the children have never spent in-person time with his wife's children, and his wife's children have never been to Nova Scotia.

8.5 The father's alleged negative behaviours/attitude toward the mother and/or her choices.

[97] The father asked the mother to provide an example of how the relationship between himself and the children was not positive. The mother stated:

...during a phone call you had told (the son) on a phone call that he can speak to me however he wanted to, which... in my opinion is not healthy for the children. I can give you more examples if you like...

Negative, **one reason is negative speaking about myself, where the children live, and what the children do. Negative speaking about everything that they eat, the place they live, about going to school, about myself, about my partner Mark, that's another huge issue with me.** (my emphasis)

I accept the mother's testimony. I find the father's undermining of the mother's authority and negative comments about the children's life with their mother to be inappropriate and a blatant effort on the father's part to influence the children to have a negative opinion of their mother and her partner.

[98] When asked to clarify further, the mother referred the father to paragraph 58 of her affidavit filed April 11, 2022, and stated:

... it mentions a phone call between you and the children, and you began making **comments about Mark having a big belly, which to me is negative speak** about Mark Blanchard who plays a huge role in the kids' lives. This is one time that I did end the call. (my emphasis)

Once again, it should go without saying that the father's comment(s) were entirely inappropriate.

[99] When asked to give an example of when the father had spoken "negatively or poorly" about her in the presence of the children, the mother referred the father to paragraph 39 of her affidavit filed July 19, 2021:

This was a Facetime call between you and the children where you stated, **"mommy's keeping you from me in Nova Scotia, but soon you're gonna come to Salt Lake."** You also stated in that phone call **"remember you used to hate going with mommy, and you cried and cried"**. To me that's negative talk about their mother, myself, which I don't believe is appropriate. (my emphasis)

The father's exchange with the child(ren) is evidence of his attempt to paint the mother in a negative light and to turn the children against her. The father

reminding a child how they were previously reluctant to return to a parent is a particularly egregious example of the father's abusive behaviour.

[100] Before the mother changed her position about seeking termination of the father's parenting time, the father asked the mother what it would take for her to feel that she did not have to ask this Court to cut off his contact with the children.

The mother responded in part:

I would take you **treating me properly. Not discrediting my parenting**, which you actually did last night. It would take you **not saying things that are for adult conversations to the children, talking about me or my parenting to the children, talking about eating habits, questioning the children endlessly on the phone...**

...

Just being respectful of me and especially on the phone with the kids not discrediting my parenting in any way, or talking negatively about myself, Mark... where we live, and also not harassing me and abusing me and... (my emphasis)

[101] On June 28, 2022, the father asked the mother "when was the last time I harassed you?". The mother responded "probably, around the day of our last court date (May 2022). Since then, you have not". The father asked the mother "what would you describe that harassment as being?" The mother responded:

"messaging me" (the mother has reported the father sometimes messaging up to 40 times per day).

[102] The father asked the mother “when was the last time I abused you?” The mother responded: “Same time (May 2022). But you did discredit my parenting just last night on the phone with the kids” (June 27, 2022):

Last night, (the daughter) was showing you her little bag of cheezies that she had eaten, and you said **oh, don’t worry, when you come with dad, you’ll be getting super healthy stuff and I’ll get you back to being healthy.**

Those are just the things that I’m saying I need to stop for me to feel, for me to feel like the kids are safe and comfortable. That they can eat treats and that’s okay for a child. That they’re allowed to have treats and they’re still healthy children. **I don’t want that negativity put in their head, especially about food and body image.** I find that very negatively impacts children.

Again, the father’s comments were inappropriate.

[103] When the father was cross-examined at trial on October 31, 2022, and upon being presented with the evidence the father acknowledged that on July 14, 2021, the father had sent a text to the mother stating:

you’re an absolutely miserable and pathetic person and mom and one day you will regret it all.

You can **keep them hostage in your little redneck town.**

Because you **can’t control the kids forever**, and leave them hostage in your little redneck town.

Keep them in **daycare all day long.**

Keep **feeding them garbage.**

Keep stealing phone calls, keep refusing my family to talk to them, keep them hostage, keep telling them horrible things.

You’re a child abuser. (my emphasis)

It is obvious the father does not appreciate anything the mother does.

[104] The father acknowledged that during videochats he has asked the children why they're going to bed so early, suggesting the children were getting ready for bed at 5:00 pm – 5:30 pm local time. I accept the mother's testimony that the children were regularly getting ready for bed at 6:00 pm – 6:30 pm. I find it is an appropriate schedule for an almost six-year-old child and an almost four-year-old child.

[105] I find the mother's sleep schedule is a schedule that not all parents are prepared to adhere to for the benefit of their children's age-appropriate sleep routine, despite the importance of a healthy age-appropriate sleep routine being readily accepted by health professionals as extremely important. I further note that the mother testified that the children did stay up later than 6:30 pm – 7:00 pm on evenings when they had scheduled activities. I commend the mother for her choice to be vigilant about the children's age-appropriate sleep routine.

[106] When cross-examined, the father stated that he could not remember stating to the mother "feed them something that doesn't cause cancer." However, when presented with a text message he acknowledged sending the mother a picture of a hotdog and texting: "every time I asked the kids what they've ate, they say hotdogs. Maybe try to give them something that doesn't cause cancer." It is commonly known that nitrites included in most process meats are linked to cancer.

It is apparent that the father is concerned about the issue, and this is an area the mother may want to talk to the children's doctor about. However, I have no reason to believe these children eat more hot dogs than the average child.

[107] The father stated that he could not remember sending the mother the following text:

You speak zero languages and wipe people's bums. I'm sorry I want better for my children. Maybe you don't. (my emphasis)

After reading the text the father did acknowledge he sent it to the mother. Of particular concern is that the father suggests "he is" what would be better for the children based on their mother's work which is helping and working with the elderly. He insinuates that he is the better role model. His lack of respect for the mother is a big issue.

[108] The father initially denied he had compared his new wife to the mother of his children on social media. When presented with a print-out, he acknowledged including the following captions on his social media pages: "a real deadbeat is the woman who keeps her child from a loving father: a good mother will never take a child away from a good father; and when the child grows up and knows the truth, do not blame the child from hating the mother for keeping her away from her good

father. #parentalalienation.” Of particular concern is the impression given that the father will never stop trying to make the children “realize” how awful their mother is.

[109] The father responded by stating:

Yeah, yeah. I agree to all this.

This suggests he saw nothing wrong with what he had posted about the children’s mother. The father then acknowledged he had posted a picture of his current wife with the following caption “now this mom on the other hand is a different story”, with two hearts and “Sarah Redd #supermom.”

[110] He acknowledged that during his parenting time with the children, after the mother had asked him not to cut their son’s hair, the father had texted the mother and stated:

You’re going to love (the son)’s haircut.

The father had not cut their son’s hair. I agree he was trying to agitate the mother.

[111] When the father was asked about whether he had contacted the mother’s former manager at Dykeland Lodge, the father responded in part:

No, that's not correct. I receive updates from the sheriff's department in Kentville. Ms. Low owes me from a resident hearing, she owes me close to \$2,500 on a hearing that she lost from the rent, from the rental, whatever you call it, the residency. So, I received updates from the sheriff's department regarding Magen Low and her work situation because they're trying to garnish, they're trying to collect that money, and so I receive updates from them. And that's when I received an update that Magen had not returned to work as she said she did.

[112] His other responses regarding the release of the mother's private work information continued as follows:

Q. And you had an email exchange with someone at her work. Is that correct?

A. Yes.

Q. You attached it to your most recent affidavit, Mr. Smith.

A. Yep.

...

Q. So, you received information from the sheriff's department that Ms. Low is not working at Dykeland Lodge. That's your evidence?

A. Yes.

Q. And then you emailed Brenda Innis, is that correct?

A. I don't know if Brenda, I don't know if I know Brenda or she emailed me because of the sheriff's department trying to relay the information, so I was given the information that Magen Low had not returned to work because the sheriff's department, like I said, has been trying to collect money from Magen that she owes for losing a tenancy hearing. So, yeah, I received the information that she wasn't working yet.

Q. And at any point, did you tell Brenda Innis that you were Ms. Low's ex-husband?

A. No, I didn't.

Q. And you didn't tell her at any time that you were in the middle of litigation?

A. No, I didn't. I had told her, I had told the sheriff's department that I was basically, yeah, to inform me of the updates or anything, any news pertaining to Magen's work, basically, so that's when all that information got to me.

Under the circumstances, if the father was attempting to improve relations with the mother, he showed a lack of judgement about how his inquiries may be perceived and what her reaction might be. It was completely inappropriate for the father to speak with the mother's employer, especially without identifying he was the mother's ex-husband.

8.6 Concerns expressed by the children's service provider(s)

[113] When the mother was asked if she had "proof of these scenes" that the mother had suggested the father had caused, the mother stated:

Yes. The school actually contacted me on (the son)'s first day of school for grade primary. **They said you had arrived and caused a scene and that I should not bring (the son) to his first day of school because they didn't want to traumatize (the son).** I had a phone call with the principal regarding this. (my emphasis)

I accept the mother's evidence on this point, and I find it to be a significant concern that the school advised the mother that the father had caused a scene, or they felt he was likely to cause a scene, which had the potential to traumatize the child.

[114] The order will reflect that the father is not permitted to attend the children's school(s); child-care facility(s); or other activities if staff express a concern about his presence and they ask that he not attend. The children shall not miss

opportunities because of their father's inability to regulate his emotions. [see clauses at end regarding parenting exchanges paragraph 331-338].

[115] The father raised a concern about the mother telling him that the children's babysitter was licensed. He stated that he had received a text from the babysitter confirming she did not have a registered business or a license. I advised the father that whether the babysitter was licensed or not, according to the order it was up to the mother to make decisions related to the day-to-day care of the children.

[116] The father explained that he had raised the issue as evidence the mother had lied to him. The father had every right to do so. The father then confirmed he was not concerned that the babysitter had harmed the children and he did not care if the babysitter was licensed or not.

[117] It would have been best for the mother to be forthright with the father about her choice of childcare provider for the children and her qualifications. However, given the father's exceedingly critical view of the mother's choices, I understand why the mother may not have wanted to advise him that her childcare provider of choice was not licensed. Regardless of whether the mother told the father the truth or not, the father's inquiries about the babysitter's licensing status likely contributed to the babysitter's decision to no longer care for the parties' children.

[118] When the father was asked if he had directed the children not to refer to the Mr. Blanchard's (the mother's partner) parents as "nanny and grandad" the father responded as follows:

No, and, and, and, I, this is, this is what I wrote in my affidavit. **I am making a big effort to try and change the damage that I've done in the past with text messages that's we've read today, with the way that I handled myself. I understand that all that was not the right way.** That was in the past and I've been making a big effort to change all of those things. As Magen Low stated today, that the summer visit went much better, that communication is much better, I'm trying to encourage, like I've always encouraged positive relationships, but this now... it just, it's another, after hearing today, it's another piece of the, of the big puzzle of both of the child act of section 16, which goes back to what's the best interest of the children. I do not believe that living in a home— (my emphasis)

8.7 The father's requests for the mother to "put the past behind them"

[119] Another area of questioning by the father related to the father asking the mother if she was prepared to put the past behind them. The mother acknowledged she had received a "Tupperware" with gifts from the father and a note he included stating that he wanted to put the past behind them. The mother acknowledged receipt of the gifts, the note, and subsequent messages. She acknowledged she did not respond to them, however, she stated in part:

Because I believed that **if you, what you were saying was true, that the negative speaking and name-calling to myself and text messages would (sic) end, they never have.** (my emphasis)

[120] Before the mother changed her position, the father asked if their relationship was better, would she still want to “cut contact?” To which the mother responded:

I would have to have a good relationship with you for a very long time, because you have been able to have a good relationship with me for a short amount of time, but you have always come back and treated me very poorly.
(my emphasis)

[121] The father asked the mother if the mother would be:

willing to try some kind of counselling for divorced couples that are trying to raise their children? Or some kind of help or assistance from counseling or social workers or something? Would you be willing to try that?

[122] And the mother responded:

Yeah, you know, potentially, yeah.

[123] When the father asked if he had ever expressed a desire to turn things around or make things better with them for the children, the mother responded:

Yeah, as I've said, you have, and **you would always come back and treated me very poorly and talk poorly about me to the children after you've said that.**
So that's why I have a hard time hearing you say that. (my emphasis)

[124] In October 2022, the mother acknowledged the father's parenting time with the children had gone quite well during the summer of 2022:

Sure, yeah. It actually did go well. There weren't many issues other than their **arrival date was late.** You did call and let us know and that was nice. (the son)

was a little upset, but it was nice you let us know. Yeah there weren't, weren't many problems, I did receive them for my first two visits, **my last visit I didn't receive them and I did agree that that was okay because I was not going to be able to drive to Cape Breton to get them, which is what you had implied that I would have to do.** So, I did agree to that, and that was fine. They did go to their sports, that I did attend as well. That's nice. And they came back on time, which is also nice. But I will say, **you did tell the kids that you'd be at their school, and you weren't, which they were quite upset about,** but other than that, it did go well. (my emphasis)

[125] The father asked why the mother had not included information about how well the summer 2022 had gone in her updated affidavit. The mother responded as follows:

You, over the past, it's been more than three years since we've separated, but over that time there have been a small number of okay visits which are nice, but I have found that it doesn't always last, and the next visit might not be the same, and as, as, I've witnessed since your visit in the summer, which was good, **your phone calls since then have not been good.** And that is, that is in my experience, and I guess that's why I didn't, why I decided not to mention it, but I'm not opposed to saying that the visit was, did go better than I expected, and I did appreciate that. (my emphasis).

