

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *NF v. JF*, 2024 NSSC 29

**Date:** 20240124  
**Docket:** 1206-7800  
**Registry:** Sydney

**Between:**

NF

Petitioner

v.

JF

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: January 4, 2024, in Sydney, Nova Scotia

Written Release: January 24, 2024

Counsel: Heidi Fahie for the Petitioner  
JF, Self-Represented

**By the Court:**

**BACKGROUND**

[1] This is a divorce proceeding involving parties who were married for five years, after living common law for two. They have one child CF who is now 7 years of age. Both parents work in the restaurant industry.

[2] Initially after the parties separated, they shared parenting while living under the same roof. JF then moved in with his sister, but after JF was evicted from his sister's home and child protection services (CPS) became involved, the child lived primarily with NF. For a period of time, JF was unhoused. After he secured stable housing arrangements with his father about six months ago, he started to exercise parenting time with CF overnight from Saturday to Sunday each weekend.

[3] NF seeks primary care and an order permitting relocation. She wishes to move with CF to the United States to live with her new partner, MJ. She says that such a move offers CF financial security, an opportunity to see more of the world, and the care and guidance of a committed step-father.

[4] JF is opposed to the relocation. He concedes that during the school year, CF should live with his mother during the week because of transportation issues, but he wants to parent on weekends. He hadn't paid child support, thus an interim order was issued on November 25, 2023.

[5] JF and NF resolved all property issues before trial, and JF does not contest the divorce or change of name.

**DIVORCE**

[6] The parties have been separated for over three years with no prospect of reconciliation. I find the marriage has permanently broken down and that all procedural requirements have been met. I therefore grant the divorce and the change of name for NF.

**ISSUES**

1. Parenting
2. Mobility

### 3. Child support

[7] In **Titus v. Kynock**, 2022 NSCA 35 the Court of Appeal noted that “It is not mandated by the [*Parenting and Support*] Act that relocation always be decided first. The order of the analysis will be driven by the circumstances of the particular case.” The same is true of the *Divorce Act* RSC 1985, c 3 (2nd Supp).

[8] I find it’s appropriate to start with parenting, because the onus under the mobility inquiry is determined by that, and the parenting analysis informs much of the mobility discussion.

### **PARENTING**

[9] Section 16 of the *Divorce Act* provides the framework for decisions on parenting. The overall consideration is the best interests of the child (s. 16(1)). The child’s best interests are determined by considering the factors enumerated in s.16(3):

#### **Factors to be considered**

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

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

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

[10] CF is 7 years of age. He has a loving relationship with his paternal grandparents and aunt, his maternal grandparents, and NF's fiancé and his family. He likes to play video games and does well in school. He has no special needs.

[11] JF acknowledged at trial that NF should exercise primary care for CF given his housing situation, his work demands, and his lack of transportation. He does not seek a shared parenting arrangement, because he recognizes that CF needs consistency during the week and that with his transportation issues, he can't reliably get CF to school.

[12] Although his Answer doesn't request shared parenting, JF indicated at times that's what he was seeking. NF therefore analysed the factors in s.16(3) of the *Divorce Act* in her brief as follows:

**The child's needs, given the child's age and stage of development, such as the child's need for stability.** [NF] has been the parent primarily responsible for meeting all the child's needs. She is the one providing day-to-day care and she ensures the child attends school and completes his homework. [JF] only has the child in his care one night per week. The child often returns unbathed and having failed to brush his teeth. He has never attended medical or dental appointments with the child and has not attended school meetings.

**The nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life.** The child is very close to his mother and enjoys the time he spends with his father. With respect to [NF]'s fiancé [MJ], the child also has a bond with him. The child will often request to call [MJ] and the two will often play video games online together. The child lives with his mother and maternal grandmother and grandfather, so they have a strong relationship. He also has a good relationship with his paternal grandmother, grandfather and his paternal aunt, BF. [CF] has had the opportunity to meet [MJ]'s extended family and has developed a relationship with [MJ]'s family.

**Each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.** Both [NF] and her partner are very supportive of the child maintaining a relationship with his father and spending time with him provided it is safe for the child to do so. They recognize the importance of the father child bond and are fully prepared to provide the child with his own phone so his father can contact him directly to talk or place a video call. They also support the child spending block periods of time with his father providing the concerns raised above with respect to [JF]'s lifestyle can be addressed.

