

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *D. G. v. R. A.*, 2023 NSSC 190

Date: 20230711

Docket: SFHPSA No. 119427

Registry: Halifax

Between:

D. G.

Applicant

v.

R. A.

Respondent

Judge: The Honourable Justice R. Lester Jesudason

Heard: June 27 and 28, 2022, December 8 and 20, 2022, and June 6, 2023, in Halifax, Nova Scotia

**Last Written
Submission:** June 8, 2023

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Counsel: Bryen Mooney for D. G.
Neil Robertson for R. A.

By the Court:

1.0 INTRODUCTION

[1] This decision is all about A.G. (the “daughter”). She’s ten and just finished Grade 4 at the LeMarchant-St. Thomas Elementary School (“LeMarchant-St. Thomas”).

[2] There’s no question that the daughter’s parents, D.G. (the “father”), and R.A. (the “Mother”), love her dearly. The father describes her as being a “very happy child” and a “leader” who likes doing crafts and the outdoors. He also affectionately describes her also as being “sneaky” and says that he sees a lot of himself in her. Similarly, the mother says the daughter is an “extremely happy, fun and creative child” who enjoys science and crafts. She says the child has “a big warm heart” who makes people smile and is very caring.

[3] Despite the daughter bringing great joy to her parents, sadly, she finds herself caught in the middle of a high-conflict parental tug-of-war because they cannot agree on how to make major decisions for her or how much time she should spend with each of them. Their ongoing conflict has resulted in the involvement of the Department of Community Services (“DCS”) which has warned that it may commence a separate court proceeding under the *Children and Family Service Act* if both parents don’t take appropriate steps to minimize the emotional harm being done to their young daughter.

[4] Despite what should be an obvious wake-up call for both parents, I don’t believe that either fully appreciates how their actions have negatively harmed the child. Tammy MacAskill, one of the social workers who was involved with the child and the parties, testified about the negative impact that the parties’ actions have had on the child as follows:

“...I recall just being in the moment with these two parents who are struggling, and their conflict with each other... And in the middle is this little girl The child who is taking on all the emotional turmoil between two parents. So, whatever is going on with the parents, she’s feeling it. And children then naturally want to please their parents and naturally want to do what’s best for each parent while they’re with them.

So that struggling, that’s hard for her...this little girl is stuck in the middle...

...

She presents as withdrawn when I meet with her. She's confused, she loves both her parents however in speaking with her she's clearly conflicted internally as to why or who she should love in that moment. As a young child, that greatly impacts not only their feeling of attachment and security but growing up feeling like you're torn between your parents and choosing who to love when, she's being set up for failure in terms of her own relationships moving forward.

She needs to be able to process that in a safe environment, process her feelings, and process...how adults sometimes make decisions that aren't best for kids and that she can help navigate that as she grows. It's also impacting her schooling, which if she's going to school tired, withdrawn, or depressed, she's not learning. She's not growing. She needs that support of her own person, and it needs to be consistent. So, the parents need to agree on who that is and regardless of where the child is, the child should be going to counselling.

For the parents...I think it's important...forever you...will be coparents. Whether or not you like each other or not, you made this beautiful child together who truly needs you both, but they need the best of the both of you. So, they need you...to at least come together, strictly when it comes to parenting. You don't need to be friends outside of that, but you need to be the adult and do everything you need to do to show the child that you're on the same page when it comes to her. Strictly about her. That will improve her emotional well being, her emotional feeling of security with either parent, so no matter who she's with, she not worried about the other parent because she knows the other parent's fine." [Emphasis added].

[5] I fully share Ms. MacAskill's concerns. Unfortunately, instead of the daughter getting the best from both her parents, she has, at times, received their worst. Their mutual dislike and mistrust of each other has, at times, overshadowed their deep love for their young daughter. This needs to stop.

[6] I don't say this to be unkind to the daughter's parents. Rather, I say this to stress that, unless they find a much healthier way to co-parent the daughter, they are effectively denying her the future which every child deserves – the chance to be the best version of themselves.

[7] To the extent that they have asked me, a complete stranger to their and the daughter's lives, to determine the parenting arrangements, I will do so. My

sincere hope, however, is that they will learn to develop the tools necessary to co-parent the daughter positively for the many childhood years ahead of her, as opposed to coming to court and asking a judge to tell them how they must parent her.

2.0 ROADMAP FOR MY DECISION

[8] In delivering my decision, I will:

- Provide an overview of the relevant family and litigation history;
- Outline various agreements of the parties;
- State the remaining disputed issues which I must decide;
- Outline the parties' positions and arguments in relation to those disputed issues;
- Discuss the relevant law; and
- Do my analysis and give my conclusions on the disputed issues.

3.0 FAMILY AND LITIGATION HISTORY

3.1 *Family History*

[9] The parties were in a relationship from 2012 to September 2018. The daughter was born in 2013. The family lived together in a condo owned by the father's parents in the West Bedford area.

[10] Following their separation, the mother continued to reside in the condo until September 2020 when DCS determined it would not support her continuing to stay there with the daughter because of unacceptable living conditions. She and the daughter moved into Bryony House where they lived for about three months before being relocated to Homewood Suites which was paid for by Bryony House. The mother then moved into a two-bedroom apartment in Dartmouth in March 2021 provided by Alice Housing. She was informed that this was a temporary accommodation although I understand that she has remained there ever since and hasn't been given a firm date by when she must leave.

[11] The father moved into a duplex in February 2019, with his current partner, C. M. They have lived there ever since. The duplex is in the same neighbourhood as was the former family condo in Bedford.

[12] As noted earlier, DCS has been involved at various times with both parents. Their involvement began in late August 2020. I will go into more detail of this involvement later in my decision.

3.2 *Parties' Current Circumstances*

[13] The father works in his own father's business. He described it as a third-generation family business. It's unclear to me exactly what the business does. He testified that it owns a container ship that goes back and forth between Halifax, Saint Pierre and Miquelon, and Newfoundland and is involved in shipping and trucking. He says he's paid an annual income of \$80,000.

[14] The mother currently isn't working or in school. In the Fall of 2021, she began attending an Adult Learning Program at Nova Scotia Community College to complete her high school education. She paused her studies in September 2022 but testified that she plans to recommence same in 2023. I have been given no information as to whether she has now gone back to school following the hearing.

3.3 *Current Proceeding*

[15] The current proceeding arises from an application filed by the father in September 2020. The mother filed a Response to Application almost a year later. The parties entered into various Interim Orders. On November 13, 2020, the parties, represented by counsel, agreed to a "Without Prejudice Interim Interim Consent Parenting Order" which reinstated the father's parenting time and provided, amongst other things, that he would have parenting time with the daughter every weekend from Friday after school until Monday morning.

[17] On April 28, 2021, the parties, represented by counsel, consented to an Interim Order which provided, amongst other things, that:

- They would have joint-decision making authority for the daughter;
- They would have week about parenting arrangement for the daughter;
- Both would fully cooperate with DCS and provide prompt responses to any calls/inquiries;
- Both would follow the recommendations of DCS and participate in any courses/counselling recommended by DCS; and

- The daughter would commence counselling and they would seek the recommendation of DCS for an appropriate counsellor.

[18] On October 20, 2021, the parties represented by counsel agreed to a Without Prejudice Interim Consent Order on child support which required the father to pay monthly child support of \$500 to the mother beginning on October 1, 2021. The Order provided that the father's income was \$80,000 and the mother's income was \$12,144.