[126] The father asked the mother how she had been able to drastically change her opinion or views on the relationship the children have with him, from asking the Court to completely cut off contact, "which is very drastic," to then proposing the children go to Utah for two weeks in the summer and that he have regular visits, like vacation, Christmas, holidays, March break.

[127] The mother stated:

Sure, I can talk to that. I have obviously been very frustrated with yours and my relationship. It has been very, very rough, it has been tough, since the last court date though, I did take what Justice Cormier, I did take faith that she has said into consideration. **I don't, I really don't want my kids to not know their father**, of course not, it's not something that I want. I do want them to have a positive relationship. I want all of their relationships to be positive, if possible, especially their adult relationships. I have taken things I have heard into consideration, and **I'd like to try a less, I guess that you put it, drastic ...(inaudible, feedback)... in effect before going to that, I suppose. So, having a more structured order** seemed more appropriate to try first. (my emphasis)

[128] In his brief dated October 20, 2022, the father stated:

"I will take 100% responsibility for my negative actions during this tough time of being away from the children. Out of pure frustration of the situation, there were times I did not handle my frustration in the best way. For that I apologize to Magen and the court. I have learned since then and the communication has improved immensely from my end... (my emphasis)

...

[129] The father states in the same brief:

Megan was given that chance on January 14, 2021 and did not succeed. Letting her anxiety take control of the important decisions for the children and making irrational decisions out of fear...

With Megan now in school for two years, taking care of a newborn and working I am deeply concerned that the children are not receiving the attention and emotional support and stability they need at this very crucial time in their lives.

There is no evidence that since January 2021 the mother "did not succeed" or made "irrational decisions" or that she has not been or will not be able to provide the "emotional support and stability the children need."

8.8 The mother's contact with the father's partner

[130] The father asked the mother why she had contacted his partner/wife, Sarah Redd (Smith) through social media. I found that initially the mother was reluctant to respond to this line of inquiry; however, the mother did acknowledge she contacted the father's partner to warn his partner about him. Given the information presented about the father's behaviour, it is not surprising that the mother may have reached out to someone she felt may be able to influence him.

[131] The mother acknowledged that after she had expressed her concerns about the father's abusive text messages and telephone calls to the father's partner, that the father's partner did offer to act as a third-party contact between the parties. The mother acknowledged she did not take the father's partner up on her offer.

The mother responded in part:

I did not, **I didn't know who this person was, I didn't want her to have my contact information as well. I didn't know if she was going to do the same things that you were.** I just didn't know who she was. I didn't. I just didn't feel comfortable doing that.

...

Yeah, so. **I, actually asked her to ask you to stop harassing me, is what I asked, not what I got, but I asked.** I just thought maybe a third person letting you know to please stop sending these negative messages to me might help you to stop. (my emphasis)

[132] The following exchange took place between the father and mother while the father was cross examining the mother:

Father: Okay. So, over a year ago, if I understand correctly, over a year ago, you were given the opportunity by Ms. Redd to use her as the middle person so that I could have my consistent calls and you could not be continually harassed, as you say but you did not accept or respond to Ms. Redd, correct?

Mother: Correct.

Father: Okay...if that was a possibility, to cut communication with myself and have the communication through a third party so that I could, so the children could continue having a relationship with their father, and you wouldn't have to have a relationship with me, would you think that would be beneficial?

Mother: **I don't think that would stop the negative talk to the children about myself, Mark, our home, school, everything we do.**

Father: so you listed, you mentioned one specific occasion where I said "remember you used to cry..." Are there any other specific occasions where I spoke negatively towards the children about you?

Mother: There are, there were **many phone calls where you question my parenting to the children. There are many phone calls where yourself and Sarah have mocked myself as a mother.** I know not everything has been included in my affidavit because I could go on forever, as we did mention in our last affidavit, as I did mention in my last affidavit, sorry, but I believe that you've spoken negatively many, many times about myself to the children over facetime calls. (my emphasis)

The mother's choice was not irrational. Additionally, and more importantly, the arrangement would not have solved the problem of the father speaking to the children negatively about the mother.

9 The law on denial of parenting time

[133] Pursuant to section 40 (4) of the *Parenting and Support Act*:

40(1) Where a person who has parenting time, contact time, or interaction under an agreement registered under this Act or a court order is denied that time or interaction, the person may make an application to address the denial.

(2) The application must be filed **no more than twelve months from the date** the applicant was denied the parenting time, contact time or interaction.

(3) In determining whether a denial of parenting time, contact time or interaction was wrongful, the court shall consider all relevant circumstances, including whether there was

(a) **a reasonable belief that the child would suffer family violence, abuse or intimidation if the parenting time, contact time or interaction was to be exercised;**

(b) a reasonable belief that the applicant was impaired by drugs or alcohol at the time the parenting time, contact time or interaction was exercised;

(c) repeated failure, without reasonable notice of excuse, by the applicant to exercise parenting time, contact time or interaction in the twelve months immediately prior to the denial; or

(d) **a failure by the applicant to give notice of when parenting time, contact time or interaction would be reinstated following advance notice that the time would not be exercised.** (My emphasis.)

(4) Where the court finds that the parenting time, contact time or interaction has been denied, but **not wrongfully denied**, the court may order that the applicant have compensatory parenting time, contact time or interaction with the child.

(5) Upon finding that the applicant was **wrongfully denied** the parenting time, contact time or interaction, the court may order

(a) **That any of the parties to the application or the child attend counseling or a specified program or obtain a specified service, and which parties must pay for the counseling, program or service;**

(b) That the applicant have compensatory parenting time, contact time or interaction;

(c) That the respondent reimburse the applicant for expenses incurred as a result of the respondent's denial of the parenting time, contact time or interaction;

(d) **That the transfer of the child for parenting time or contact time be supervised, and which parties must pay for the costs associated with supervision;**

(e) **That parenting time, contact time or interaction be supervised, and which parties must pay for the costs associated with the supervision;**

(f) The payment of costs for the application by one or more of the parties;

(g) That the parties appear for the making of an additional order; and

(h) The payment of no more than five thousand dollars to the applicant or to the applicant in trust for the child;

(6) A finding that the parenting time, contact time or interaction was wrongfully denied constitutes a material change in circumstances for the purpose of a variation order regarding custody, parenting time, contact time, or interaction.

(7) The court may, without the applicant filing a variation application, make the variation order referred to in (6) at the hearing of the denial application. (my emphasis)

I find the mother was not always able/or willing to follow through with the children's telephone calls with the father because she was trying to protect herself and the children from the father's negative attitudes.

[134] I accept that at other times the mother was busy with life, including the children and work or school, and that the father had alienated a number of persons who could have assisted with facilitating his telephone calls with the children, including the babysitter and the mother's partner. I accept that the father's partner may have also "mocked" the mother at times and was not and is not a good option. I am not prepared to find that the mother wrongfully denied the father's parenting time, whether in person or by telephone with the children.

[135] I find that on at least one occasion, in **July 2020**, the father took the children from the mother's care without her consent, which precipitated a further application to the Court. [correction from July 2021]. Although section 45 may not be engaged specifically by the event from July 2020, due to the timeframe, pursuant to section 37 of the *Parenting and Support Act*:

37(1A) in making a variation order regarding custody, parenting arrangements, parenting time, contact time or interaction, the court may include any provision that could have formed part of the original order that is being varied.

10 The Father's additional concerns

10.1 Incident August 12, 2021

[136] Mr. Blanchard was asked questions about the incident which occurred on August 12, 2021. He stated that when he and the mother met with the father to exchange the children on that date, the father began videotaping the exchange. He indicated he was concerned about the mother, and he got out of the car, and he asked the father to stop filming.

[137] That when the father did not stop filming, he reached for the father's telephone to put it down "so it was not in Magen's face and mine" and he physically interfered with the father and the father's telephone. Mr. Blanchard acknowledged: that the parties' son was upset during the exchange; that the mother was telling him "he could not do that"; and that he used profanity during the incident.

[138] Mr. Blanchard admitted he had previously used profanity in the children's presence. Following the incident, a no contact order was put in place between Mr. Blanchard and the father.

[139] When the father was picking the children up in August 2021, the father had not seen the children for some months, and I accept that the use of his telephone to videotape the moment may have started out as an innocent attempt to capture the moment. However, once the mother or her partner had objected to the use of his telephone to videotape, the father should have stopped.

[140] Given the evidence related to the father's bullying, harassment, and mistreatment of the mother, and at times denigration of her partner, it is understandable to me that her partner would want to protect the mother from the father. It is an explanation for Mr. Blanchard's behaviour but not an excuse or a defence for Mr. Blanchard physically intervening to stop the father. I would note that although Mr. Blanchard did not immediately stop trying to physically restrain the father when the mother asked him to stop, that the mother was not afraid to assert herself with Mr. Blanchard and to repeat her request until he did stop.

[141] There is no evidence to suggest that Mr. Blanchard does not now clearly understand the limits to how he may intervene to protect the mother or the consequences that may ensue. The mother and Mr. Blanchard have subsequently worked together to avoid having Mr. Blanchard placed in a similar situation. I would note that the father has criticized the mother's efforts to control the situation by insisting the children speak to their father in the privacy of their bedroom and

thereby allowing the father to have contact with the children while avoiding Mr. Blanchard breaching his no-contact order.

10.2 The children's involvement in religion

[142] The father asked the mother questions about their marriage and her baptism in the Church of Latter-Day Saints when she was twenty-one years old. The mother acknowledged her marriage to him, her baptism, and that both children were given their "baby blessings" at church. She agreed that while the parties lived in Utah their son attended church "pretty often" and that they would pray together several times per day.

[143] The mother provided context with respect to the children's involvement in the Church of Latter-Day Saints by explaining that their daughter was five-months old, and their son was two-years old (I note he was two years and five months) when she left Utah with the children. The mother acknowledged she has told the children she would not participate in prayers with them. The mother stated:

Yes, I had, in the, in the order it said that I have decisions regarding religion. I believe in their, as their sole custody parent, that in their best interest is not to attend church. That's what I believe. We don't say prayers in our home. I didn't say that to them, but I did ask you to refrain from telling them to.

[144] The father referenced a text message from the mother wherein he said she “threatened to take the calls away if I (the father) mention anything about saying prayers to God”. The mother acknowledged:

During that phone call, I did say that **if you continued to talk obsessively about that, that I would end the call, yes.**

[145] At times I have directed that parents may teach their children about their respective beliefs or religious practices, but they should do so during their own parenting time. In this case, the mother has been awarded decision making authority with respect to the children’s religion.

[146] Because there is apparently “no middle ground” between the parties, as suggested by the mother’s lawyer, but mostly because of the father’s negativity toward the mother and firmly held belief that all of his choices are better than hers, I do not believe the father would teach the children about his religious beliefs and practices without being critical of the mother’s choice not to be involved in a formal religion or the church. I am ordering that at this time and until further order of this Court the father not involve the children in his religious choices practices or allow anyone else to do so while the children are in his care or in the care of any person as arranged/facilitated by him.

[147] The mother has the authority to decide what works for her in her home. The children should not be caught in the middle of their parents' conflict and differences of opinion about religion. The father should not indirectly or directly suggest that the children's mother's choice is wrong. The challenge for these parents will be to teach the children tolerance and respect for different choices. When appropriate the children will make their own choice.

10.3 Enrolling the children in gymnastics

[148] The father asked the mother if the children had told her they wanted to be enrolled in gymnastics. The mother stated that she had heard the father on a telephone call with the children telling them to ask her to enroll them in gymnastics, and that subsequently they had indeed asked her to enroll them.

[149] The mother offered an explanation about why she had not enrolled the children in gymnastics in Nova Scotia:

I feel uncomfortable doing that because you're involved pretty much every gym around here that I know of, and obviously there's been conversations with you and people and I've seen, you know, interaction with those people in your Facebook and your posts about me, and I just feel extremely uncomfortable being around those people and I don't know who I'm going to run into, and I truly don't feel comfortable right now going into the gyms around here.

...