**The history of care of the child.** As noted above, it is [NF] who has been for the last 2 years been primarily responsible for caring for the child. [JF] spends one overnight per week with the child and has rarely asked for additional time.

**The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained.** The child is too young to participate in a Voice of the Child assessment.

**The child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage.** [NF] and [MJ] are not religious, but they will fully support [CF] following a religious lifestyle if he so chooses.

**Any plans for the child's care.** [CF] would be attending [elementary school] which is located on the [\*] Air Force Base (the Base). Also located on the Base is the Child Development Centre, a Department of Defense owned and operated education service that provides education and care for non-school aged children and after school care for school aged children. Also located on the Base is a community centre which has basketball and tennis courts, a water splashpad, a community swimming pool, and a sand volleyball court. The Base also has many playgrounds and picnic parks.

**The ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child.** [JF]'s lifestyle is unstable. Prior to the last approximate 6 months when he moved into his father's apartment, [JF] spent periods of time homeless and couch surfing.

Additionally, despite having fulltime employment [JF] has been unable to maintain a cell phone that works outside of areas where wi-fi is available. This hinders communication and could be a danger in emergency situations.

[JF] has also demonstrated an inability to care for the child when he is ill. On one occasion the child vomited before making it to the washroom and [JF] reacted by yelling at the he child before abandoning him to go smoke a cigarette and leaving his sister to clean up and comfort the child.

There are also concerns regarding [JF]'s mental health, his ability to control his anger and drug use. He on one occasion showed up at [NF]'s place of employment and began threatening [NF] and causing a scene. This resulted in a police report being filed.

**The ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child.** Communication between the parties is strained. [JF] can be combative and angry. [JF] makes little attempt to be a cooperative co-parent. There are several times when text messages have been sent trying to address important concerns [NF] had regarding [CF] where she has been shut down or disregarded entirely. [NF] is trying her hardest to ensure [JF] is involved in important decisions regarding [CF], but he shows little interest in participating in the decision-making process.

**Any family violence and its impact on, among other things, (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child.** [NF] acknowledges that [JF] has never assaulted her but, he was mentally and verbally abusive during the party's relationship and continues to be argumentative and threatening. [JF] has been physical with his sister in front of the child.

**Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.** There are no other proceedings.

[13] JF did not expressly analyse the best interests factors, but I find from his evidence that:

- JF agrees that CF needs stability in terms of school arrangements, and he agrees that CF should spend weekdays with his mother.
- CF has a good bond with JF and his paternal grandparents and aunt.
- JF has not tried to undermine CF's relationship with the maternal family.
- CF spends one overnight each week with JF. He hasn't shared parenting for the past two years.
- N/A
- N/A
- JF wishes to see CF remain in his current school and spend weekdays with his mother and weekends with him. He didn't present any other details about his plan for CF.
- JF feels he can meet CF's needs, but has struggled with some aspects, including getting him to school on time. He rejects NF's claim that he didn't properly care for CF when he was ill. He says that he can rely on his mother or sister for support, even though he and his sister don't speak.

- JF denies that his communication has been inappropriate.
- JF denies any family violence or abuse, and in particular verbal abuse.
- Although NF called police on JF when he came to her work and behaved aggressively, her employer dealt with it by prohibiting him from entering the premises, and not through criminal charges.

## EVIDENCE

[14] Not all of the facts argued in NF’s brief were proven in evidence, so I have not given those any weight. In addition, I have not considered the hearsay evidence that was excluded at trial. Despite the limited nature of JF’s evidence, I tried to weigh the evidence evenly (**DAM v. CJB**, 2017 NSCA 91).

[15] In addition, I assessed credibility in accordance with **Baker-Warren v. Denault**, 2009 NSSC 59, as approved in **Gill v. Hurst**, 2011 NSCA 100. I find that, although JF was candid in most of his evidence, he minimized his anger issues, which negatively impacts his credibility. His text exchanges with NF and his mother, and his behaviour in being barred from NF’s work site demonstrate that he reacts impulsively, with profanity and verbal abuse, when someone opposes or challenges him.

[16] The incident with his sister that led to his eviction involved an angry outburst, and JF demonstrates a lack of insight about his behaviour. He testified that his sister called child protection authorities afterwards “to be spiteful” yet he acknowledged that during the argument with her, he physically shoved her out of his room in CF’s presence.