[19] At various points in this proceeding, the parties' private parenting dispute was put on hold due to investigations by DCS into various allegations made largely by the mother against the father. For example, in July 2021, after the father served the mother with an interim motion to address where the daughter would go to school in September, the mother made a referral to the Agency in relation to various disclosures made by the daughter which included possible sexual abuse to the daughter by the father and C.M. This resulted in his parenting time temporarily being voluntarily suspended pending an investigation. The Agency interviewed the daughter, the father, and C.M. and quickly concluded the allegations of sexual abuse were unsubstantiated. Agency workers have also expressed concerns about the daughter being coached by the mother in relation to various disclosures which have been made by the child to them.

[20] The hearing in this matter was started in June 2022. Several witnesses testified including three social workers from DCS. On June 28, 2022, Agency counsel sent an email to counsel for the parties outlining the Agency's Case Plan which it wanted the parents to voluntarily engage in to address the potential harmful effects that their actions were having on the daughter. The email was marked as Exhibit 6 and stated:

...

I have confirmed with the Social Worker Alison Muise that the Agency Case plan is:

1. Individual counselling for both parents. Both parents have been placed on waitlist for services. The Agency is experiencing an usually long wait list with service providers under Policy 75.
2. [Ms. A] is connected with Family Support Worker Faye Halpern. Their work is reflected in the case recordings. The FSW work right now is focused just on mom. The Agency will reassess once it has been computed to determine if dad would benefit from it as well.
3. [The daughter] was just connected with a counsellor on Friday June 24. The Agency service contract has not yet been finalized. The worker has not yet had the chance to connect with [the mother] and [the father] to pass this information along. [The

daughter's] counsellor is N.H. It is expected the contract will be completed and sent out either today or tomorrow. Services should start soon.

4. The case plan is for Joint couples counselling for dad and his partner. This had not yet been arranged.

[21] Ms. Muise testified that the Agency hoped that, by following the Agency Case Plan on a voluntary basis, both parents would gain insight into the negative impact that their actions have had on the daughter including the emotional harm which has resulted. The goal was to explore why the risks came about, and how to mitigate them. It was expected that the Agency Case Plan would take a few months to complete.

[22] Both parents agreed to voluntarily comply with the Agency Case Plan. Given that it was expected to be a few months before it could be completed, and because there was insufficient time to complete the trial in June, a further hearing date was scheduled for December 2022. It was anticipated that the Agency's requested services would take place and I could receive new evidence about what happened in terms of each parent's engagement in those services.

[23] The evidence for the hearing was completed in December and the parties' counsel subsequently provided written submissions, the last of which was received on June 8, 2023.

4.0 PARTIES' AGREEMENTS

[24] The parties were able to reach several agreements with the assistance of their counsel and through discussions led by me during the hearing. Many of those agreements were reduced to writing and marked as Exhibit 7. Their agreements covered various areas including, but are not limited to, the following:

- Joint responsibilities each owes to the daughter;
- Joint responsibilities each owes to the other as the daughter's parents;
- How they will communicate with each other;
- Several aspects of how they will make decisions for the daughter;
- Restrictions on relocation;
- Travel terms;
- Requirement to cooperate with DCS;

- Holiday and special time parenting arrangements including the summer; and
- Some aspects of child support.

[25] I commend the parties for being able to reach these agreements despite being in a stressful and adversarial hearing. Those efforts to reach agreements are consistent with sentiments expressed by the Supreme Court of Canada in the case of *Association de médiation familiale du Québec v. Bouvier*, 2021 SCC 54, which stressed the importance of creating an “agreement culture” in family law matters, and also emphasized that, when children are involved, their best interests deserve the ongoing ability of their parents to communicate and resolve disputes: paragraph 135.

5.0 REMAINING DISPUTED ISSUES

[26] In light of parties’ agreements, the remaining issues I must decide are:

Issue 1: What decision-making arrangement is in the daughter’s best interests?

Issue 2: What regular parenting arrangement is in the daughter’s best interests during the school year?

Issue 3: Should I order a review of the parenting arrangements?

Issue 4: Should income be imputed to the mother?

Issue 5: Ongoing child support including contribution to claimed s. 7 expenses; and

Issue 6: The father’s claim for a retroactive contribution to the daughter’s tutoring expenses.

[27] I will address the parenting issues (Issues 1 to 3) before addressing the financial issues.

6.0 ISSUE 1: DECISION-MAKING

6.1 Agreements

[28] Again, to the parties' credit, they agree on many aspects of how decisions should be made for the daughter. Specifically, they agree:

- The parties shall meaningfully consult with one another on all important issues involving the daughter. Should the parties not be able to reach a mutual decision in relation to the important decision, they shall defer such decision to a third-party professional.
- Either party has the ability to authorize emergency medical care and shall advise the other parent when reasonably practical.
- Either party can make day-to-day decisions in relation to the daughter when she is in their care.
- Neither party shall use corporal punishment in relation to any discipline required for the daughter.
- Whenever a medical, dental or other appointment is made with a professional by either party, they shall immediately notify the other parent of the date and time of such appointment.
- Dr. L. shall remain the daughter's family doctor, so long as they are practicing, unless agreed otherwise in writing or changed by way of Court Order.
- Dr. B.T. shall remain the daughter's dentist, so long as they are practicing, unless agreed otherwise in writing or changed by way of Court Order
- The parties agree that the daughter can participate in counselling with H.C. so long as she is attending LeMarchant-St. Thomas Elementary. It is noted that H.C. is the school counsellor and may not be associated with the daughter's future school if there is a change in her school.

[29] In light of their agreements, my discussion will focus on the parties' positions and arguments on the disputed issue of how decisions should be made when no third-party professional is involved. Both parties seek final decision-making authority after meaningful consultation with the other parent.

6.2 The Father's Arguments

[30] In support of his request for final decision-making authority when no third-party professional is involved, the father makes various arguments including, but not limited to, the following:

- When the parties separated, the daughter was in the French Program at École Beaubassin but, in September 2020, the mother unilaterally changed the daughter's school to LeMarchant-St. Thomas and enrolled her into the French Immersion program. He was not notified or consulted about this significant change. The decision was made at a time when the mother had also completely cut off his parenting time.
- Around the same time that she changed the daughter's school, the mother relocated with the daughter from Bedford to Halifax without notice to him or advising him where the daughter would be living while in her care.
- The mother subsequently moved the daughter into the English Program at LeMarchant-St. Thomas. Following the shifts in her school and education, the daughter's school attendance and performance drastically suffered. She now lags significantly behind her peers at school and requires additional support including a tutor which he has arranged through Oxford Learning.
- The daughter's attendance at school and tutoring during the mother's parenting time continues to be inconsistent. She continues to struggle academically when she was previously doing well at École Beaubassin. While both parents had previously agreed that getting a French education was important for the daughter, the mother's unilateral actions deprived the daughter of that opportunity. The mother also withheld the daughter spending time with him who, as a native French speaker, would have been able to assist the daughter with her homework in French. The daughter now requires additional tutoring, even in English, to try to catch up with her peers.
- The father seeks to have the daughter enrolled in the new West Bedford School which is scheduled to open in September 2023. He has resided in the same residence in that school district since 2019. While the mother disagrees to enrolling the daughter in the new school, he says that, unlike the mother, he has a demonstrated history of wanting to ensure that the daughter has a consistent education and prioritizing the daughter's needs above his own. For example, he agreed to the daughter remaining at LeMarchant-St. Thomas for the 2022-2023 school year to complete Grade 4 to minimize disruption for her.