If I felt the kids really wanted to do something like that, I'm sure I'd find a way to get them to do it, but truly, I don't believe they want to do gymnastics. **The only**

time they bring it up to me is when you kind of drill it in their heads during a phone call. And you then they, you tell them, you tell them to ask to put them in gymnastics, that's when they ask me. They're happy doing their sports that they do right now. One other ...(inaudible, feedback)... sports, he likes his soccer. We've tried a couple of other things and he hasn't enjoyed them, so, yeah, we, we, we've been pretty open to letting them explore sports. (my emphasis)

It is extremely unfortunate that the mother feels the way she does but is understandable given the extent of the father's negativity toward her and his extensive involvement in the gymnastics community. There is no requirement that the children participate in gymnastics; however, the area of extracurricular activities is an area I hope the father can be more involved in and that the parties will be able to cooperate.

10.4 Consequences for the children

[150] Mr. Blanchard acknowledged he has "yelled at" the children "once or twice" but he denied locking the children in their basement at any time.

[151] A general rule of thumb commonly accepted by many professionals who provide advice about best practices for parents is that it is not appropriate and simply not helpful to yell at children. Despite the commonly accepted notion that yelling at children is not tremendously helpful and may cause emotional harm to children in many circumstances, many parents do yell at their children.

[152] When considering a parent's or a caregiver's behaviour it is important to consider the context. For instance, it may be different if a parent yelled at a child when there was a risk of the child harming themselves or another, as compared to yelling at a child when a parent is angry and/or frustrated and the child is irritating the parent or merely non-compliant with a basic request.

[153] Yelling may in fact alert a child to an immediate risk and potentially stop them in their tracks before serious physical harm is inevitable. Mr. Blanchard was not asked any follow up questions with respect to when and why he might have yelled at the children "once or twice." I have no reliable evidence suggesting that Mr. Blanchard regularly yells at the children in an angry manner which may cause emotional harm to the children.

10.5 The children's schedules and caregivers

[154] Mr. Blanchard explained that he, a babysitter, and sometimes other family members have cared for the children while the mother has at times been working 12-to-14-hour shifts. I am not concerned about the mother taking advantage of the support she has in her life to arrange childcare for the children. I would note, however, that at trial in October 2022, the mother was no longer working at her previous job. She was attending school and planned to work mostly on holidays and in the summer.

[155] The father asked about the mother's work situation and about her statement that she intended to return to work or had returned to work. The mother replied in part:

Sure, absolutely. So, in my affidavit, I did say that I returned to work as a casual worker. And at the time, I had reached out to my work, and we have scheduled an orientation shift for me to return. As it had turned out, as that date approached, I had an illness, and due to the nature of my job, I absolutely should not be attending work with an illness, because I work with a vulnerable sector, so I took that date off and I was waiting until we got better. As I'm sure, as I've told you, Hugh, we've been very ill lately, just with school starting, we've all been sick, rotating, so I had to keep putting off my orientation day. **But after I did notice that you were in contact with my work and they were kind of telling you my information without my knowledge, I was pretty upset with them and I have been meeting with them to discuss that kind of breach of my privacy** and just due to my school, due to like my busy, busy life and schedule, I did end up deciding not to work. As it's stated here, I said I could manage it around my studies, and I have decided that with my fulltime schedule and with having two young, sorry, three young children, that I was going to put off working, just kind of keep it to summers and holidays. But yes, I am no longer worker for Dykeland Lodge. **I am no longer an employee due to how I feel they breached my privacy, and we are currently meeting regarding that.** (my emphasis)

[156] The father inquired about the mother's school schedule, and she advised:

Mother: It varies. Right now, I'm only, I have a smaller courseload for this semester just due to credits that I've transferred over, so I'm really home, I've been home a lot. But once I go into my **next semester, yes I will have full days and I will be doing homework.** I absolutely **keep most of my homework till after the kids go to bed**, because, as you can imagine, three young kids five and under are very demanding for their mother, so I do try not to bring anything out while they're around. I couldn't tell you exactly how many hours, it depends on the day, it depends on what I have due, but yeah, that's my focus right now, that's my job, trying to better myself and so, yeah, I do spend time doing my schoolwork.

Father: And what do the kids get home from their school or their daycare? Are they currently still attending daycare?

Mother: They do attend daycare right now. It's not, like I said, right now it's now how it will be for the next two years, this semester is a lot easier on me, so I do come home most, I would say most, so three days out of five, I'm home by lunch time right now, which is really nice. (the son) gets off of the school bus at 2:50 and (the daughter) as well. They both go to school right now, so that's when they get off the school bus. Right now, the workers are on strike, actually, so (the daughter) is not in school, so I do see her more. **Yeah, there's a babysitter occasionally right now because Mark's home taking the rest of my parental leave**, which ends end of November, and then the kids will be fulltime in daycare again. (my emphasis)

[157] The mother confirmed that at that time, she was usually home around lunch time except on Wednesdays and Thursdays when she arrived home around 4:30 pm. When school is in, the children arrive home from school around 2:50 pm (or 4:00 pm) from school, and usually start getting settled for bed by 6:00 or 6:30 pm, although their daughter (who was three years old at trial) may start getting settled for bed earlier. She advised that both children participate in soccer and that their daughter also participates in a dance class, and she was taking the children to a cheerleading class for Halloween.

[158] The father asked if the mother agreed that with the children arriving home around 4:00 pm, if school is in and they are attending after school care, then eating dinner, then speaking with the father on the telephone every second evening, then playing with their electronics, and they are involved in their bed-time routine, that "that really left almost zero parenting time with the mother." The mother

responded: "I'm parenting from the time they get home." I accept the mother's response.

[159] I do not agree with the father's suggestion that the mother was not parenting when she greeted the children, fed them, assisted in settling them for a telephone call with him, assisted or participated in screen time with them or some other activity, and helped with their bedtime routine. The family has a weekday routine. The children have their school lives, their friends, and their community.

[160] The mother later elaborated about who cares for the children if she is at school:

If (the daughter)'s not in school, she's home with Mark or she goes to Jill's sometimes, because the kids request to go to Jill's. They have friends at Jill's, so occasionally, they still go to Jill's when they ask to right now. But yeah, when things pick up, it'll be Jill's in the morning before school and Jill's after school until I pick them up.

[161] The mother clarified that if their daughter was not in school, their daughter would be home with Mr. Blanchard and their child. When asked if she thought it was better for the children or for their daughter to be home alone with Mr.

Blanchard or to be home alone with their father the mother responded:

I'm not sure what, which one's better. You're not here, unfortunately, so that's not really an option. I mean, this is our family life right now, and... I don't think Mark is a negative impact on (the daughter)'s life. I communicate very directly

with my children in regards to any way they feel and so I don't believe that there's any risk for harm, and as you know, **we've been investigated by CPS multiple times due to your calling and they've never commented on any concerns to me about myself or Mark. (my emphasis)**

[162] Through his questions and evidence, the father has at times suggested he or his wife or his mother would be home with the children, or he could take the children to work with him at the gym. He fails to recognize that the children have an established routine he is asking the Court to upend.

[163] The father had initially been employed fulltime as a gymnastics coach in the United States. The father was injured in a car crash in or around March 2021 and as a result he suggested he could only work part-time as a gymnastics coach. He then married his current wife and suggested he would have to stop work altogether while he applied for a "green card."

[164] To my knowledge, the father is not independently wealthy and has not arranged for someone else to pay child support for him. The father can work fulltime if it does not require him to overload his back. He should be working. If he has chosen not to work, he is underemployed and his availability to care for the children is a fiction.

[165] The father has a positive obligation to find work commensurate with his abilities and to pay child support. It was his choice to leave Canada where he was

able to work. As noted, if he has not sought fulltime employment which does not require him to “overload” his back then he is not fulfilling his obligations and he is underemployed. His choice to be unemployed and lead the life he is leading does not absolve him of his responsibility to pay child support.

[166] The father asked the mother if it would be in the children’s best interest to live with him for a few years in Utah while she was in school so that she could focus on school and the children could reconnect with him. The question shows a lack of understanding about the children’s need for consistency, stability, and security, and also the need for the father to work and pay child support.

[167] The mother explained that she did struggle when she first arrived back in Canada and was living with the children as a single parent going to school fulltime, and that she did ask him for help then, but she stated that:

I don’t believe that the kids should be ripped from what they have. (the son) is in grade one. He’s been going to school; this is his third year. **They have friends. They have friends on our road. You know, we’re accustomed to our life and our schedule, and I don’t believe that it would be beneficial to move them from that to another country for two years.** I’m not overwhelmed with school. It’s tough, but I have a lot of support now that I didn’t have back then. (my emphasis)

[168] When the father suggested the mother was okay with taking the children away from their home when they had been living in Salt Lake City in Utah the mother responded:

I'm not sure exactly how to answer that. I, when we separated, Hugh, **I could not work in Utah. There was no, there was no way that I could have stayed there. I'm not, I would have been an illegal person living there once we divorced.** I was only there because I was your spouse, and so, the only thing that made sense was to return home. Also, **(the son) had lived here before and (the daughter) was only five months old.** So, I don't believe it had a huge impact on them. (my emphasis)

Again, the mother has testified that she could not work in the United States. She returned to Canada to attend school/find a job to support the children.

10.6 Provision of regular updates to the father

[169] The father asked the mother about his information requests for regular updates about the children and for the daycare provider's information. The mother acknowledged she did not provide the information as requested and that if she was in the father's place she would have wanted to know where the children were and who was caring for them.

[170] The mother explained:

I agree, I wouldn't like that. At the time, I was, **myself and my childcare providers were both nervous about you having their information because of you showing up to daycare providers and schools and not letting them go and causing a big scene.** That's why I was refraining at that time. (my emphasis)

[171] The father asked the mother how many monthly reports she had given him since the hearing in January 2021. The mother stated:

I've given you a few. I've been more... I've been more, I'm not sure the word, but I've been making sure I do them since May. I've been really trying to do that. That's definitely something that I need to get in more of a habit of, but I've been trying to send you emails and send you photos through text when the kids request you to see something, and things like that. I've been trying to be better doing that.

[172] The mother should have sent reports. The reports were intended to help the father keep abreast of developments in the children's lives. They may have resulted in the father spending more time talking to the children about age-appropriate fun things going on in their day to day lives that he may not have known about in advance of a video call. It was wrong of the mother not to send the reports once per month as I had directed (whether or not a clause was included in an order).

10.7 The mother's use of melatonin for the children and children's illnesses

[173] The father asked the mother about the children's use of melatonin. She stated that she gave the children melatonin as directed by their doctor. The father asked if the mother felt it was normal for children generally to need to take something to help them fall asleep. The mother responded:

I don't personally know if it's normal. We had a struggle with (the daughter) for a long time where she wouldn't go to sleep until close to midnight. I'm not sure, we

weren't able to figure out why that was, so I just followed up with her doctor, and he advised me to give them one melatonin before bed. So, we do give it to them. It's in a gummy form, and it's approved by their doctor. It just helps them wind down and (the daughter) has been really benefiting from that. She has a full twelve hours of sleep at night and is just a happier kid now.

I'm satisfied with the mother's response.

[174] When asked about the children's frequent illnesses the previous year the mother stated:

I mean, especially with school, they've been sick pretty much non-stop, which is pretty normal for school kids. I did ask a doctor about it just because I was little concerned with my youngest kid sick so much, but they all reassured me that it's totally normal for a kid to be sick pretty much all the time while they're in school or daycare.

Once again, I'm satisfied with the mother's response.

10.8 The mother's Generalized Anxiety Disorder

[175] The mother acknowledged that as a child she was diagnosed with Generalized Anxiety Disorder. The father asked the mother whether fear or panic about any risk of him taking the children out of Canada (I believe the father was referencing March 2020, the summer of 2020, and summer 2021), might be related to her anxiety, the mother stated:

I believe that thought came to my mind because of the past and you taking the children to the, to the United States without my permission. That's where that thought would come from.

I accept that the mother had a realistic fear that the father would not abide by their agreements.

[176] It is true that at times the parties both failed to follow court orders. On a balance of probabilities, I find it was the father pushing for the month on/month off parenting arrangement. The father's plans were not age-appropriate for the children and created barriers for the children being registered in daycare and school programming in Nova Scotia. Those barriers impacted on the mother's ability to improve her financial situation after being dependent on the father while she had been residing in Utah with the father.

[177] On June 28, 2022, the mother was asked about suffering from Generalized Anxiety. She explained:

I just, I have extra worry about things. It depends on the situation, it depends, it hasn't severely affected me for a long time. I've been in control really well with mediation and therapy, and ...yeah.

There is no credible evidence to suggest that the mother's diagnosis impacts negatively on the children.

[178] The father asked the mother if she was "healed from anxiety? The mother responded in part:

I don't know if you can heal from anxiety, but at this point I definitely feel like I have it under control and I live a very normal life.

[179] I have no evidence to suggest the mother “overreacted” to the father’s behaviour. I feel that if anything, the mother should have insisted much earlier that the children reside primarily in one location rather than agreeing to the father’s plan to share care of the children with the father 1 month on / or a month off.