[17] He also testified that CPS offered services to address his anger, but he refused because his anger “issues” are with his sister, which has “nothing to do” with CF. He doesn’t seem to recognize that his son was exposed to violence between two loved ones, which would have been distressing.

[18] I find, on a balance of probabilities, that the best interest factors in s.16(3) of the **Divorce Act** weigh in favour of NF, and that the most stable, secure, and appropriate parenting arrangement for CF is in his mother’s primary care.

[19] I therefore grant NF primary care and sole decision-making responsibility for CF. JF will be entitled to exercise parenting time. However, before determining what parenting time he will enjoy with CF, I must address the mobility issue.

## MOBILITY

### a) Burden

[20] The first question I must consider is the burden of proof in a mobility case. In her brief, NF argues that JF bears the onus of proving that a move is not in CF's best interests. She says:

17. The Act contains specific provisions on which party bears the burden of proof in a relocation application. It reads as follows:

#### **Burden of proof — person who intends to relocate child.**

16.93 (1) If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage 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.

#### **Burden of proof — person who objects to relocation.**

(2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their 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.

#### **Burden of proof — other cases**

(3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.

[21] JF made no submissions on this issue, but it's clear that CF does not spend substantially equal time in the care of each parent, and hasn't for some time. Rather, he spends the vast majority of his time in NF's care. CF has been staying overnight on Saturdays since JF found an apartment, but for months before that, he had limited contact because JF didn't have a permanent address.

[22] JF therefore bears the burden of proving, on a balance of probabilities, that a move is not in CF's best interests.

### b) Notice

[23] Next I'll address the issue of notice. Neither party addressed the issue of whether proper notice of the proposed move was provided to JF. In particular,



there's no evidence that NF complied with s.16.9(1) of the *Divorce Act* by providing notice of the proposed move in the approved form.

[24] The notice requirements in the *Divorce Act* are intended to give the other parent sufficient time to consider and respond to the proposed move. I find that NF did not provide proper notice of the proposed move to JF in accordance with s.16.9(1) & (2). She didn't provide a date for the move, an actual address and contact information, or a proposal for how JF would exercise parenting time after the move.

[25] Given this situation, I will consider whether it's appropriate to invoke s.16.9(3) of the *Divorce Act*. In certain circumstances, such as where there was timely and effective notice, I can exercise my discretion to waive formal notice. The facts I have considered include:

- NF amended her petition on April 5, 2023 to include a claim for mobility and she served that document on JF.
- NF didn't file an updated parenting plan outlining her plan for JF's time with CF if the move was approved, but it was generally known that she plans to marry MJ and live with him in California on the air force base where he's stationed.
- JF filed an Amended Response to Application on November 8, 2022. This was meant to be an Amended Answer which JF filed in anticipation of NF filing her Amended Petition. He knew that relocation was being proposed and his Amended Response seeks to prevent relocation.
- Much more than sixty days have passed since JF became aware of the proposed move.

[26] JF received actual notice of NF's request to move CF when he was served with the Amended Petition. He also knew that the plan was to move to California, where MJ is stationed. However, there's no evidence to show that he was given the full details of the proposed move even after being served. To some extent that is his fault, because I accept that NF tried to discuss the issue with him, but he "shut [her] down".

[27] To compound the lack of specifics, NF's fiancé testified that he recently learned he could be posted to Alaska. He provided a letter from his Flight Commander outlining the housing, school, health, and community supports and services available at the base in California where he's currently posted. He says that

similar living arrangements, supports and services would be available at the air force base in Alaska. He did not provide (and doesn't have) a date for his possible reassignment, and he testified that there's no real option for him to refuse it.

[28] This development makes NF's plan somewhat fluid. However, the change in the actual location where CF may live doesn't overly concern me. Either way, he would be living on an air force base on the US west coast, on the other side of the continent from JF.

[29] I can also waive notice if there's a risk of family violence. I accept NF's uncontradicted evidence that JF was verbally abusive during their relationship and abused drugs. I accept the evidence that since separation, JF communicates disrespectfully and angrily with NF. I accept that he showed up at NF's place of employment to confront her about the proposed move, at which time he pounded his fist on the desk and spoke to her in a threatening manner.