6.3 *The Mother's Arguments*

[31] In support of her request for final decision-making authority when no third-party professional is involved, the mother makes various argument including, but not limited to, the following:

- She was the *de facto* primary caregiver of the daughter during the parties' relationship as well as the period post-separation until the June 2021 Interim Order which provided for joint decision-making authority and a week about parenting arrangement.
- She wishes for the daughter to remain as a student of LeMarchant-St. Thomas because she has attended school there for all of Grade 2 and Grade 3 (and now Grade 4). She's known to school staff, who are aware of the areas where she needs development and have implemented classroom adaptations to better assist her in these areas. She has a counsellor at that school and an established friend group there. Continuing at this school would provide stability for the daughter while the father's school preference would disrupt this stability.
- While both parents now reside outside of the LeMarchant-St. Thomas catchment area, she previously completed an Out-of-Area Request Form and obtained permission for the daughter to attend that school. Re-application for Out-of-Area Requests is not required for subsequent years.
- The father has two motor vehicles and has not described any difficulties with transporting the daughter to LeMarchant-St. Thomas. The mother, however, does not have a vehicle so transportation is an issue for her.

7.0 ISSUE 2: ONGOING PARENTING ARRANGEMENTS

[32] Since the June 2021 Consent Interim Order, the daughter has been in a week about shared parenting arrangement. Both parents now seek to have the daughter live primarily with them during the school year.

7.1 *Agreements*

[33] Again, to the parties' credit, they agree on several parenting terms as part of a Final Order. I won't summarize all of them. They include, however, equal sharing of summer parenting time on a two-week rotating schedule, and to alternate and share holiday and special occasion parenting time each year. They also agree that the daughter can request telephone and electronic communication with the other parent when in one parent's care.

7.2 Parenting Time During the School Year

[34] The remaining disputed issue is what should be the regular parenting arrangements for the daughter during the school year. I will therefore outline each party's position and supporting arguments in relation to same.

7.3 Parties' Positions

[35] Both parties seek what they describe as "primary care" of the daughter during the school year.

[36] The father seeks that the daughter live primarily with him and that the mother's regular parenting time be every second weekend from Friday until Sunday evening. He also agrees that, should the mother be available to care for the daughter, her time would be extended by an extra day if her scheduled weekend time fell next to a Professional Development (PD) Day or non-defined holiday not already covered by the parties' agreements.

[37] The mother essentially seeks the same in reverse – i.e. that the daughter be in her primary care and with the father every second weekend from Friday until Sunday evening. She also agrees that his weekend time could be extended by an additional day should it fall next to a PD or holiday not already covered by the parties' agreements.

7.4 Parties' Arguments

a) The Father

[38] In support of his position, the father makes several arguments. I have considered them all and summarize some of them as follows:

- The mother has repeatedly shown that she doesn't support the daughter's relationship with him. She has denied him parenting time even after Orders were put in place, made unilateral decisions regarding important decisions about the daughter, and refuses to acknowledge her role in the daughter's disclosures against him to DCS despite multiple individuals expressing concerns that the mother is coaching the daughter to make them. He says this is extremely concerning given that some of the false accusations involved disclosures about sexual assault with graphic details back in July 2021. More recently, the daughter's disclosures included telling the social worker that "her dad always lies in court and that her dad told the court that he spent

ten thousand dollars on her”. This disclosure came following the daughter being in the mother’s care immediately after the December 8, 2022, court appearance where he testified that he spent ten thousand dollars on tutoring for the daughter.

The father says that he, on the other hand, ensures the daughter isn’t exposed to any negative comments about the mother, and there have been no concerns about him coaching the daughter.

- He believes that his concern about the mother coaching the daughter to make false allegations against him will continue as the mother will not acknowledge her behaviour despite the involvement of a family support worker and counsellor. Should the daughter remain in a shared parenting arrangement, or more concerningly, be placed in the mother’s primary care, he believes that, due to the mother’s behaviour and actions, the daughter will become alienated from him. He believes that the parenting arrangements must change to ensure that this doesn’t happen and to prevent the mother’s coaching from having a significant negative effect on the daughter’s long-term mental health.
- The mother has repeatedly disrupted the daughter’s stability by unilaterally relocating the daughter outside of the West Bedford area and refusing to allow the daughter to spend her time with him. She also disrupted this stability by changing the daughter’s school and by removing her from the friends she had known for years. To the contrary, he has shown much more stability and consistency for the daughter, and has remained in the West Bedford area which was the area the parties themselves had previously agreed the daughter should live.
- The mother’s long-term living arrangements are unknown. She testified that Alice Housing generally only provides a two-year temporary residence which was scheduled to cease in March 2023 although she believes she can stay there indefinitely. She indicated a long-term desire to secure a residence in the LeMarchant-St. Thomas school district but has not provided any evidence that she will be able to make this happen.
- The daughter has had a significant decline in her education since September 2020 when the mother started making unilateral educational decisions in relation to the daughter. Things have only improved since he was permitted to have greater involvement in educational decisions and since he arranged tutoring for the daughter. the mother has been unable to ensure that the

daughter consistently attend school or tutoring and even selfishly refused his offer to transport the daughter to and from tutoring and give the mother extra parenting time to make up for the travel time.

b) *The Mother*

[39] In support of her position, the mother makes a number of arguments. I have considered them all and summarize some of them as follows:

- She denies having coached the daughter's disclosures or trying to keep the daughter from the father. In her counsel's post-hearing submissions, he suggests that when one considers the nature of the sexual abuse disclosures made by the daughter, and the specific details which the daughter chose to emphasize, that the disclosures appear to be the "product of the mind of an overly imaginative eight-year-old child". He says that while the mother took the daughter's disclosures seriously, it is clear that the ongoing conflict between she and the father has eroded trust between them and created an atmosphere of "hypervigilance" when the daughter is in the care of the other parent.
- The mother's counsel submits that despite the daughter's disclosures appearing to be somewhat "implausible and inconsistent with other disclosures" made by her, the daughter has consistently made disclosures of frequently witnessing family violence in the father's home and being subjected to the father using inappropriate disciplinary techniques. When interviewed, the daughter has described to social workers frequent verbal and physical altercations between the father and C.M. He suggests that her disclosures of family violence are reliable and that the mother's concerns about family violence in the father's home are well-founded.
- The father has not followed through with the Agency's Case Plan and services while she largely has. When the trial continued in December 2022, it was confirmed that he was not participating in any of the services as recommended by the Agency and instead justified his lack of participation by suggesting that the Agency's concerns only related to the mother, not him. Furthermore, the father had become escalated and aggressive towards third-party professionals put in place by the Agency to address concerns relating to him. The mother says he seeks to shift all the blame for parental conflict on her and to minimize his own involvement in same.

- The father has disregarded Court Orders. For example, despite the Interim Interim Consent Order issued June 15, 2021, specifying that the daughter is not to be removed from the Halifax Regional Municipality without the other party's written consent or Order of the Court, the father conceded to doing this until he was advised by his lawyer that he was not permitted to do so. He also did not pay child support on time as required in the Interim Order agreed to on October 20, 2021, and made no apologies for allowing arrears to accumulate while, during this same period, financing the purchase of a brand new camper trailer which he testified cost around \$100,000. He only paid those arrears off after enforcement activity was threatened by the Maintenance Enforcement Program and his driver's licence was suspended. He also testified that he expects that he will likely miss payments in the future if he was ordered to pay child support.

8.0 CREDIBILITY

[40] Before getting into my analysis on the disputed parenting issues, I will make a few comments on the parties' respective credibility. Assessing credibility isn't a science. As the judge, I'm not required to believe or disbelieve either of the parties' evidence in their entirety. I'm to assess the totality of the evidence and can believe none, part of, or all of the witnesses' evidence and attach different weight to different parts of their evidence.