[180] I recognize, as I did in August 2020 when I ordered a week on / week off parenting arrangement, how difficult it would have been for very young children to adjust to the month off / month on parenting arrangement preferred by the father. I find there is evidence (the children’s difficulty returning to the mother in the Spring / summer of 2020) that the children’s emotional health was negatively impacted by the parties’ previous agreement to implement a month on / month off parenting regime. The impact was of course heightened by the father’s negativity toward the mother and Nova Scotia.

10.9 Mr. Blanchard’s daughter F from a previous relationship

[181] When Mr. Blanchard was asked about his daughter from a previous relationship, he stated that although he does not see his daughter, he does share custody of his daughter with his daughter’s mother and his daughter’s maternal grandmother. I accept that is the case.

[182] He explained that his daughter's mother was in a car accident some years ago and she suffered a traumatic brain injury. At the time of the accident, he was working out west and his daughter stayed with his parents and his daughter's mother's parents.

[183] He stated that his daughter developed some stability with her maternal grandparents and when he wanted to assume her care, his daughter presented as angry with him or appeared to "blame him." His daughter was nine years old when she chose to remain with her maternal grandmother and not to have contact with him. He explained that his sister, however, does have some contact with his daughter.

[184] The father expressed concern about Mr. Blanchard's past relationship with his daughter suggesting there was some risk involved and that's why Mr. Blanchard's daughter would not have contact with him and that the parties' children were at risk with Mr. Blanchard. The father began asking questions suggesting what Mr. Blanchard's daughter's grandparents may have told him about the situation. I cautioned the father about that line of questioning, as the grandparents were not present to testify.

[185] The father subpoenaed Mr. Blanchard's daughter's maternal grandmother Deborah Griffiths-Cuffari and Mr. Blanchard's daughter's maternal step-grandfather Joseph Cuffari, to Court on October 31, 2022. The witnesses did not file affidavits. The mother's legal counsel objected to the witnesses providing testimony or alternatively asked that the Court allow only limited cross-examination on a specific issue and limit the length of cross-examination.

[186] The father was permitted to ask the mother's partner's daughter's maternal grandmother and step-grandfather if they knew why Mr. Blanchard no longer had contact with his daughter from a previous relationship. I determined that the question was relevant as Mr. Blanchard lives with and provides care for the parties' children.

10.9.1 Joseph Cuffari (mother's partner's daughter's maternal step-grandfather)

[187] In response Mr. Cuffari explained:

My Lady, our daughter was involved in a very serious car accident, about four years ago, August of 2018. She had primary care and custody of our granddaughter, up until that time, and Mr. Blanchard was working out west. She was in a coma for a couple of months and was in rehab until March of 2019. We shared parenting with Mr. Blanchard's parents. We had pretty much majority of the time, but there was shared parenting during that period, all thinking that our daughter would eventually be able to take care of her child. She has severe Traumatic Brain Injury (TBI).

...

Mark Blanchard advised, in February... give or take 2019 that he was coming back, and he was going to take care of F. F reacted strongly to that and hence, we started to take court action in April to try and ...ween F into seeing her father gradually. The court action went on for about a year and a half. F was adamant she did not want to be with her father or see him and would cry and whatever. The court finally agreed and appointed a trauma counsellor to meet with F. Dr. Holly McConville and I'm not sure how for the court wants me to go with this. I have a four-page letter that Dr. McConville wrote to the court advising the court of circumstances and that there are issues that occurred during the counseling sessions that caused Dr. McConville to contact the RCMP and family and children services. I can read the entire letter if that will, that is the reason we are here today in the sense that Dr. Holly McConville's letter is the reason that eventually, there was a consent order that said Mark will not have any form of direct or indirect access or communication with F at this time. Communication shall only occur if initiated by F. Counseling between F and Mark will occur if recommended by Dr. McConville in consultation with F. This was the order of the court issued September 18, 2020. There has been no contact since then nor has any contact been initiated by F. So if was based on this letter, if you wish me to read it, I can. That is the, that is the only reason, basically, for the court order and why Mark has no access to his daughter.

[188] I allowed Mr. Cuffari to read Dr. McConville's letter dated in December 2019 into the court record. The following is my synopsis of the letter:

1. Dr. McConville indicated she was writing the letter on behalf of F. She referenced F's mother's motor vehicle accident which occurred on August 18, 2018, stating that the mother's injuries prevented F's mother from continuing in her role as primary caregiver to F. Dr. McConville stated that F's family physician was concerned that F was **"starting to disassociate"** and had reported **"feeling dead inside."** (my emphasis).

2. Dr. McConville stated that F's grandmother had told Dr. McConville that F was upset about some of the recommendations stemming from the custody and access assessment as she felt F's voice was not heard. F's grandmother reported to Dr. McConville that F did not want to see her father, although the assessment report had recommended F begin transitioning to his care.
3. Dr. McConville reported various comments F had made and then on October 1st 2019, F disclosed to Dr. McConville that she had told her grandmother something really personal, but she did not wish to discuss it. Following that session, F's maternal grandmother reported that on September 30, 2019, F had made a disclosure to her grandmother. On October 8th, 2019, F spoke with Dr. McConville about her disclosure.
4. Dr. McConville stated that although she expected F's father and the professionals involved in F's care were concerned that this may all be stemming from a case of parental alienation, she thought it was important to note that while she had certainly worked with cases involving parental alienation, she felt strongly that this was not the case in F's situation.

5. That she had expected to involve F's father in her sessions with F, however, F was not in support of having contact with her father in any capacity. F refused to include him in her sessions and F also expressed much discomfort with Dr. McConville's suggestion of her meeting with her father without F present or Dr. McConville having any telephone/email contact with her father. To support the development of rapport and therapeutic trust, Dr. McConville indicated she thought it best to respect F's wishes and to allow F to progress at her comfort level.

[189] Mr. Cuffari suggested that to his knowledge the only reason Mr. Blanchard did not have contact with his daughter was because of Dr. McConville's letter. I would note that neither Mr. Cuffari nor Ms. Griffiths-Cuffari, provided the Court with a copy of the court assessment report recommending F begin transitioning to Mr. Blanchard's care.

[190] Again, Dr. McConville was not called to testify. Based on my review of Dr. McConville's letter, I find it is most likely that Dr. McConville chose to support F's decision from a therapeutical standpoint because she felt F's point of view should be respected as F's own reality (starting where the patient is, so to speak). Dr. McConville did not state in her letter that she believed Mr. Blanchard

presented as a risk to F, except to say that F's opinion was entrenched and Dr. McConville essentially felt it would do more harm than good to force the child to live with her father.

[191] Mr. Cuffari indicated that at the time of trial in October 2022, F was thirteen and a half (13.5) years old, and she did not want to see her father. Mr. Cuffari confirmed that to his knowledge Mr. Blanchard was never charged with any criminal offence.

10.9.2 Deborah Griffiths-Cuffari (mother's partner's daughter's maternal grandmother)

[192] Ms. Griffiths-Cuffari also testified. She confirmed that F has refused to see her father, Mr. Blanchard. Ms. Griffiths-Cuffari confirmed that she believed the parties to the court application involving F were: Ms. Griffiths-Cuffari; her daughter, Jacqueline; and Mr. Blanchard.

[193] Ms. Griffiths-Cuffari confirmed that Mr. Blanchard's sister, Marley, has occasional contact with F and that Mr. Blanchard's insurance pays for F's trauma counsellor and Mr. Blanchard pays child support for F. The mother confirmed that she did not have in-person contact with her partner's daughter. She also stated that she and Mr. Blanchard send his daughter gifts for every single holiday and that her partner pays child support for F.

[194] I am not prepared to admit as evidence in this proceeding or to rely on F's comments about her feelings and experiences with her father. The circumstances surrounding F's comments raise serious issues with respect to reliability and are not helpful to me in the case with respect to the parties' children.

11 Concerns raised and not denied by the father

[195] That father acknowledged that his father's name is Frank Smith and his father lives in Cape Breton. He claimed he was uncertain whether his father was previously convicted of sexual assault. I do not accept the father's testimony on this point.

12 Custody

[196] Custody has been described as a "bundle of rights and obligations" including the right to physical care and control of the child; to determine the child's residence; to discipline the child; and to make decisions about the child's education, religion, medical care and general health and activities. *Young v. Young*, 1993 CanLII 34, (1993), 49 R.F.L. (3d) 117 (S.C.C.); *Chou v. Chou*, 2005 CanLII 11195, [2005] O.J. No. 1374 (Ont. S.C.J.); *Harsant v. Portnoi*, 1990 CanLII 6703, [1990] O.J. No. 1144, 74 O.R. (2d) 33(Ont. H.C.); *Izyuk v. Langley*, 2015 ONSC 2409 (Ont. S.C.J.); *Jackson v. Mayerle* (supra).

[197] An award of sole custody to one parent grants decision-making rights to that parent, generally to the exclusion of the other parent's ability to interfere or impose their own preferences. *Kruger v. Kruger*, (1979) 11 R.F.L. (2d) 52 (Ont. C.A.).

[198] The Court must ascertain a child's best interests from the perspective of the child rather than that of the parents. Parental preferences and rights do not play a role in the analysis except to the extent that they are necessary to ensure the child's best interests are met. 2016 ONSC 6938 (CanLII) *Young v Young* (supra); *Gordon v. Goertz*, [1996] 2 S.C.R.27 (SCC); *Wilson v Wilson*, 2015 ONSC 479 (SCJ).

[199] The **usual** presumption that children should have regular and comprehensive involvement in the non-custodial parent's life is not just measured in terms of time allotted. **If possible**, the *quality* of the parent-child relationship should be the same for both parents, irrespective of custodial designations. While the amount of time spent with each parent need not necessarily be equal, if possible, the *nature* of the child's experiences with each parent should be equivalent. This entails sharing of all aspects of life including overnights, extended time, celebration of special events, participation in school and recreational activities, etc.

[200] Any reduction or restriction with respect to generous time and generous involvement by a non-custodial parent requires persuasive evidence and

justification. The greater the restriction sought, the heavier the burden of proof on the parent seeking to limit the other parent's involvement. *M.A. v. J.D.*, 2003 CanLII 52807 (ON CJ), [2003] O.J. No. 2946; *Smith v. Ainsworth*, 2016 ONSC 3575 (SCJ).

[201] Where restrictions on liberal parenting time are necessary, they should reflect the minimum amount of intrusion required to safeguard against a specific concern. The nature of the concerns should be clearly articulated. The restrictions should be modified or removed as soon as the concerns have been reasonably addressed.

[202] Restrictions which impact on *the child's* experience – such as denial of parenting time, supervision, or limitation on hours of contact – require the most urgent and delicate resolution. Restrictions which primarily impact *the parent's* experience – such as a prohibition against alcohol consumption – may be less offensive on a temporary basis, out of an abundance of caution.

13 Best interest test

[203] When considering the question of custody and parenting I am required to consider sub-section 18 (5) of the *Parenting and Support Act*, which 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**. (my emphasis)

Specifically, I am required to consider the list of circumstances included in subsection 18 (6), including:

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

[January 2021 – When I granted an interim order in the summer of 2020 and a final order in January 2021, I was concerned about the children's very young ages and their need for frequent contact with their primary caregiver(s). I found neither of the father's plans were appropriate for young children: a month on month off arrangement with their mother in Halifax, Nova Scotia and their father in Cape Breton, Nova Scotia (or elsewhere/Montreal/Utah); or having the children spend a significant period in the United States with their father when their mother was unable to live in the United States. It may have worked for the father's lifestyle, but the focus had to be on the children's best interests with a focus on their sense of time, consistency, stability and security].

[October 2022 – the children were almost six (6) years old and four (4) years old at that time. The father’s plan was to move the children from Halifax Nova Scotia where they have resided primarily since approximately May 2020; take them out of their schools, daycare, community activities, and away from their mother, step-father, and baby sister and other family members and friends in Halifax, Nova Scotia and move them to Utah, USA to be cared for by himself, his new wife, and his mother. His plan to homeschool the children, all while claiming he would allow the mother 14 weeks or more of parenting time and any other contact she wished – after he had previously suggested that after spending time with him in a month on/month off parenting arrangement October 2019 – approximately May 2020, at least the eldest child did not want to return to the mother, was not in the children’s best interests].

(b) each parent’s or guardian’s willingness to support the development and maintenance of the children’s relationship with the other parent or guardian;

[January 2021 - after reading text messages written by the father and filed for the hearing in January 2021, I was very concerned about whether it was in the children’s best interest for the father to continue to have any contact or unsupervised contact with the children. I was concerned given the father’s

inability to be child focused when planning for the children, and I did not believe moving the children to Salt Lake City, Utah, USA to live part-time or primarily with their father was in the children's best interests]

[October 2022 - I find that any reluctance the children may have exhibited in wanting to spend time with their mother in or around the spring or summer of 2020 is directly related to the father's comments about the mother, about her choices, and about Nova Scotia generally. I find that without professional intervention there is a high risk that the children will be encouraged by their father and/or his family to think negatively about their mother, about her choices, and about Nova Scotia, especially if the father was permitted extended periods of uninterrupted time with the children either in Nova Scotia or Utah, allowing the father to further negatively influence the children. I find there is no credible evidence/or basis for the father's concerns about the mother's care of the children].