[30] I've also considered the evidence of JF's mother. She says that JF's mental health seems to have stabilized since he started taking medication. However, she acknowledged that he's lashed out at her on occasion.

[31] There's no evidence that JF ever directed his anger towards CF, but I'm satisfied that he directs it towards NF regularly. I find that JF's actions meet the definition of family violence in s.2(1) of the *Divorce Act*.

[32] In all of these circumstances, I find that the notice requirements in s.16.9(1) & (2) of the *Divorce Act* should be waived. I'm satisfied that, even with imperfect notice, JF had a full opportunity to respond to the mobility request.

### **c) Best Interests of the Child – Additional Factors**

[33] I must next consider the factors laid out at s.16.92 dealing with relocation. That section states:

#### **Best interests of child — additional factors to be considered.**

16.92 (1) In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,

- (a) the reasons for the relocation;
- (b) the impact of the relocation on the child;

- (c) 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;
- (d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;
- (e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- (f) 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
- (g) 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.

**Factor not to be considered.**

(2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.

[34] NF says that the additional best interests factors under the relocation provisions of the *Divorce Act* favour her proposed move. She says in her brief that:

a. **The reason for the relocation.** [NF] is seeking to relocate to begin her life with her chosen partner. This is not a situation where a parent is attempting to relocate to simply thwart the other parents parenting time and undermine her/his role as a parent.

b. **The impact of the relocation on the child.** There is no doubt the relocation will influence [NF]'s parenting time. However, [NF] and her partner will make every effort to ensure that [CF] is available for telephone calls, video chats and block parenting time alternating between the summer (keeping in mind that school begins in August in California) and the Christmas break. [CF] will be provided with his own phone to ensure [NF] can contact him at anytime, other than when the child is in school, engaged in homework, engaged in an organized activity, or involved in his bedtime routine. The block access will provide [JF] with more meaningful time with the child as opposed to the current schedule of just one night per week.

[CF] is young and children of his age generally adopt to new surrounds easily. He is social and [NF] is certain he will make new friends quickly. She will also ensure he maintains contact with extended family members, both maternal and paternal.

[NF] can also arrange with the parents of [CF]’s closest friends to maintain regular video chats should [CF] wish to do so.

c. **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 current arrangement has [CF] spending 52 day of the year in his father’s care.

[d. – not addressed but I find that NF did not comply with the notice requirements]

e. **The existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside.** Although there is no order in place, [NF] has had de facto primary care of [CF]. It is her position that given the concerns laid out above, it would be highly inappropriate to change primary care.

f. **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.** It is obvious that there will be a great deal of expense involved with ensuring [JF] is able to exercise in-person parenting time. Return flights from California generally average around \$1,500 per person. Given [CF]’s age, he must be accompanied by a parent/guardian. [NF] is willing to forego child support in the hopes [JF] will be able to save money to ensure he sees [CF] in-person.

[g. – not addressed but JF has not paid child support and I find he’s unlikely to voluntarily pay in future without enforcement action]

[35] JF did not address the additional best interests factors. However, in essence, he argues that taking CF to the other side of the continent, away from family and friends, and allowing him only virtual contact and infrequent visits with his father, isn’t in the child’s best interests. He does not suggest that the move is an attempt to thwart his parenting time, nor does he ask for a change in primary care if NF moves.

[36] The onus is on JF to satisfy the court that a move isn’t in CF’s best interests. He hasn’t met that onus. He has struggled in recent years to meet his own needs. He hasn’t paid child support and only recently secured housing with his father. He testified that he “fell on hard times” but he’s doing what he can to “regain custody” of his son. He can’t offer a plan for CF’s care beyond weekends, despite his desire to do so. He hasn’t played a major role in CF’s life for the past few years.

[37] I grant the mobility order permitting NF to relocate CF from the Province of Nova Scotia to California (and such other locations in the continental USA where MJ may be posted in the future).