[41] Guidance on assessing credibility comes from cases such as *Baker-Warren v Denault*, 2009 NSSC 59, as approved in *Hurst v. Gill*, 2011 NSCA 100, where various factors are outlined. I won't list those factors but have considered all of them. Having done so, I conclude that both parties did, at times, give self-serving evidence which wasn't credible. At other times, I accept they gave me their genuine perceptions or interpretations of events whether they were objectively supportable.

[42] At the end of the day, however, except to the extent I discuss further when examining the specific factors which go to the daughter's best interests, I don't conclude that the ongoing parenting arrangement turns on the credibility of either of the parties. It also doesn't turn on the credibility of the other witnesses who testified (e.g. C.M., M.I., B.O., the social workers) whose evidence I have carefully considered. Rather, the ongoing parenting arrangement turns on a children-centred focussed assessment as to what arrangement is now in the daughter's best interests based on all the evidence and all of the relevant factors. Thus, I will move to that child-centred focussed assessment now.

9.0 ANALYSIS OF PARENTING ISSUES 1 AND 2

9.1 *Legislation and Law*

[43] Any parenting decision I make must be governed by section 18 of the *Parenting and Support Act* (“PSA”). Under subsection 18(5), the paramount consideration is the daughter’s best interests and I am required to consider all relevant circumstances, particularly those ten circumstances outlined in subsection 18(6).

[44] As well, subsection 18(8) of the *PSA* directs me to give effect to the principle that the daughter should have as much contact with each parent as is consistent with her best interests which must include a consideration of the impact of any family violence, abuse or intimidation.

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

[46] Currently, the daughter is in a week about shared parenting arrangement. Both parties now seek to change this by having the daughter live primarily with them during the school year. The parties, acknowledge, however, that one of the options open to me is to order that the daughter continue to be in a shared parenting arrangement should I determine this to be in her best interests.

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

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

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

[8] ...a shared parenting arrangement requires the Court to be confident that the parents are committed to, have demonstrated and will be able to continue with a high degree of integration, cooperation, respect and flexibility in and for their respective parenting styles. The parents' approaches need to leave the Court confident that the application of the requirements...to the particular circumstances, along with the ultimate assessment of what is in the best interests of the child(ren), can lead to a conclusion that a shared parenting arrangement is reasonable, realistic and workable.

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

9.2 Review of Best Interests Factors

[50] I will now examine the evidence in relation to the best interests factors as they relate to the daughter. While I have considered all the evidence, I will only highlight some of that evidence when discussing each factor.

(a) The daughter's physical, emotional, social and educational needs, including her need for stability and safety, taking into account her age and stage of development

[51] While the daughter is a well-loved child, she is currently clearly struggling emotionally, educationally, and with feeling safe and secure. As discussed, she has been negatively impacted by the emotional turmoil which has resulted from her being at the centre of a parental tug-of-war.

[52] As for her educational needs, the parties agree that the daughter is far behind where she should be at her age and stage of development. The mother unilaterally changed the daughter's school and shifted her education from a French program at École Beaubassin to a French Immersion one at LeMarchant-St. Thomas. Her academic performance significantly declined after the change in schools. The daughter continues to struggle academically despite being moved into an English program and the father arranging for her to get a tutor. The mother has struggled to

get the daughter consistently to school on time and to her tutoring sessions during her parenting time.

[53] I make a finding of fact that the father has been the parent who has been best focussed on meeting the daughter's educational needs. He has been the one who has arranged for, and consistently ensured she attends tutoring. He is the parent who has far more consistently ensured that the daughter attends school on time.

(b) each parent's willingness to support the development and maintenance of the daughter's relationship with the other parent.

[54] Sadly, neither parent has done a positive job in this area. They have, at times, let their dislike and mistrust of each other overshadow supporting the daughter getting the best of what the other parent has to offer.

[55] I accept that, as testified by the social workers from DCS, coaching has been a serious concern with respect to the mother towards the daughter. When the daughter has made those disclosures, the mother has sometimes reacted by restricting or completely cutting off the father's parenting time even when doing so wasn't justified.

[56] The mother may not be coaching the daughter in a maliciously way. However, as testified by social worker, Stephanie Williams, the child appears to sometimes be regurgitating things which she was being told without knowing what they mean and provides inconsistent information or disclosures which lack supporting detail. Such disclosures are concerning even if there is no malicious intent to coach the daughter to make them.

[57] Furthermore, while I agree with the mother's counsel's comments in his closing submissions that certain allegations made by the daughter were "implausible and inconsistent", I'm not prepared to dismiss them, as he suggests, to simply being the product of the mind of an "overly imaginative" child. Rather, I conclude that a more plausible explanation would be, as social worker Tammy MacAskill testified based on her interviews with the daughter, that the daughter sometimes expresses fears that she has learned through the mother and says things which she believes would be things the mother would want her to say due to her love for her mother and feeling stuck in the middle of the conflict between her parents. Indeed, during her evidence, the mother, when asked by me about the child's bond with the father, she testified that there is "no doubt that she loves her father" but went on to suggest that the daughter was "under pressure about how I

feel when she's over there" and that she's "her mommy" and that "[the daughter] tells [her] everything".

[58] The father must also accept responsibility for his part in creating the current parental tug-of-war. He doesn't consistently do what is required to support the daughter having a positive relationship with the mother. His own evidence suggests that he views himself as the far superior parent who doesn't have any issues which need to be worked on. For example, when questioned by me about his lack of follow through with services suggested by DCS, the father testified that, "it's all common sense" and that "all the issues" were coming from the mother's side.

[59] With respect, the father is completely wrong about all the problems stemming from the mother. Clearly, the Agency had concerns with both parents and wanted both parents to engage in services to mitigate the risk of emotional harm for the daughter. The father's minimization and lack of insight about his own actions and behaviours is concerning.

[60] Furthermore, the father's lack of meaningful recognition of his legal obligation to consistently pay child support also goes, in my view, to supporting the daughter's relationship with the mother who is a single-parent without employment income. She relies on the father's financial support to help meet the daughter's needs while in her care.

[61] The father was openly critical of what he perceives is the mother's failure to find employment when he was expected to pay child support. With respect, he shouldn't overlook the fact that he has had the luxury of being employed by his own father in a third-generation family business and appears to be able to receive financial assistance from his family when he needs it. Despite this, he accumulated arrears of child support under the existing interim order and, when asked why he didn't pay the arrears until Maintenance Enforcement suspended his licence, suggested he had a "big reason" for not doing so. His self-described big reason involved outlining other financial commitments he had, and testifying that, "unfortunately, I don't poop money, man". He agreed, however, that he was able to pay off his arrears quickly after borrowing money from his father when the "system" pushed him to do so. He also testified that, if ordered to pay child support, he likely would again default on his child support obligations in the future. This rather telling statement came despite him also testifying that he has been able to finance the purchase of a \$100,000 camper trailer which he uses to take the daughter on camping trips.

[62] Plainly, the father's comments show a lack of appreciation that basic child support payments owed by a parent must be prioritized over luxury camper trailer purchases. Furthermore, the fact that he provides luxuries to the daughter while in his care while the mother is expected to make ends meet during the parties' shared parenting arrangement which has existed for over two years, is not appropriately supporting the daughter's relationship with the mother. This is particularly so when he failed to fulfill his obligation to pay child support under the existing Interim Consent Order until the "system" pushed him to do so.