[204] When rendering my oral decision in January 2021, I quoted from some of the texts written by the father to the mother to highlight the disdain the father often showed for the mother, including:

You're just horrible, Magen. Man, you were really born to be low, because you're lower than low. You should be called below because you're below low. Have a nice day, **you filthy animal**.

There is such a thing as life quality. It's not just different when they are with you. It's a lower level of quality of life, which is super sad for my kids. It's not my fault they feel what they feel. I'm sorry, but kids are honest, and (the son) is smart, and he just doesn't want to be there and that's the saddest thing ever. I wish you were the mom you used to be because you were actually great. **A mom who loves their kids would do more than you did to save their family.**

You get married and then you just gave up after a year and we had a perfect baby, a perfect boy, and a good life that could have been fixed and now your kids don't want you. That's not my fault and it will just get worse as they get older and eventually, they will be with me full time when they get older. And please tell me how having kids there stuck in a house with you doing school all day in a house without anyone to entertain or play or give them nutritious meals, or teach them, or play with them in a drug smelling house is even comparable to what they have here with cousins, loads of fun, nutritious food, clean fun with good people and influence around them and home school and just learning so much with me and Leta...

You're just so lost Magen. I don't even know why I bother. You're oblivious. You're none of those things and that's what makes me so mad, because you were actually becoming that person and that mother, but you completely lost everything and lost sight of everything and now you're the opposite of all that and opposite of everything I hoped for in a mom for my kids. (my emphasis)

[205] As noted, I find it is more likely than not that if the children became reluctant to spend time with their mother in or around 2020 for instance, it was because of their father's negative comments or attitude about the mother's choice to separate from the father, about the mother generally, and/or her choice to move to Nova Scotia. The father demeaned the mother, and his behaviour undermined the mother's position as one of the children's parents. The children are likely to

continue to be influenced by the father's negativity unless there is professional intervention.

(c) the history of care for the children, having regard to the children's physical, emotional, social and educational needs;

[January 2021 - I found both parents were able to care for the children's basic needs, and that they'd both had opportunities to care for the children and the children were likely comfortable with both parents (absent significant interference from the father) and they were able to stay with either parent (if there was no interference by the father.)]

[October 2022 - the children have been in the mother's primary care since approximately May 2020, the children have been in school/daycare and lived in the same community in Nova Scotia for years. The children's needs are being met by their mother and she has a support system in place to help her to prioritize the children. The father suggests the mother should not be permitted to profit from leaving Utah. He has left out of that argument the fact that he returned to Nova Scotia in 2019 and he had advised the Court at that time that he did not intend to return to Utah, but he would be living in Montreal, and was leaving for Saudi Arabia for a month. The father could have chosen to remain in Nova Scotia, to make his house he co-owns in Nova Scotia "liveable" and to obtain employment

locally. He did not. A week on/week off parenting arrangement was ordered in August 2020. The mother did not have similar choices available to her: she could not remain in Utah to work, and she had limited choices when she first arrived in Nova Scotia. A status quo has developed in Nova Scotia].

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

[January 2021 - The mother had attempted to develop a clear plan for the children and at times the father's plans superseded hers and interfered with her ability to develop a consistent, predictable, and secure plan for the children in Nova Scotia. Due to the father's choices to exercise his parenting time first month on/month off in Montreal and Utah, then week on/week off in Cape Breton, the mother had been unable to secure reliable childcare nor register the kids in school resulting in the mother being "unable to work full time and pursue her career" or arguably attend school. The father made it difficult for the mother to continue to care for and to provide for the children as the father opposed the children's registration in daycare and wouldn't allow the children to be in school" and he insisted the children move to Utah where the mother could not work.]

[October 2022 – The mother has had a plan in place for an extended period. The children have a routine and a life with the mother here in Nova Scotia. The father has moved from the apartment the parties had shared with their children in Utah, he has remarried, and he now lives with his new wife in a townhouse belonging to a friend, and at times with his new wife’s three children. He has suggested that he, his wife, and his mother would care for the children (there is no evidence any of them have experience homeschooling children) or he could take the children to work with him. Despite more than three years of negative talk about the mother, he suggests there will be no more negativity from him, and that the mother could have 14 weeks of contact or more each year. However, he requested orders that the mother’s partner, her mother, and her sister could not be “left alone with the children,” while at the same time stating the children would have unlimited and unrestricted access to anyone in Nova Scotia at anytime they want and that he would allow for any of the mother’s family to contact the children at any time.]

13.1 The children’s ongoing contact with their mother

[206] There is no evidence to suggest the mother could have remained in the United States of America to enjoy a meaningful relationship with the parties’ children. However, the father is and has always been a Canadian citizen and could reside in Canada and work in Canada. The father had significant ties to Nova

Scotia and arguably job opportunities as well. He was not an American citizen in January 2021 or in October 2022.

[207] When asked by the father about why she left Utah the mother stated in part:

I'm not sure exactly how to answer that. I, when we separated, Hugh, I could not work in Utah. There was no, there was no way that I could have stayed there. I'm not, I would have been an illegal person living there once we divorced. I was only there because I was your spouse, and so, the only thing that made sense was to return home. Also, (the son) had lived here before and (the daughter) was only five months old. So, I don't believe it had a huge impact on them.

[208] The father expected the mother to remain with him in Salt Lake City in Utah with the children, and to keep the family "intact." When the mother did not remain in the relationship with the father, it is clear that he considered her a "bad person" and a "bad mother" for choosing to leave him and he was not shy to say so.

[209] The father highlighted factors such as: contact with the children's extended family members on his side; his access to "cultural activities"; opportunity for travel; his plan to homeschool the children; and his plan for the children to spend time outdoors, as part of his plan which he suggested was in the children's best interests. No doubt the life the father was proposing for the children had many positive aspects.

[210] However, when the positive aspects noted above are considered alongside the father's negative behaviour toward the mother and also considered along with the children's age-appropriate emotional needs, including their need for a continuing relationship with both their mother and their father, the reality is that the children would be highly unlikely to continue to have a positive relationship with their mother, one of their primary attachments, unless she is their primary caregiver. The father has shown a lack of insight, lack of ability to regulate his emotions, and a refusal to acknowledge the limitations created because the mother and the children were living in Nova Scotia.

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

[In January 2021 very little evidence was adduced by either party with respect to this area of inquiry]

[October 2022 – There was some new information from the father suggesting he would raise the children in a Christian home. There is no common ground for the parties with respect to religion or spirituality. The best that can be achieved is to keep the children out of the conflict knowing they will be free to make their own decisions when they are adults.

(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:

[January 2021 - I found it was not appropriate to consider the views of a then approximately three-year-old child and five-year-old child. In any event, any view held by either child against the mother or her supports was most likely influenced by the father's negativity toward the mother, her supports, and toward Nova Scotia generally.]

[October 2022 – The children were almost six (6) and almost (4). Again, it would not be appropriate to allow the children to make a choice. It appeared based on the evidence that although the father continued to interfere with the mother's parenting, the mother did allow the children the freedom to enjoy their father during his in person parenting time.]

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

[January 2021 - I found the children were bonded with both parents. However, the father provided me with no reassurance that if left to his own devices (I did recommend counseling to him) that he would develop any insight and be able to

stop making negative comments about the mother, statements which were likely to erode the children's ability and right to continue to bond with, to appreciate, and to develop their relationship with their mother, their family, their friends at school. and in their community and their appreciation for Nova Scotia.]

[October 2022 – I have determined that without professional intervention and evidence of engagement there is a high risk that the father will interfere with and cause harm to the children's relationship with their mother. The limits on the children's relationship with their father will be dependent on his ability the follow through with the Court's direction regarding counseling, programming, and education related to children's developmental needs and their exposure to conflict.]

(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;

[January 2021 - I accepted evidence about the father's mother and the children's paternal grandmother's relationship with the children. I accept that their paternal grandmother did spend time with the children. The father referenced other "relatives or cousins" of his in the United States and argued that the children should be permitted to develop relationships with them. I accept that the children were approximately five months of age and two years and five months of age when

they left Utah with their mother. Since the children left Utah, the father has moved, remarried, and is a step-parent to his wife's three children.]

[October 2022 – The mother's partner, her mother, her sister, and other support persons, including babysitters, friends, community members have all been supports to the mother and the parties' children. The children have school friends, neighbourhood friends, and friends from soccer, hockey, and dance. They are part of a community. The father would like the children to get reacquainted with his family and his various communities and wants to participate meaningfully in the children's lives. I have ordered the children have no contact with the children's paternal grandfather unless the paternal grandfather provides the required information to be reviewed by the Ccourt.

- (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;

[January 2021 - Throughout the proceeding and up to trial in January 2021 the mother appeared to respond to the father in a "very measured manner." I noted that in September 2020, after significant negative behaviour from the father, the mother was still willing to consider a week on/week off parenting arrangement with the father in order to promote the children's right to a relationship with their

father if commensurate with their best interests. I note that despite her misgivings and perhaps out of necessity, between October 2019 and possibly March or May 2020 the mother allowed the children to visit with their father for extended periods in Montreal, Canada (and elsewhere). I found that throughout that period, the father most likely made negative remarks about the mother and her choice to move to Nova Scotia which on balance of probabilities impacted the mother's relationship with the children.]

[October 2022 – I am not confident that the parties can improve their relationship and reduce conflict without professional intervention].

[211] When considering the issue of parenting I am required to consider any evidence of family violence:

- (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 cooperation would threaten the safety or security of the child or of any other person. (my emphasis)

[212] Sub-section 18(7) provides that 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;

[the father has made ongoing negative remarks about the mother's choices including but not limited to: her choice of employment; her choice of partner; her choice of community; her spiritual choices; and her choice to separate for him. He made inappropriate remarks about the mother's mental health, suggesting she was acting unreasonably due to her mental health and taking no accountability for his behaviour. He made it difficult for the mother to arrange child-care to allow her to secure employment. He told the mother that the children did not want to be with her, and on at least one occasion he physically removed the children from her, while they were in her presence and while she objected to him doing so, running down the street with the children while the mother was running after them].

- (b) how recently the family violence, abuse or intimidation occurred;

[the father's behaviour was ongoing throughout the period of litigation in question]

- (c) the frequency of the family violence, abuse or intimidation;

[the father regularly demeaned the mother's choices including her long-term choices and her daily parenting choices].

- (d) the harm caused to the child by the family violence, abuse or intimidation;

[Most likely the initial impact was on the children's relationship with their mother].

- (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring;

[there is no evidence to suggest that the father has sought counseling or sought out information regarding **early emotional development of young children and the effects of conflict on children**]

and

- (f) all other matters the court considers relevant.

...

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

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). (my emphasis)

[214] In January 2021, I found the father communicated with the mother in an abusive and intimidating manner. I was reluctant to allow the father to have any extended period of parenting time with the children because of the risk the father's comments about the mother posed to the children and their sense of safety, security, and stability. I found the father "seemed to be in a competition between he and the mother to prove he was the better parent."

[215] Up to and including at trial in January 2021, the father said very little about the abusive comments he had made about the mother or about my findings or concerns, except to suggest that when he made the comments or wrote the messages, he was angry and/or emotional/or he was frustrated – apparently arguing that his behaviour was justified because he was frustrated.

[216] However, the mother has stated that she recognizes the father can be a good parent and is a good parent when he's focused on the children. The mother reconsidered her initial position, and she was no longer seeking to have the father's parenting time terminated indefinitely. Given the parties' history, she remained concerned that if the children did travel to the United States to visit their father,

that he would not return with the children. She was concerned that the father presented as steadfast in his beliefs that he is the better parent and that it is in the children's best interest to reside in Utah.

[217] The mother was concerned about international travel and although in October 2022 she was offering the father two weeks of summer vacation time in Utah with the children, she was asking the Court to include a provision referencing the *Hague Convention* and for the Court to stress the importance of the father following the Order. The mother also asked that the parties be ordered to use a parenting application to facilitate communication, such as OurFamilyWizard.

[218] The mother asked that the father have generous parenting time during the summer, at Christmas, and March break each year, but that his parenting time occur outside the school schedule. She further asked that if his parenting time was in Nova Scotia, that he be required to take the children to school (if school is in session) and to their activities as scheduled.

[219] The mother suggested that the parties have "almost no common ground." The father does not believe in daycare, and they disagree about how the children should be educated. The mother argued that the father has strong beliefs or

opinions about parents staying home to raise their children and he does not believe in daycares.

[220] The mother highlighted that the parties live in separate countries and therefore the mother is asking for final decision making in relation to the children while the father would continue to have access to information related to the children. The mother undertook to provide information to the father more regularly, agreeing to a clause being added to any Order.

[221] The mother argued that the children's home was in Nova Scotia with her, with their half-sister, and with Mr. Blanchard and all their other family, friends, and service providers.

[222] The mother suggested that she did not accept the father's position that he has no money for child support. She argued that his lifestyle says something very different. The father had travelled to Belize, Arizona, Hawaii, and he was married in Las Vegas, all suggesting he had an ability to pay child support. The mother noted that the father and his new wife are not paying rent and only paying for utilities at their friend's home. She argued that the father has chosen to stay in Utah but he could return to Canada and work at any time.

[223] The mother noted that because of the choices he had made, the father would be completely supported by his wife while he applies for a green card. Arguably, if the children moved to Utah, the father's wife would be providing for them financially. She suggested that child support would flow from the Court's decision about parenting and that perhaps the parties should file updated income information for themselves and their spouses once a decision on parenting is finalized, and an additional affidavit without the need for cross-examination.

14 Relocation

[224] Has there been a change of circumstances since the decision was rendered on January 14, 2021? Is it in the children's best interest for the Court to grant an order allowing the children to relocate to Salt Lake City in Utah with Jay Hugh Smith?

[225] As noted, the mother left the United States with the children and relocated to Halifax, Nova Scotia Canada in or around May 2019. However, based on the evidence heard by another judge at the interim hearing held in 2019, the father had returned to Nova Scotia and then relocated to Montreal, Canada. In the summer/fall of 2020, the father asked that I consider allowing the children to relocate from Nova Scotia to live in Utah with him. I denied his request after evidence was heard in January 2021. Once again, in October 2022, the father

asked this Court to allow the children to relocate to Utah in the United States with him.

[226] The Supreme Court of Canada in *Barendregt, supra* has commented about the trial judge's task and what courts must and must not consider when deciding a relocation case at first instance and otherwise:

[99] ...a judge has the onerous task of determining a child's best interests in the tangle of competing benefits and detriments posed by either outcome: *Hejzlar v. Mitchell Hejzlar*, 2011 BCCA 230, 334 D.L.R. (4th) 49 at para 23. And as Abella J.A. (as she then was) once observed, "[i]t can be no more than an informed opinion made at a moment in life of a child about what seems likely to prove to be in that child's beset interests": *MacGyver v. Richards* (1995), 1995 CanLII 8886 (ONCA), 22 O.R. (3d) 481 (C.A.), at p. 489.

...

[114]...The history of parenting arrangements is always relevant to understanding a child's best interests.

...

[115] The crucial question is whether relocation is in the best interest of the child.

...

[129] That said, the court should avoid casting judgement on a parent's reasons for moving. A moving parent need not prove the move is justified. And a lack of a compelling reason for the move, in and of itself, should not count against a parent, unless it reflects adversely on a parent's ability to meet the needs of the child:

...

[132] Concerns about parenting time with the child will inevitably be engaged in relocation cases: the crux of the dispute is whether it is in the child's best interests to move notwithstanding the impact on their relationship with the other parent. In other words, this concern is folded into the central inquiry before the court.

...

[154] ...traditional considerations bearing on the best interests of the child must be considered in the context of the unique challenges posed by relocation cases. In addition to the factors that a court will generally consider when determining the

best interests of the child and any applicable notice requirements, a court should also consider:

- the reasons for the relocation;
- the impact of the relocation on the child;
- the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child’s life of each of those persons;
- the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
- whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

[155] As I have explained, several pillars underlying the Court’s reasoning in Gordon have shifted over time, leading courts and now legislatures to refine, modify, and supplement the Gordon factors. These refinements leave us with a clear framework going forward.

...

[169] The mother’s need for emotional support was a relevant consideration in the best interests analysis... A move that can improve a parent’s emotional and psychological state can enrich a parent’s ability to cultivate a healthy, supportive, and positive environment for their child. Courts have frequently recognized that a child’s best interests are furthered by a well-functioning and happy parent: *Burns v. Burns*, 2000 NSCA 1, 183 D.L.R. (4th) 66, at pp. 81-82...

...

[171] ...Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child’s wellbeing: ...

[172] Similarly, the additional support of family and community at the new location can enhance a parent’s ability to care for the children: ... Extended family, for example, can provide additional support to children while their parents begin to navigate the new terrain of post-separation life:...

[173] It is often difficult to disentangle the interests of a parent from the interests of a child. Indeed, “the reality that the nurture of children is inextricably intertwined with the well-being of the nurturing parent” is far from novel: *Pelech*

v. *Pelech*... A child's welfare is often advanced in tandem with improvements in the parent's financial, social and emotional circumstances...

...

[227] The *Parenting and Support Act* (amended), SNS 2021, c. 15, applies in this case:

Relocation

18E (1) In this Section and Sections 18F to 18H,

(a) "person planning to relocate" means

(i) a person who is planning a change of that person's place of residence and is a parent or guardian or a person who has an order for contact time with the child,

(ii) a parent or guardian who is planning a change of both that person's and the child's place of residence, and

(iii) a parent or guardian who is planning a change of the child's place of residence;

(b) "relocation" means a change to the place of residence of

(i) a parent or guardian,

(ii) a person who has an order for contact time with the child, or

(iii) a child, that can reasonably be expected to significantly impact the child's relationship with a parent, a guardian or a person who has an order for contact time with the child.

18H (1) When a proposed relocation of a child is before the court, the court shall give paramount consideration to the best interests of the child.

(1A) The burden of proof under subsection (1) is allocated as follows:

(a) where there is a court order or an agreement that provides that the child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(b) where there is a court order or an agreement that provides that the child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of

the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(c) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child;

(d) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child; (my emphasis)

(e) for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child.

[228] I have considered the factors I must consider when determining a relocation request and I find it is not in the children's best interests to relocate to Utah in the United States with their father. I find that it is in their best interests to remain in the mother's primary care in Nova Scotia, Canada.

15 Child Support

[229] Prior to the court appearance on June 28, 2022, the father raised a further concern about overpaying child support based on a material change of his circumstances and not one of his choice (car accident resulting in part-time work), and he argued that he was paying for childcare when he should not be paying for

childcare. I determined that the father's concerns needed to be addressed as soon as possible.

15.1 Consent Interim Variation of Child Support

[230] On June 28, 2022, the parties agreed to an interim retroactive decrease in the table amount of child support and special or extraordinary expenses paid by the father, imputing an income of \$25,000 US or **\$32,207 CAD** to the father: reducing the table amount from \$758.00 per month to **\$486.73 per month beginning April 1, 2021**.

[231] I am prepared for the retroactive decrease to apply for the period between **April 1, 2021 (his car accident) until the end of March 2022**. Giving the father a year to recover from his injuries, to retrain for alternate employment as necessary, and to seek alternate employment. The father suggested he was not seeking alternate employment as he would lose his 01 Visa, and he subsequently married a US citizen and suggested he would not be able to seek employment while he applied for a green card. Those were his choices, but they do not absolve him of the requirement to pay child support commensurate with his ability to earn an income.

[232] **On June 28, 2022**, it was anticipated that the father's **arrears of child support** existing at that time would be reduced by \$4,069.05; and on a without prejudice basis **special or extraordinary expenses** paid/payable by the father were reduced from \$560.00 to \$0 as of August 1, 2021.

[233] It was anticipated that the father's **arrears for special or extraordinary expenses** would be reduced by \$6,160. Considering that the father will be responsible for his and the children's travel expenses related to his parenting time, the father will only be responsible for 2/3 of the cost of any extracurricular activity he chooses for the children and 1/3 of any activity the mother chooses (covered elsewhere in this decision).

15.2 Evidence Employment and lifestyle

[234] The father was asked questions about his financial circumstances. In part he acknowledged making the following statements on his social media account:

1. "it's official, so excited for my first USA land purchase, almost five acres", acknowledging he had purchased five-acres of vacant property in Nevada, USA.

2. “well, I couldn’t resist. This pretty lady is all mine here”. And he posted a picture of a car. He later explained that his wife had purchased the car and owned it.

[235] The father acknowledged he had sent a text to the mother stating: “money moves slow, and I don’t get my calls.” He acknowledged that his wages were being garnished through the Maintenance Enforcement Office.

[236] The father acknowledged that during the last couple of years he had travelled to Hawaii, and that in the last two years he had travelled to Belize, Arizona, and Disneyland. He acknowledged that he had also travelled to Las Vegas to be married, and he had been married since May (I believe he stated 2022).

[237] The father stated he had been living with his wife since February (I believe he meant 2022) and they were living “in a brand-new home in one of the most desirable and fastest growing neighbourhoods” and that “the community is safe, clean, and very family oriented with countless programs and activities for children.”

[238] He clarified that he and his wife live in a townhouse and that his mother was living with them. The townhouse is owned by a friend of his, and he and his wife

were paying the “HOA fees and the utilities.” The fees to the Home Ownership Association were approximately \$700 every three months.

[239] The father’s wife has three children who live with their father in Idaho and his wife has parenting time with her children “the whole summer”, a couple of weeks at Christmas, and a couple of weeks in March. In addition, his wife enjoys parenting time once a month as planned or agreed. The father believed his wife was paying child support and he was not aware whether his wife was receiving spousal support or not.

[240] He acknowledged he was a Canadian citizen and could work in Canada if he chose to do so. He further acknowledged that as of October 2022 the only restriction on his ability to work was a restriction on working fulltime as a gymnastics coach because he was directed not to “overload” because of his car accident in March 2021, and he could work at jobs not requiring “a lot of labour.”

[241] He explained he had been working in the US “under what’s called an O1 work visa.” He explained it was a specialized visa for people “with extraordinary talents or education in athletics, in music...” which allowed him to work with his employer, USA Gymnastics World at that time. Since his injury in March 2021

(resulting in numbness down his neck from his C4 vertebrae) he was working part-time, as his neck gets numb if he is “spotting” gymnasts.

[242] As noted, the father stated that since he married a US citizen, he was eligible for a “green card” and would likely be applying for his US residency. He had not looked for other work as he would have to forfeit his O1 Visa. Once he applies for a “green card” he understood that his O1 Visa would cancel out and he would not be able to work in the US until he got his green card. He explained that his income in 2019 was higher than usual as he had two incomes in 2019, explaining that at that time he had one income from USA Gym World as head coach and an income from Cirque du Soleil in Montreal, Canada.

[243] The father acknowledged he had recently participated in a marathon with family members – the Utah Valley half marathon. He did suggest he walked quite a bit of the race.

[244] He acknowledged that he and his wife, with the help of her brother who owns a car dealership, had purchased a recreational vehicle (RV) and that the ownership papers are in his and his wife’s names and that they rent the RV to other travellers. He acknowledged he had told the parties’ son that he wanted his son to get his license when he was 16 and that they had a car for him in Utah.

[245] The issue of the father's request for a reduction in child support based on the need for him to travel to exercise his parenting time is denied. The father chose to move back to the United States and to marry a US citizen. The father could have chosen to reside in Nova Scotia, Canada where he has stated he owns property (a house that he said was not liveable in 2019).

15.3 April 1, 2021 – March 1, 2022

[246] I have taken the father's circumstances following his car accident in March 2021 into consideration and the father's annual income for child support purposes is found to be \$25,000 US (\$32,207 CAD calculated in June 2022) attracting a child support payment of **\$486.73** between April 1, 2021 till the end of March 2022.

15.4 April 1, 2022 – October 1, 2022 (trial) and thereafter

[247] The father's income between April 1, 2022, and October 1, 2022 is found to be \$40,000 US or (\$54,398.80 CAD), which based on the Nova Scotia Child Support Tables attracts a child support payment of **\$775 per month** to be paid at the first of each month.

15.5 Interim Order June 28, 2022

[248] On June 28, 2022, prospective child support accruing as of July 1, 2022 was suspended until the completion of the hearing October 30, 2022. The suspension **is** lifted, and the father owes child support as noted above.

[249] Payment of any arrears accrued before July 1, 2022, shall be paid in increments of \$50 per month at the first of each month until all arrears are paid in full. Arrears arising as of July 1, 2022, shall be paid forthwith unless the parties agree otherwise.

[250] The order should include the usual disclosure requirements and Maintenance Enforcement clauses.

[251] The parties shall exchange annually by June 30 copies of their personal and any business income tax returns and notices of assessment.

[252] The parties shall maintain for the children such health care coverage as may be available through their respective employment. They shall provide annual confirmation of such coverage by June 30 each year. If the father does not have any coverage, he shall pay **half the cost of any private or extra coverage** the mother obtains for the children.

[253] If the parties have any insurance coverage on their lives respectively, the parties shall each designate the children as the sole beneficiaries of the first \$200,000.00 of insurance on their lives respectively. If they currently do not have any insurance coverage on their own lives, they shall obtain insurance coverage. They shall maintain such policies in the future. By June 30 annually they shall confirm to one another in writing the status of any life insurance.

16 Disposition

16.1 Jurisdiction

[254] The Nova Scotia Supreme Court (Family Division) continues to have exclusive jurisdiction with respect custody, parenting, and child support. **The children are not permitted to leave Nova Scotia with the father except as permitted by an order of this Court.** Both parties are parents, having rights of custody and rights of access (parenting). According to the *Hague Convention*, the habitual residence of both children is Nova Scotia, Canada.