[63] The bottom line is that both parents can and must do far better in promoting the daughter's relationship with the other parent. As Ms. MacAskill testified, these parents don't have to be friends. Clearly, they aren't. They shouldn't be enemies either. What they should do, for the daughter's sake, is to co-parent together in a much more positive way, and to help support her getting the best from what each has to offer so that she doesn't feel torn and conflicted with her loyalties, love and feelings of attachment for both of her parents.

(c) the history of care for the daughter, having regard to her physical, emotional, social and educational needs.

[64] I accept that, following the parties' separation in September 2018, the mother provided more of the childcare for the daughter. I also accept that there were times the father's parenting times were restricted by her as a result of the disclosures made by the daughter which necessitated the involvement of DCS. However, for at least over two years now, the parties have been operating under a Consent Interim Order which provides for a week about shared parenting arrangement. Thus, the more recent history has both parents significantly involved in the daughter's care.

(d) the plans proposed for the daughter's care and upbringing, having regard to her physical, emotional, social and educational needs.

[65] Both parents seek primary care of the daughter and assert that their plan best meets the daughter's physical, emotional, social and educational needs.

[66] Of the two plans, the father's plan has more certainty and stability for the daughter. He is the parent who has shown he can best meet the daughter's educational needs. He has been living in the same residence since 2019 in his proposed school catchment area. He intends to stay in the area and continue to work in the family business. He has the support of C.M. to assist him, as needed, with child care. He says enrolling the daughter in the West Bedford School would

ensure she interacts with children she has known for years and would also allow him to enroll her in activities during his parenting time which have not been possible since the daughter's school was unilaterally changed to outside the area where the parties had lived together as a family.

[67] The mother's long-term plans are far more uncertain. Her living arrangements are temporary. She is unsure where she will be living in the future. Depending on where she ends up living, this may result in a further change of schooling for the daughter if the daughter was in her primary care.

[68] The mother said that she plans to return to school in 2023. Since the hearing was concluded, I have no information as to whether she has returned to school or is working. However, should she return to school or become employed, I have no clear information as to how this would impact on her ability to care for the daughter and her overall parenting plan.

(e) The daughter's cultural, linguistic, religious and spiritual upbringing and heritage

[69] The parents describe the daughter as having mixed French and English heritage. They initially agreed that the daughter would receive her education in a French Program at École Beaubassin. However, because of the change in schools to LeMarchant-St. Thomas, and the daughter's subsequent academic struggles, she is now receiving her education in an English Program. Given her struggles, both parents agree that she should continue in an English Program regardless of where she goes to school.

(f) The daughter's views and preferences given her age and stage of development

[70] Given the daughter's young age, this is not a significant factor. Even if it was, I am not satisfied that I have any reliable information about the daughter's views and preferences given the concerns expressed about coaching.

(g) the nature, strength and stability of the relationship between the daughter and each parent

[71] Both parents acknowledge that the daughter has a strong bond with the other parent although the father describes the bond between the daughter and the mother as more of a best friend relationship, rather than a parent-child one. Despite this description, the evidence supports that both parents clearly love the daughter and, while their parenting styles may differ, the daughter is bonded and close with both. Again, this makes the parental tug-of-war even more regrettable as it leaves the

daughter conflicted with her loyalties and love for each of her parents. Simply put, the daughter shouldn't feel as if she needs to pick sides in the ongoing parental tug-of-war.

(h) the nature, strength and stability of the relationship between the daughter and each sibling, grandparent and other significant person in his life

[72] Besides her parents, the only non-professional adult who spends a significant amount of regular time with the daughter appears to be the father's partner, C. M., who has been living with him for over three years. Her evidence included that while the daughter was initially shy around her, the two of built their own strong bond and do such things as crafts, board games, cooking and cleaning together.

(i) the ability of each parent to communicate and cooperate on issues affecting the daughter; and

(ia) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the daughter;

[73] Again, these parents clearly have exceedingly poor communication. Both readily acknowledge this.

[74] In recognition of the current poor state of their communication, the parties have agreed that, except in emergency situations, they will communicate by electronic means only which could include the use of a parenting communication app. In their respective June 2023 post-hearing submissions, both confirm they are agreeable to participating in co-parenting counselling but are unwilling to do so if there is an associated cost.

[75] In my view, it would be extremely beneficial for both parents to explore healthier ways to communicate in the future even if there is an associated cost. In his affidavit sworn on May 24, 2022, the father states that communication between he and the mother has been "inappropriate on both sides and that this is something we both need to work on". He goes on to say that he believes "co-parenting counselling would help us both learn better tools to communicate with each other in a way that is supportive of [the daughter's] best interests".

[76] I agree with the father's statements. If he truly believes them, then incurring reasonable costs to cover same should be prioritized in the daughter's best interests over purchasing a \$100,000 camper trailer. Indeed, not only would better parental communication clearly benefit the daughter, but it would also likely help to diminish the parental conflict thereby reducing the stress on both parents.

[77] While I decline to expressly order co-parenting counselling at this time, I strongly encourage the parties to explore professional assistance to help them learn healthier communication and co-parenting strategies. They may also wish to reach out to the Agency as it had previously been willing to work with both parents on a voluntary basis and implement services which presumably would be free of charge to them.

(j) the impact of any family violence, abuse or intimidation, regardless of whether the daughter 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 daughter, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the daughter including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[78] Family violence, in any of its forms whether physical, emotional, psychological or financial abuse is a significant factor to consider when determining the best interests of children. This was recently emphasized again by the Supreme Court of Canada in ***Barendregt v. Grebliunas, 2022 SCC 22***. As noted in that decision, children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: paragraph 143.

[79] The mother submits that exposure to family violence is significant factor which supports the daughter being placed in her primary care. While she relies on some incidents which have occurred during parenting exchanges, her primary concern appears to relate to persistent disclosures from the daughter about being exposed to family violence during the father's parenting time. These disclosures allege the father uses inappropriate physical discipline and the daughter witnessing verbal and physical altercations between him and C.M.

[80] The father denies using physical discipline towards the daughter. He also denies any physical violence between him and C.M. but says that they have, at times, had verbal arguments "like any family". When C.M. was questioned, she acknowledged that she and the father have had verbal arguments but that they were "not frequent". She denied any physical incidents.

[81] As noted earlier, on June 28, 2022, the Agency asked both parents to voluntarily engage in a Case Plan to mitigate the concerns of potential harm to the daughter caused by their actions.

[82] Ms. Muise testified about their respective engagement in services when she was recalled testify in December 2022. She said that, for the most part, the mother followed through with the Agency's recommendations although there were some issues with her attendance at counselling. She advised that the Agency was not requiring the mother to complete any further services.

[83] With respect to the father, Ms. Muise testified that the Agency initially set up family support work for him with a plan to have him complete same before assessing the need for couple's counselling between him and C.M. However, the father refused to complete the family support work and Ms. Muise testified he advised he was not willing to do any further services with the Agency. As a result, neither family support work nor couple's counselling was completed. The mother said that the father's refusal to engage in voluntary services with the Agency was concerning.

[84] I share Ms. Muise's concerns about the lack of engagement in services by the father. Again, the Agency's involvement wasn't solely due to concerns in relation to the mother but related to concerns in relation to both parents and how their respective lack of insight into their actions was harming the daughter. To the extent the father dismissed the Agency's concerns and services as "common sense", he is failing to recognize how his own actions have negatively impacted on the daughter.

[85] Notwithstanding my concerns, and the fact that, as outlined by the Supreme Court in Canada in *Barendregt*, family violence allegations are notoriously difficult to prove and often lack corroborating evidence, when I carefully consider and weigh all the evidence, I'm unable to conclude that family violence has been established as a significant factor on a balance of probabilities for the following reasons:

- As noted by the social workers (Stephanie Williams, Tammy MacAskill and Allison Muise) who, unlike me, had the chance to independently investigate the allegations and, in some cases, speak directly to the daughter, there are serious concerns of coaching or imprinting by the mother with respect to the daughter's disclosures. The daughter was often unable to provide consistent details of incidents and the Agency

ultimately concluded that the allegations of family violence were unsubstantiated;

- The mother had no direct evidence of family violence occurring during the father's parenting time and C.M. and the father emphatically denied same except for the occasional verbal argument. While verbal arguments can also be concerning as a form of family violence, the evidence does not establish any level of family violence which would cause me to conclude the daughter was at a substantial risk of harm while in the father's care; and
- Both parties have agreed to a term in an order that neither will use corporal punishment in relation to any discipline for the daughter. This gives me some degree of comfort that the daughter will not be exposed to physical discipline in the future.

10.0 CONCLUSIONS ON PARENTING ISSUES 1 AND 2

[85] I have carefully considered the evidence, the law, and the submissions of the parties. After applying a holistic and child-centered focus for the daughter, I will now give my conclusion in relation to Issues 1 and 2.

10.1 Conclusion on Issue 1: Decision-Making

[86] As noted earlier, I order all the agreed upon terms with respect to decision-making contained in Exhibit 7 including how the parties will make major decisions for the daughter when there is a third-party professional involved.

[87] With respect to decisions for the daughter when there is no third-party professional involved, I order:

- The parties must meaningfully consult on same in writing through their agreed upon method of electronic means.
- Should the parties, after meaningful consultation, be unable to agree on a major decision involving the daughter, the father is given final decision-making authority.

[88] I find this decision-making arrangement to be in the daughter's best interests largely for the following reasons:

- In my view, the evidence supports that the father is the parent who is best able to consistently make decisions which are in the daughter's best interests. He consistently gets her to school and tutoring on time compared

to the mother who has had repeated issues with the daughter missing same or arriving late. The mother has not given me any reason to believe that this will change in the future. The daughter is significantly behind in school compared to her peers. Ensuring consistency for her at this stage of her life is crucial. Getting her to school and tutoring on time is an important part of ensuring this stability and consistency for her.

- The daughter's parents cannot agree where she should go to school in September. Unless one of them gets to make that decision, the parties may find themselves requiring yet another contested hearing before September to determine her school placement. Such a hearing would add more conflict to an already highly conflictual situation. This would not be in the daughter's best interests.

The father has proposed the West Bedford School which is in his catchment area. The mother, on the other hand, has proposed that she continue at LeMarchant-St. Thomas which is not in either parent's catchment area. Even though the daughter may be approved to attend there as an Out-of-Area request, having the daughter attend a school which isn't in either parent's catchment area, or particularly convenient for either, isn't in the daughter's best interests particularly given that the mother has had significant challenges getting the daughter to school on time. Ensuring the daughter attends school and her tutoring sessions consistently so that she can try to overcome her academic struggles is a priority. I'm satisfied that the father will best ensure this happens.

- The mother has shown that, at times, she will make major decisions without consulting with the father. These include, but are not limited to, unilaterally removing the daughter from their agreed upon French school of École Beaubassin and moving her to a new neighborhood and placing her in the French Immersion Program at LeMarchant-St. Thomas. She then again moved the daughter into the English Program at that school which the father subsequently agreed to when contacted by the school. The fact that she would not consult with the father on these major educational issues troubles me particularly because the parties previously agreed that the daughter would benefit from an education in a French school. After these shifts in the daughter's education, her attendance and academic performance suffered.
- The mother has also, on various occasions, unilaterally suspended the father's parenting time when not required to do so by DCS. The quick manner in which she has restricted the father's parenting time is concerning

to me particularly because of the concerns related to her coaching the daughter to make the disclosures.

Even if I accept that the mother may have held valid concerns which she felt warranted her restricting the father's parenting time, the appropriate thing for her to have done is to bring the matter before the Court, as opposed to unilaterally making the decision herself. Based on the history of this file, and the current evidence, I have more confidence that the father will meaningfully involve the mother in major decisions for the daughter such that both parents will have input in relation to same.

- Both parties acknowledge that they currently have poor communication. The daughter shouldn't be stuck in limbo should her parents be unable to agree on major decisions for her when no professional is involved. While both parents have acknowledged the potential benefit of co-parenting counselling, neither is willing to participate in same should there be a cost associated with it. While I encourage them to obtain the necessary professional assistance to learn better communication strategies in the future, until that happens, it simply isn't in the daughter's best interests to have her parents embroiled in further conflict if they cannot reach agreement on major decisions after meaningful consultation. In such circumstances, it is in the daughter's best interests that the father, the parent I believe more likely to consistently make decisions in her best interests, be given final decision-making authority if no third party professional is involved.

10.2 Conclusion on Issue 2: Ongoing Parenting Arrangements

[89] Again, I order all the agreed upon terms with respect to ongoing parenting arrangements which I conclude are in the daughter's best interests.

[90] With respect to the remaining disputed issue of what parenting arrangement is in the daughter's best interests during the school year, I conclude that it is in the daughter's best interests to live primarily with the father and have parenting time with the mother every second weekend which will be extended should her weekend be adjacent to a Professional Development/Inservice Day or a holiday which has not already been covered in the parties' agreements.

[91] I find this parenting arrangement to be in the daughter's best interests for a number of reasons including, but not limited to, the following:

- Clearly, the existing shared parenting arrangement which the daughter has been in for the last few years isn't working for her. It has resulted in a parental tug-of-war. These parents unfortunately do not have the "high degree of integration, cooperation, respect and flexibility in and for their respective parenting styles" and necessary level of communication and cooperation necessary to make a shared parenting arrangement work in the daughter's best interests. It's therefore in the daughter's best interests that she live primarily with the parent who will best meet her needs and provide her with the consistency and stability she requires at this delicate stage of her life.
- While there is no ideal option here, and I have concerns about both parents' abilities to put the daughter's needs first, I'm satisfied that the father is better able to meet her needs on a consistent basis. I say this despite my significant concerns about the father's unwillingness to show insight into or engage in services to address the potential emotional harm which his actions are causing the daughter. Again, both parents need to do better.
- While I am concerned about the significant reduction in the amount of time that the daughter would spend with the mother during the school year, the mother has consistently struggled to get the daughter to school or to her tutoring sessions. The daughter is struggling academically and fallen significantly behind her peers. She requires consistency and stability getting her to school and tutoring during the school year so she can be potentially set up for having success in school, as opposed to being set up for failure. I'm satisfied the father is the parent who will best allow this to happen and it is therefore in the daughter's best interests that she spend the majority of her school week in his care. The daughter will still get to spend equal weekend time with the mother and also spend equal time with her during the summers and holidays when the need to focus on academics is lessened.
- The mother's long-term parenting plan has too many unknowns for me to conclude that it's in the daughter's best interest to live primarily with her during the school year. Her living accommodations are temporary, she doesn't have a vehicle, and doesn't even live in the daughter's current school district. Depending on where she ends up living, this could result in more disruption for the daughter in terms of her school, living arrangements, etc. The mother also plans to go back to school but hasn't told me how this may impact on her ability to care for the daughter.