16.2 Custody and Parenting clauses

[255] The Applicant, Magen Low, shall have final decision-making authority with respect to the children's education, medical and dental care, and with respect to the children's religious affiliations and practices. The mother shall be entitled to enroll

the children in school, any educational school program, and in daycare or before/after school care without the father's verbal or written consent.

[256] If possible, the mother shall advise the father of any decisions to be made with respect to either child at least **thirty days in advance of any known deadline**. The father shall be entitled to offer his opinion in writing to the mother only once, unless the mother is open to further discussion on the topic. When offering an opinion, the father shall not disparage, insult, denigrate or undermine the mother or her partner or the children. The mother shall make the final decision and she shall advise the father of her decision within 24 hours of finalizing her decision.

[257] The mother shall also send a **monthly update to the father on the 1st day of every month**. The update will communicate details about the children, including but not limited to their interests, sports, friends, and medical appointments or updates. This monthly update may include photos or videos.

[258] With respect to counselling or professional assistance for the children, the mother shall have the authority to select any professionals or service providers involved in the children's lives.

[259] If counselling is arranged for either child, both parents shall be equally involved in the process (although not necessarily together), subject to any determination by the counsellor.

[260] The mother shall keep the father informed in writing as to the particulars of any professionals, educational institutions, or recreational associations involved in the children's life, in addition to the monthly report the mother has been ordered to provide the father.

[261] The mother shall notify the father in writing prior to any medical or professional appointment for either child (as soon as the appointment is booked) and provide full particulars immediately, within 24 hours after either child has attended for the appointment.

[262] Both parties shall be entitled to receive copies of all medical, dental, school, and other reports related to the children. Both parties shall be entitled to communicate directly with the children's teachers, caregivers, physicians, dentists, and other health care providers concerning the general well-being of the children. Neither party may ask the service providers about the other parent. Both parties shall be listed on all documents pertaining to the children and shall be entitled to attend any of the children's scheduled appointments [except if the service provider

specifies otherwise due to concerns regarding conflict]. Both parties shall execute consents or authorizations to all persons, including teachers, doctors, dentists and others involved with the children to speak fully and openly with both parties.

[263] The mother shall consult with the father prior to implementing any non-emergency decisions in the children's lives. The consultation shall occur as soon as the mother becomes aware of an issue and if possible, **at least 30 days prior to the date on which a decision is to be made**. The father shall be entitled to make inquiries and provide feedback and suggestions in writing once (unless further input is invited and welcomed by the mother) and shall do so without disparaging, insulting, denigrating, or undermining the mother. After consultation has occurred, the mother shall have the final decision-making authority and shall advise the father of her final decision within 24 hours after finalizing the decision.

[264] Both parents shall be listed as contact persons with all medical, educational, recreational, and social agencies involved with the children.

[265] In the event of a serious illness, accident, or other misfortune involving the children, the party then having the child(ren) in their care shall immediately and promptly notify the other party by telephone, text, or most efficient means.

[266] The Applicant and the Respondent shall each have authority to arrange emergency medical treatment for the children. If there is an emergency situation, the party with care of the child(ren) shall make all reasonable efforts to contact the other party immediately to allow that party to attend the emergency medical treatment facility if possible.

[267] During any period of illness by the child(ren) or recovery, each party shall have generous and reasonable contact with the child(ren), consistent with the conditions of this order and the welfare and happiness of the child(ren).

[268] If a child is sick, the transition from one parent's care to the other parent's care is to proceed unless the child is too sick to travel as per the determination of the child's doctor.

[269] The mother shall have the authority to obtain a Canadian passport and the mother shall pay the cost of obtaining the Canadian passport, and any other documents required by the children to travel without the need for the father's verbal or written consent. The children's travel documents shall remain in the mother's possession, copies shall be provided to the father, and the originals shall be made available to the father as required. The mother shall ensure that the children always have a valid Canadian passport available for international travel.

[270] The mother shall have the authority to apply for the parties' daughter to be registered as a Canadian citizen without the necessity of obtaining the verbal or the written consent of the father.

[271] The mother has a right to apply for any other government documents for either child, including but not limited to social insurance numbers and health cards, without the necessity of obtaining the father's verbal or written consent.

16.3 Extracurricular activities

[272] The parties shall share selection of extra-curricular activities for the children in the following manner:

[273] Each year they will take turns selecting activities.

[274] In even numbered years the mother shall select first by January 30th. The father shall select second by March 31. The mother third by May 31. And the father fourth by July 31. If a party misses a deadline for selection of an activity, the other party may proceed with their selection (unless the parties agree otherwise, neither party shall be entitled to select more than two activities per year).

[275] The parties must take the children's wishes, demonstrated interests, their aptitudes, and their current program involvement into consideration. Neither parent should unduly influence the children to choose an activity either parent

prefers. If the father chooses gymnastics, the mother will determine which program/organization the children will participate in, whether through a private club or the Halifax Regional Municipality recreation department.

[276] In odd numbered years the pattern shall be reversed.

[277] Selections may be for an activity which takes place during any portion of the year. A selection may not overlap or conflict with the schedule for a previously selected activity.

[278] The party selecting the activity shall pay two-thirds of the cost; the other party shall pay one-third.

[279] The selected activities shall be within the Halifax Regional Municipality, unless the parties agree otherwise, or if the activity occurs entirely during either parent's parenting-time they may choose the activity and shall pay the entire cost.

[280] Only the parent who has physical care of the child during the extracurricular activity shall attend the event, unless both parties agree in advance. However, for school or religious events (if the mother chooses to enroll the children in a religious event), playoffs or final competitions and presentations, both parents may attend. The parent who has the child(ren) in their physical care shall be responsible for preparation of the child(ren) for the activity.

[281] Until further order of the Court, both parents shall ensure that the child(ren) attend the activity commitments during the time the children are in their care, absent any illness as determined by a child's doctor (with the exception of the time the children spend in Utah or outside of Nova Scotia with their father two weeks per year, dad's specified parenting time during the March break, or his specified parenting time during the Christmas holidays). If the parent has difficulty arranging transportation in relation to the event but does not otherwise have plans involving the child(ren), that parent shall offer the other parent the opportunity to transport the child(ren) to the activity. **The children must be available for transport within the Halifax Regional Municipality for their scheduled activities when school is in session.**

[282] These terms set out a basic framework for extracurricular activities. The parties may agree to make other arrangements.

[283] Apart from these provisions, neither party shall make any scheduling commitments for the children which encroach on the other party's time with the children. For instance, the mother is not permitted to schedule the children's activities during the father's Christmas holiday (6 or 7 days), March break holiday (10 days) or two weeks of summer parenting time in Utah (14 days). All parenting

block times include time allotted for travel to pick up and drop off the children at Halifax, Nova Scotia.

[284] The parties shall keep one another informed of their residential telephone numbers, their residential address, and their e-mail address.

[285] The mother shall provide the **father with 90 days advance notice** of any intention for her to relocate the ordinary residence of the children outside of the Halifax Regional Municipality.

[286] The parties shall communicate primarily by way of **OurFamilyWizard** or a similar family program and shall share any cost. For anything of a time sensitive or urgent nature (child is injured/accident), the parties shall call or text and a response shall be provided as soon as the parent receives that communication. All communications shall be brief, civil, and relate only to parenting or financial issues. Neither party shall allow the child to see any or hear any communications exchanged between the parties.

[287] Insofar as the children have been negatively impacted by the high level of conflict between the parties, both parties shall have an ongoing obligation to ensure the children are shielded from any negativity or conflict. Neither party shall

disparage, insult, denigrate, or undermine the other parent during their discussions together or in the presence of the children.

[288] Neither party shall allow any person to make negative or disparaging comments to either child or in the presence of either child, about the other parent or members of their family or household, extended family or community, school or extracurricular activities, meals, or level of physical activity. They shall encourage the children to have a positive and respectful relationship with the other parent and persons in each household.

[289] The parents shall not communicate about issues or non-emergency arrangements when the children are present or nearby. They shall not convey messages or documents using either child as an intermediary. They shall not encourage the children to make requests or proposals on their behalf or to ask either parent to enroll them in a certain activity.

16.4 Parenting

[290] The mother shall have primary care of the children. The mother is entitled to receive a video call from the children on Mondays and Fridays if the children are in their father's care or any other person's care during the father's parenting time.

16.5 Video parenting time with the children

[291] There is to be a 15-minute telephone call with each child, or up to one ½ hour telephone call in total before the children's bedtime, on Mondays at 6:00 p.m. Atlantic time (or Sunday if they anticipate missing the call Monday) and Fridays at 6:00 p.m. Atlantic time (or Thursday if they anticipate missing the call on Friday). The mother shall initiate the call on Mondays. The father is to initiate the call on Fridays.

[292] If the mother **anticipates** that either child will be unavailable for a telephone call on a Monday or a Friday, if possible she shall give the father at least 48 hours notice and she shall move the telephone call **up by one day (Sunday / Monday) or (Thursday / Friday)** or in the case of an **unanticipated** missed call, the call shall be made the day immediately following the missed call (Monday / **Tuesday**) or (Friday / **Saturday**).

[293] The mother is open to the father calling to speak with the children at other times according to hers and the children's availability and she will facilitate the telephone calls. The father may leave one message in advance of or on the day he is seeking an additional call with the child(ren).

16.6 Father's in-person parenting time

16.6.1 PHASE I Parenting

[294] The father's in person parenting time with the children shall entail a short-term regime (**PHASE 1**) allowing the children to travel to Utah USA for two weeks only during the children's summer holidays / 2 days back with mom in Halifax Regional Municipality / followed by two additional summer weeks in Nova Scotia (July 1 – end of August) / Christmas (6-7 days) Nova Scotia / March break (10 days) Nova Scotia. This will become a final order if objectives for PHASE II are not reached by February 2024.

16.6.2 Christmas (PHASE I and II)

[295] The Christmas school break shall be divided equally between the parties. As part of this division, in **odd numbered years** such as 2023 the mother shall have the children with her from December 21st when school gets out, through December 27 at 5:00 p.m., and in 2023 the father shall have the children in **NOVA SCOTIA** with him from December 27th at 5:00 p.m. until January 1st, at 5:00 p.m. In **even numbered** years the father shall have the children with him from December 21st at 5:00 p.m. through December 27 at 5:00 p.m. (to incorporate Christmas and both children's birthdays). The father will be able to travel with the children to Utah for Christmas (2024) or March break (2024) only if the father

completes the programming / counseling for PHASE II by February 2024 will an order be issued by this Court confirming completion and an expansion of the father's parenting time to PHASE II. The mother shall have the children from December 27th at 5:00 pm until school recommences on or about January 2. The parties may change the holiday schedule by agreement in writing.

16.6.3 March Break

[296] The father shall have the children for the entire March school break for students in Nova Scotia from **Friday at 5:00 pm** after school until **Sunday at 5:00 pm** the evening before school resumes in Nova Scotia. Only if counseling and programming are complete by February 2024 will a further order be issued by this court permitting the children to travel to Utah for March break. (For example: March break 2024, Friday March 8th at 5:00 p.m. to Sunday March 17th at 5:00 p.m., in UTAH if PHASE II is achieved and a further court order is issued confirming completion).

[297] The children shall always be with their mother on Mother's Day, and shall always have a video call with the father on Father's Day. The telephone call shall be for up to an hour anytime between 9:00 am until 7:00 pm. The father shall provide the mother with two windows of availability at least one month in advance.

[298] **In advance of the children's summer school break in 2023, by June 15th 2023,** the father must select his first two vacation weeks (14 days including travel time which may take place with the children in Salt Lake City in Utah between July 1 and the end of August each year). If the father wishes to have an additional (14 days including travel time) of summer vacation time with the children in Nova Scotia, he must allow the children to have at least two days with their mother before exercising his third and fourth week of summer vacation in Nova Scotia after returning from Utah, USA.

[299] In advance of summer 2024 and every summer thereafter, the father must advise the mother by **May 1st each year** when and where he intends to exercise his summer break parenting weeks (the period between July 1 – and end of August, up to 28 days in total including travel time) with notification to be made to the mother in writing.

[300] The father must pick the children up in the Halifax Regional Municipality and then return them to the Halifax Regional Municipality. In addition to the two days in between the four weeks (two in Utah and two in Nova Scotia) the mother shall be entitled to parenting time for the remainder of the summer (the father shall return the children to the Halifax Regional Municipality to allow the mother to

exercise her two days of parenting time, and after his last two weeks of parenting time in Nova Scotia).

[301] The father or his designate will travel with the children between Halifax, Nova Scotia and Utah, USA until the children are eligible to fly as unaccompanied minors according to the airline's policies and the children's level of comfort in doing so. If the mother is going to object to either child's participation in the unaccompanied minor program when either child is eligible, then she must arrange to accompany that child(ren) to travel to see their father in Utah, USA for his specified parenting time.