- While I accept that there are benefits to the daughter from attending the same school she has for the last few years including benefits from her existing supports, when I weigh all the evidence, I make a finding of fact that the benefits of the daughter being in the father's primary care outweigh the benefits of her remaining in the same school – a school which the mother unilaterally placed her in and where the daughter continues to struggle. Giving the daughter a fresh start at a new school with a new parenting arrangement will hopefully provide her with more structure and routine with the parent who is better able to meet her educational needs. This may also lessen the effects of the parental tug-of-war created by the daughter spending equal time with both her parents who clearly have very different parenting styles and routines.
- I conclude that the parenting arrangement I have ordered appropriately balances the requirements of the *PSA* within the context of an overall consideration of the daughter's best interests. It allows the daughter to continue to foster and maintain a positive relationship with both parents in a manner consistent with her best interests at this stage of her life.
- I make a finding of fact that this arrangement best meets the daughter's physical, emotional, social and educational needs at this stage of her life including her need for stability and safety.

11.0 ISSUE 3: SHOULD I ORDER A REVIEW OF THE PARENTING ARRANGEMENTS?

[92] I asked both parties to address whether they felt that I should order a review of any parenting plan I put in place especially given that the mother's living arrangements are temporary and her future plans in terms of her education and employment have not yet crystallized. Furthermore, as noted, I still have concerns about the father's lack of engagement with services and how that could impact on the daughter in the future should he not gain insight into his role in creating the current parental tug-of-war which the daughter sadly finds herself in. Both parents would be wise to heed the Agency's warning that, should the concerns of emotional harm to the daughter created by both parents not be addressed, it may seek to formally commence a court proceeding under the *CFSA*. If that were to happen, it could result in the daughter being also thrust in the middle of yet another court proceeding this time involving the Agency which would likely be asking a judge to place restrictions on the parenting arrangements for the daughter or, even worse, have the daughter removed from their care.

[93] In the father's submissions filed on June 9, 2023, his counsel writes:

“The father does not agree that a Review clause would be in [the daughter's] best interests. [The daughter] requires consistency unless a material change occurs. Having an ability to review without proving a material change, would only create potential uncertainty and instability.”

[94] In the mother's submissions filed June 9, 2023, her counsel writes:

“Yes, the mother would be agreeable to the parenting arrangement being reviewed after one year, or such other period of time determined by His Lordship.”

[95] Reviews should not be routinely ordered. When they are, they should be “tightly circumscribed” to avoid being seen as an invitation for parties to simply reargue or relitigate a case: *Leskun v. Leskun*, 2006 SCC 24.

[96] After carefully considering whether it is in the daughter's best interests to order a review of the parenting arrangements I have now ordered, I decline to do so for the following reasons:

- Ordering a review at this time effectively would mean the parties will continue to have this litigation lingering in the background of their and the child's lives. It could possibly continue to fuel the flames of the existing ongoing parental tug-of-war at a time when I'm trying to douse water on those flames and stabilize the situation for the daughter. My hope is that the parties will now focus on co-parenting the daughter in a more positive way in the future than preparing for further litigation possibly a year from now at a review.
- To the extent that DCS is keenly aware of the existing concerns with respect to both parents, it gives me some comfort that there will be an independent set of eyes on the ongoing parenting situation who can step in to seek to change the parenting arrangements I have ordered should doing so be in the daughter's best interests to ensure she is free from ongoing risk of harm. Both parents should be keenly aware of this and do everything they can to ensure they support the daughter to grow and flourish in a positive way which avoids possible intrusive Agency intervention. To the extent Agency counsel participated in this hearing, and my decision is a matter of public record, both counsel confirmed that the parties agree a copy of my decision

can be sent to Agency counsel. Thus, the Agency will be made aware of the parenting arrangement I have ordered as well as my reasons for doing so.

- Should the mother determine her long-term plans in terms of living arrangements and ability to care for the daughter as a result of her education or employment, she can always seek to bring a variation application. Should she obtain a residence in close proximity to the father's residence, or the parental communication improve, it may be that the parenting arrangements could also be varied and consideration be given to whether it would be in the daughter's best interests to once again be placed in a shared parenting arrangement or some other parenting arrangement which better meets The daughter's needs. In saying this, I emphasize that should these things happen, this would not automatically result in a material change of circumstances being established thereby resulting in a change to the parenting arrangement I have ordered. Rather, any variation application would be dealt with on its merits at the time.

12.0 ISSUE 4: SHOULD INCOME BE IMPUTED TO THE MOTHER?

12.1 The Father's Position

[97] The father seeks to have income imputed to the mother to at least \$25,000 annually on the basis that she should be earning an income which is at least equivalent to full-time minimum wage employment. He takes the position that she is intentionally underemployed/unemployed which isn't required because of any need to provide care for the daughter. He says this should be especially the case since a week about shared parenting was ordered as it gave the mother at least every other week to work without having any child-care responsibilities. He says that even if she returns to her adult learning program which she had started in the Fall of 2021, she should still be capable of earning an income of at least \$25,000 annually given that, in the past, the program only required her to attend three days per week.

12.2 The Mother's Position

[98] The mother's position is that no income should be imputed to her. She says the evidence establishes that she was the parent who had to sacrifice her own career and education to care for the daughter. Furthermore, while she had to temporarily pause her studies at the Nova Scotia Community College, she hopes to recommence her studies in 2023 to possibly become a dental assistant.

12.3 The Law

[99] In paragraphs 20-23 of *Standing v. MacInnis*, 2020 NSSC 304, Justice Forgeron provides a helpful overview of the principles of the law relating to imputation of income. I summarize the principles as follows:

- Section 19 (1) (a) of the *Child Support Guidelines* allows the Court to impute income if the payor is under-employed provided the under-employment does not arise because of the needs of a child or the payor's reasonable educational or health needs;
- The discretionary authority found in s.19 must be exercised judicially, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income;
- The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor;
- The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor asserts that his/her income has been reduced or his/ her income earning capacity is compromised by ill health;
- The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances;
- A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity. A party cannot avoid support obligations by a self-induced reduction in income;
- There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work;
- A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job the childilability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment;

- A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations; and
- The test to be applied when determining whether a person is intentionally under-employed is reasonableness, which does not require proof of a specific intention to undermine or avoid a support obligation.

12.4 *Decision on Imputing Income to the Mother*

[100] In exercising my discretion, I decline to impute income to the mother at this time for the following reasons:

- I accept that, after the parties' separation, the mother had to focus on her and the daughter's circumstances including finding suitable housing. She then had had to navigate the shared about parenting arrangements during the pandemic when she didn't have a vehicle and while being expected to get the daughter to school and to tutoring. I'm prepared to accept that she had reasonable justifications for not pursuing employment.
- I accept that the mother's plan to go back to Nova Scotia Community College is a reasonable one not only to better her own personal circumstances but, if pursued, will likely benefit the daughter as well.
- When I consider all the circumstances and the evidence, the father has failed to satisfy me that it would be fair and reasonable to impute income to the mother at this time over and above her actual income.

[101] While I have declined to impute income to the mother at this time, this shouldn't be taken as a long-term justification for the mother to not take reasonable measures to reasonably contribute to the daughter's right to child support. Thus, should the mother not return to school this year, or not pursue gainful employment, it will be open for the father to pursue an imputation of income argument in the future on the basis that the mother hasn't taken reasonable steps to financially contribute to the daughter.

13.0 ISSUE 5: ONGOING CHILD SUPPORT INCLUDING CONTRIBUTION TO SECTION 7 EXPENSES

13.1 *Table Child Support*

[102] The father has advised that he does not seek any Table Amount of child support from the mother should the daughter be placed in his primary care. Given that at the time of the hearing, the mother's Updated Sworn Statement of Income

indicated that she was only making \$5,420 annually through the Employment Support and Income Assistance Program, she likely would not meet the threshold of having to pay Table Amount of child support in any event unless her income has gone up since the filing of her last financial information.

[103] Notwithstanding the father advising he does not seek any Table Amount of child support if the daughter was placed in his primary care, should the mother's income exceed the minimum threshold for payment of child support, I leave it open for the father to pursue a claim for Table Amount of child support given that child support is the daughter's right.

13.2 Section 7 Expenses

[104] With respect to ongoing section 7 expenses, the parties agreed to several things as outlined in Exhibit 7 including, but not limited to, the following:

- Any agreed upon section 7 expenses shall be divided in proportion to their incomes;
- For determination of proportionate sharing of agreed upon section 7 expenses, The father's income is \$80,000;
- Any go forward tutoring expenses shall be divided in proportion to their incomes subject to the determination of the mother's income;
- The father shall maintain medical and dental coverage for the benefit of the daughter so long as he is legally able to do so; and
- They will annually disclose their income which shall include income tax returns and notices of assessments.

13.4 Position of the Father

[105] In his submission filed on June 9, 2023, the father advises that his position is that all future agreed upon section 7 expenses would be split 50/50 (net expense). He claims the daughter's tutoring costs as an ongoing section 7 expense. He also seeks that the mother contribute equally to any net Excel costs he incurs should the daughter be enrolled in the West Bedford School in September 2023 but is unsure whether the daughter's enrollment in Excel within LeMarchant-St. Thomas can be transferred to the West Bedford School.

13.5 Position of the Mother

[106] In her submission filed on June 9, 2023, the mother advises that, provided that income is not imputed to her, she is prepared to proportionately contribute to the cost of any agreed upon section 7 expenses. She takes the position that she should not be required to contribute to the cost of any section 7 expenses that are arranged without her input and agreement, including the service provider and location for the daughter's tutoring.

13.6 *The Law*

[107] Section 7 of the *Child Support Guidelines* gives me the jurisdiction to order financial contributions by the parties relating to certain expenses. Specifically, in determining whether the parties should be ordered to contribute to certain expenses, I should:

- determine whether the expense falls within one of the enumerated categories of s. 7 of the *Guidelines*;
- determine whether the expense is necessary in relation to the daughter's best interests;
- consider the reasonableness of the expense in relation to the parties' and daughter's means and to the family's pattern of spending prior to separation; and
- if the expense falls under subsection 7(1)(f) of the *Guidelines* (expenses for extracurricular activities), determine whether it is "extraordinary" after determining the above considerations. (*L.K.S. v. D.M.C.T.*, 2008 NSCA 61 (CanLII), at paragraph 27; Leave to appeal to the Supreme Court of Canada denied at *D.M.C.T. v. L.K.S.*, 2009 CanLII 1998 (SCC))

[108] In order to be a proper section 7 expense, the expense must be "special" or "extraordinary" because "ordinary" expenses are generally expected to be covered by basic table amount of child support.

[109] If I determine that the expenses are proper section 7 expenses, I have the discretion to require that either party pay all or any portion of same. I can consider any subsidies, benefits, income tax deductions or credits when I determine the amount of an expense which can be estimated: subsection 7(3) of the *Guidelines*. The guiding principle is that the expense should be shared in proportion to the parties' incomes after deducting from the expense, the contribution, if any from the daughter: subsection 7(2) of the *Guidelines*.

[110] As noted in Exhibit 7, the parties agree that it is in the daughter's best interests to obtain tutoring. I agree. Both agreed to proportionately contribute to same. The father arranged for the daughter to get tutoring through Oxford Learning. I order that the mother be required to contribute proportionately to tutoring costs regardless of location but decline to order her to contribute to any other section 7 expenses such as potential Excel costs unless otherwise agreed to by her. I do so for the following reasons:

- Neither party has challenged the necessity or reasonableness of the tutoring costs. Indeed, the mother has expressly agreed that the daughter benefits from tutoring and agreed to proportionately contribute to same in Exhibit 7. The mother's insistence that she should now only contribute to same if she agrees on the provider and location isn't reasonable. The father now has primary care of the daughter and has consistently demonstrated that he is committed to getting the daughter to her tutoring sessions. Thus, he should get to choose the provider and location of where that tutoring happens.
- While the father now asks for a 50% contribution to the tutoring costs, this is quite different than the proportionate sharing of same agreed to in Exhibit 7. Furthermore, given that the mother is not working and has minimal income, I exercise my discretion to not require her to contribute to anything more than, as she agreed, a proportionate contribution to same based on her actual income, not any imputed income. If the parties are unable to agree on the mother's income, I reserve the jurisdiction to determine same as I was not given the latest income information from the mother such as her 2022 Notice of Assessment.
- While the parties did appear to agree on the daughter attending after school care (Excel) at LeMarchant-St. Thomas school, I have no information from the father as to the necessity and reasonableness of any other section 7 expenses including the potential Excel costs should he enrol the daughter in the West Bedford School. In such circumstances, I decline to order that the mother should be required to contribute to same unless she agrees to do so. Even if such information was provided, given the mother's minimal income, I would decline to order her to contribute to same.

14.0 ISSUE 6: THE FATHER'S CLAIM FOR A RETROACTIVE CONTRIBUTION TO THE DAUGHTER'S TUTORING EXPENSES

[111] The father seeks a contribution towards past tutoring expenses he incurred for the daughter through Oxford Learning including complete reimbursement of

tutoring costs he incurred because the daughter missed tutoring sessions which couldn't be rescheduled during the mother's parenting time. In his submission of June 8, 2023, he outlines that he is seeking reimbursement from the mother of \$5,142.16 for past tutoring expenses.

[112] When I have ordered that, as agreed in Exhibit 7, the mother is required to make a proportionate contribution to ongoing tutoring costs, I exercise my discretion to decline to order her to make any contribution to retroactive tutoring costs for the following reasons:

- Prospective awards of child support generally take priority of retroactive ones. The mother's income is very modest. At the time of the hearing, she was only receiving \$5,420 annually from the Employment Support and Income Assistance Program Income. Ordering the mother to reimburse the father for past tutoring expenses now would, in my view, place a financial burden on her which is not warranted and could negatively impact on her ability to provide for the daughter during the times the daughter is in her care. This is particularly so given that the mother will no longer receive the \$500 per month in child support from the father.
- When the parties were in a shared parenting arrangement, the father was aware that the mother didn't have a vehicle and it would be difficult for her to get the daughter to the Bedford Oxford Learning location. He knew her preference was that the daughter attend the Quinpool Oxford Learning location in Halifax which was only a thirteen-minute walk from her residence. While he may have offered to assist with transportation, the parents' poor communication and, at times, hostilities towards each other, didn't make this a tenable option.

15.0 ORDER

[113] I reserve the jurisdiction to deal with any implementation issues arising from my decision and deal with any issues which were properly raised by the parties but not addressed in this decision. I also direct that Ms. Mooney prepare the appropriate form of Order reflecting my decision which should be consented to as to form only by counsel with respect to the issues I have decided, and consented to both as to form and content for any provisions I have ordered which were agreed to by the parties. The Order should be sent to me no later than 3 weeks from today's date.

16.0 COSTS

[114] Both parties have asked to be heard on costs after receiving my decision. I encourage counsel to see if they can assist the parties in resolving the issue of costs to avoid further litigation. If the parties cannot agree, counsel should also advise in three weeks and request a thirty-minute conference before me to discuss how the issue of costs will be determined.

Jesudason, J.