[302] **If the father fails to return the children from Utah or from a location in Nova Scotia to the mother within the 14 days (including travel time) permitted in PHASE 1 following any travel / domestic or international travel without valid excuse (clear evidence of flight cancellation or delay), the children will not be permitted to travel with the father outside the Halifax Regional Municipality, Nova Scotia (the children's habitual residence) or internationally until the matter can be reviewed by the Court and further order of the Court is issued. The matter shall be returned to my docket as time permits.**

[303] The father shall provide the mother with an itinerary indicating where the children will be staying during his parenting time. The children shall be permitted to contact their mother at any time, and the father shall ensure he facilitates a telephone call between the children and the mother on Mondays and Fridays.

[304] The father may NOT travel outside of Nova Scotia for his third and fourth weeks of summer parenting time (July 1st – end of August), or his Christmas parenting time (6-7 days), or for March break (10 days) until counselling and programming is completed to the satisfaction of the Court and a new order is issued by this Court confirming the completion of the father's programming / counseling and movement to PHASE II.

PHASE II

[305] Only if the counseling and programming with evidence of engagement as outlined herein are achieved by the father by February 2024, will this Court grant a further Order, (PHASE 2) *allowing the children's travel to Utah, USA to be expanded further to incorporate the father's specified parenting time and up to two weeks of additional parenting time (Christmas 6 – 7 days as in PHASE I) can add an additional week (7 days) not to interfere with mom's Christmas holiday / March break 10 days as in PHASE I (can add an additional 7 days either side of*

the children's actual Nova Scotia March school break)/ Summer 4 weeks total (28 days) in Utah / with dad outside Nova Scotia between July 1 – end of August).

[306] Any additional parenting time (up to two weeks/14 days in total) the father must make a request to the mother at least fourteen **(45 if international travel)** days in advance. It is not contemplated that the father's total extra parenting time would exceed **more than two weeks (14 days) in total per year which is above and beyond his specified time at Christmas (6-7 days) / March break (10 days) / and the summer (28 days)**. The father may request an additional 7 days before or after his Christmas parenting time (if it does not interrupt the mother's specified Christmas holiday in that given year or an additional 7 days before or after the children's March break if it incorporates the entire Nova Scotia school break). The parties may alter the schedule by agreement in writing.

[307] Pending satisfactory completion of counseling and programming **and with no further negativity expressed toward the mother or continuation of any other concerns outlined in this decision** by February 2024, a new parenting order addressing the father's parenting time only may be issued as set out herein as PHASE II and become a final order.

[308] The children may travel within Canada or internationally for vacation purposes with the mother. This travel will not require the consent of the father.

The mother shall provide the father with an itinerary indicating where the children will be staying. The mother shall ensure she facilitates a telephone call between the children and the father on Mondays and Fridays [or on alternate days as previously stated paragraphs 291 - 293.]

[309] The parents shall notify one another in advance, in writing, whenever the children will be sleeping away from either party's ordinary residence for more than two nights in a row. Missed telephone calls to the father shall be made up upon the child(ren)'s return home.

[310] Either party proposing international travel involving the child(ren) shall provide the other party with full particulars **at least 45 days prior** to the intended travel, including the exact itinerary, destinations, accommodations, and methods of communication.

[311] The parent travelling with the child(ren) shall ensure that the child(ren) initiate a telephone call (or video call) to the non-travelling parent at a pre-arranged time, on Mondays and Fridays [or the alternate days listed above at paragraphs 291 – 293].

[312] If either parent plans a vacation without the children, that parent will give the other parent a telephone number where he or she can be reached in case of emergency or if the children wish to contact the travelling parent.

[313] The father shall inform himself about any criminal convictions any of his relatives, friends, or acquaintances may have for crimes against children. The father shall provide the mother and the Court with the particulars. The father shall ensure the children do not have contact with persons who have previously been convicted of crimes against children. **The father shall actively inquire about the children's paternal grandfather's, Frank Smith, criminal record, and no person shall allow the children to have any direct or indirect contact with their paternal grandfather or to visit their paternal grandfather's home without further order of this court.**

[314] In relation to any period of parenting time there must always be a sober caregiver present with the child(ren) and the child(ren) must not be exposed to other persons who are under the influence of alcohol or drugs.

16.7 Counseling and programming

[315] **The transition from Phase 1 of parenting to Phase 2 parenting** shall be subject to the following being satisfied:

[316] The father shall participate in **counselling in relation to child development with an emphasis on the emotional development of children and the effects of conflict**. The father shall provide any counsellors with copies of my decision and of the order resulting from the decision trial which concluded with all possible submissions on December 30, 2022.

[317] The father shall obtain and shall provide the mother and file with the Court a written report from all counsellors or programs, confirming not just that he attended, but also a description of the issues discussed and the counsellors' observations as to the father's progress.

[318] The father **shall participate in a Caring Dads' program or some other similar program offered in his jurisdiction**.

[319] Once the father's counsellor has read this decision and the father has attended at least ten individual counselling sessions, both parties shall participate in counselling with a qualified therapist or counsellor in "co-parenting" with a view to addressing any issues relating to co-parenting the children without conflict. Sessions shall occur at least once a month, or with such frequency that the counsellor may determine, for a period of at least one year. [If the mother fails or

refuses to participate this requirement shall not be a precondition to completion of PHASE I and the father moving on to PHASE II].

[320] The father shall be fully responsible for the cost of his individual counseling and his other individual programming.

[321] The mother and the father shall be equally responsible for the cost of co-parenting counselling. They shall cooperate in expediting the implementation of such counselling.

[322] The parties shall confer in writing with respect to the selection of all counsellors or programs, and they shall keep one another informed in writing as to the scheduling of all sessions or appointments, and progress being achieved.

[323] The father shall be free to select whatever programs he deems appropriate in relation to child development with a focus on the emotional development of children and the effect of conflict within families or between separated parents. He shall notify the mother in writing as soon as he selects each program. Upon receiving that information, the mother shall respond in writing advising whether she agrees that the program/counselling is appropriate. If she does not agree it is appropriate, she shall explain her reasons and suggest a specific alternative (available in the father's jurisdiction). The mother may also make specific

suggestions about counselling available in the father's jurisdiction (and her rationale) at any time. The father need not participate in the specific programs/counselling recommended by the mother, but on an ongoing basis the father should keep the mother informed as to steps he is taking, and the mother should keep the father informed as to specific steps she feels he should be taking.

[324] Both parties shall have an obligation to facilitate the counselling as quickly as possible, as it is in children's best interests that all of these issues be addressed effectively and quickly.

[325] Each parent shall have an affirmative obligation to promote the children having a positive relationship with the other parent.

[326] The parties shall maintain a daily diary briefly recording all efforts they have made to comply with and encourage cooperation and conflict free communication.

[327] The parties will appear before me for a conference on September 18, 2023 at 2:00 pm – 2:30 pm. **Two weeks in advance of the conference, each party shall submit to each other and to the Court** a written summary of everything they have done to facilitate and promote the completion of the counseling and programming requirements. **The written summary is not to include any negative**

comment about the other party. Each party is simply to provide me with a summary of everything *they* have done to help address the situation.

[328] The parties will be required to attend for another court conference on January 18, 2024 from 10:00 am to 10:30 am. **A letter is due from both parties two weeks in advance.** On each occasion they will be required to provide me with a daily summary of everything they have done since the previous summary, to promote these objectives and expectations. Again, for clarity: **These will not be occasions for either party to convey any criticism of the other party.** These attendances will be solely for the purpose of each party reporting the positive steps that *they* have taken.

[329] **If on any of the two reporting dates I am of the view that insufficient effort has been made, I will impose such additional requirements as may be appropriate** – including, quite possibly, more frequent court attendances to report on their progress OR I may grant a Final Order excluding PHASE II. The mutual focus must shift from complaining to problem-solving.

[330] For clarity: it is my expectation that both parties will apply themselves diligently to allow us to address and expand the father's parenting time **beyond the terms set out in Phase 1, by February 2024.**

16.8 Parenting exchanges shall occur as follows:

[331] When school is in session, and when exchange times coincide with the start or finish of the school day, end of after school care parenting exchanges shall occur at school or at the after-school care program. Only the party dropping off the child(ren) in the morning or picking the child(ren) up at the end of the school day shall be in attendance.

[332] Similarly, if the child(ren) are at an institutional before-school/after-school/daycare facility, parenting exchanges shall occur at that neutral facility. If it is a private home childcare arrangement, the children will be picked up elsewhere.

[333] In the alternative, parenting exchanges shall occur at a **location where the party receiving the children can wait inside a child friendly location [or alternatively at the Lower Sackville RCMP detachment.]** The party who is receiving the children shall arrive at least five minutes ahead of the exchange time, and they shall wait inside the child friendly location. The party delivering the children shall drive close enough to the door or escort the children to the door and then allow the children to walk unaccompanied to join the other parent with the children in sight. The party delivering the children shall remain outside the child friendly location and shall not communicate with the receiving parent. The party

delivering the children shall be on time and ensure that the transition is done quickly and with encouragement. The party delivering the children shall leave the vicinity of the child friendly location immediately upon confirming that the receiving parent has assumed care of the children.

[334] If there are any problems with respect to the aforementioned “exchanges at a child friendly location” – **irrespective of any attribution of blame for those problems** – exchanges shall thereafter (on a final basis) be at **Veith House in the Halifax Municipality** or another recognized institutional access exchange center in the Halifax Municipality. Exchange times (and days) may have to be adjusted to coincide with the availability of the facility. Any cost associated with the parenting exchange facility shall be paid equally by the parties.

[335] To facilitate the availability of a neutral access exchange facility, in case it comes to be needed, **either party may file a Veith House Order to my attention at the Nova Scotia Supreme Court (Family Division)**, or both parties shall immediately register at the Veith House supervised access program in Halifax privately or elsewhere at another exchange program. If the parties cannot agree on an alternate parenting exchange facility, they will each register at Veith House. These registration requirements are to provide contingencies only. It is hoped that such facilities will never be required for parenting exchanges.

[336] The parties shall not question either child (or comment to either child) about the other parent's personal life and activities.

[337] Neither party shall video or audio record the children for the purpose of recording statements or discussions about the other parent or parenting issues.

Neither party shall video or audio record any parental interactions (at access exchange times or otherwise) nor shall they permit any person to do so on their behalf.

[338] Except for purposes of morning drop-off at a school, daycare, or a institutional childcare program in Nova Scotia or afternoon pick-up at a school, daycare, or institutional childcare program in Nova Scotia, neither party shall attend at the children's school, daycare, or institutional childcare program without checking in at the school office or relevant office at the relevant program **[except as stated in paragraph 114]**. Neither party shall attend at the school, day care, or childcare at a time when the other parent (or their designate) is known to be dropping-off or picking-up the children. Neither party is entitled to ask the staff / other parents at the children's programs to give them information about the other parent. Both parties may attend school events open to the public with the consent of the other **[see paragraph 280]**. But the parent who would otherwise have care

of the children at the time, shall continue to have responsibility for the children during the school event.

[339] Neither parent shall make any permanent or long-lasting change to the child(ren)'s physical appearance (such as piercings; tattoos; hair dying) without the prior written consent of the other parent.

[340] If the parties cannot agree *in advance* with respect to ordinary cosmetic and grooming issues such as haircuts, these issues shall be determined by the mother.

[341] To minimize what the child(ren) must travel with, both parents shall have sufficient clothing for the children and these items shall not travel back and forth. However, outerwear such as winter coats and boots and sports gear shall travel back and forth between households.

[342] The children shall be allowed to take their preferred belongings between households.

[343] I will seize myself of any future issues on this file, for a period of three years. It is important that there be continuity in terms of judicial findings and expectations. In the immediate future I anticipate seeing the parties every three months – briefly – for updates as to their respective efforts in relation to the “Objectives & Expectations” in relation to the evolution of access.

[344] Apart from that, if any residual issues other than costs need to be addressed, they can be raised at the conference in September 2023.

[345] If either party is seeking costs, written submissions should be filed on the following timelines (which may not be extended by the parties):

[346] The mother's submissions on costs to be served and filed within 21 days of the date of the advanced copy of this decision sent on May 31, 2023.

[347] The father's submissions to be served and filed within 15 days of receipt of mother's submissions.

[348] Any reply submissions by the mother to be served and filed within 10 days of receipt of father's submissions.

[349] However, before the parties spend a lot of time on costs submissions, they should both familiarize themselves with the law in relation to:

[350] Costs payable by or on behalf of self-represented litigants and consider the following issues: success; successful party who has behaved unreasonably; decision on reasonableness - party's behaviour; divided success; absent or unprepared party; costs to be decided at each step: and factors in costs including "reasonableness" and "time properly spent on the case."

[351] I reserve the right to edit this decision for typographical errors and to edit for readability.

[352] The mother's lawyer shall draft the order.

Cindy G. Cormier, J.