[38] Next I must consider what parenting arrangements are in the child best interests with CF living in the USA. NF proposes the following:

- (a) Visits will occur during either the summer or Christmas school breaks rotating each year.
  - (i) Visitation period will alternate between summer and Christmas each year.
  - (ii) [CF] will return to [NF]'s and [MJ]'s care before school is expected to restart following the visitation period, keeping in mind the school year begins in mid-August in California.
  - (iii) Travel for the summer period will be expected to occur within 1 week of the last day of school and [CF] must return 1 week before the start of the next school term.
  - (iv) Christmas visitation travel will occur within 2 days following the last day of school and [CF] will be returned 2 days prior to the return to school.
- (b) [JF] will be expected to pay for [CF]'s travel to Nova Scotia. [NF] will be expected to pay for [CF]'s return travel.
  - (i) Tickets will be purchased at a minimum of 30 days out from the initial day of travel to allow each party to arrange for time away from work to facilitate the travel and pursue lower cost tickets.
    - 1. If [JF] cannot afford the travel to Nova Scotia for a summer visitation period, or if finances during the stay are a concern, [JF] may contact [NF] to coordinate a later date of travel that will allow [JF] to purchase tickets. [CF] will still be expected to return prior to 1 week before the start of the school term.
    - 2. If tickets cannot be purchased by [JF], visitation will be considered forfeited for that period.
  - ii. If in the unlikely circumstance [NF] and [MJ] cannot afford return tickets prior to the start of visitation, visitation will occur as normal and [CF] will remain in Nova Scotia until tickets are able to be purchased by [NF] and [MJ].
    - 1. Inability to secure tickets by [NF] and [MJ] waives the return date requirements for the visitation period.
    - 2. [NF] and [MJ] will reimburse at least 50% of the unexpected costs for continued support of [CF] during the period beyond the original expected return date.
- (c) Any requests to change visitation dates from either party will be communicated to the other parent via email to valid email address

associated with the parent or guardian with the requested change, reason, and proposed solution or compensation for time lost, if the timeframe is to be shortened.

- i. All approval, denial, or renegotiation to a proposed change will be coordinated in writing through a known, valid email address associated with the parent or guardian.
  - ii. Any change to visitation made by [NF] and [MJ] that stems from a situation reasonably expected to directly impact [CF]'s health, education, or development will require only notification to the other party and will be considered approved unless [JF] can provide reasonable justification for denial. Such situations may include.
    1. Required summer school that cannot be performed abroad.
    2. Important medical appointments, examinations, or surgery.
    3. Immobilization due to injury or accident.
- (d) Any classwork sent with [CF] to be done over a visitation period must be supervised by the receiving parent or guardian and returned completed, or with enough attempted to be completed upon return prior to start of the school term.
- i. Failure to meet this requirement may result in appropriate justification for delay of further visitation periods until out of term school work is completed.
- (e) If [CF] is unable to visit [JF] during a visitation period due to injury, accident, or other extenuating circumstance, [NF] and [MJ] will work with [JF] to provide a reasonable capability for [JF] to visit [CF], instead. Such negotiations may include assisting with lodging at on base lodging facilities or local hotels, up to 50% of cost.

[39] In the event the court approves the move, JF suggests that he should have CF in his care every summer, plus alternate spring and Christmas breaks. NF argues against alternating breaks in addition to every summer, because she believes it involves too much travel and will impede CF's ability to develop new relationships in his new home town.

[40] NF's objection fails to recognize the significant impact the move will have on JF's relationship with CF. It also appears to prioritize financial considerations over what's best for CF. It does not maximize CF's contact with his father.

[41] I find that the following schedule is in the best interests of the child. JF will have parenting time with CF as follows:

- Starting in 2024 (whether or not CF has moved by then) two consecutive weeks every summer, arriving on a Sunday and departing on a Sunday, with CF's return date being no later than a week before his scheduled return to school (on the official calendar);
- Starting in 2024 and every second year thereafter, a week during the Christmas break, arriving no more than two days after CF's finished school for the Christmas break (on the official calendar) and departing seven days later;
- Starting in 2025 and every second year thereafter, a week during CF's annual winter/spring break (on the official calendar) arriving on the first Saturday of break, and departing on the following Saturday;
- Flexible and open electronic contact, including phone calls and texts, video platforms such as Facetime, WhatsApp, Zoom, Messenger video, and online video games. Such contact is subject only to the requirement to initiate the contact no earlier than 9 a.m. (local time where CF lives), and not during school hours, and to end such calls or games before 8 pm (local time where CF lives);
- Flexible and generous in-person parenting time should JF visit CF in the United States;

[42] The following terms are incidental to the parenting arrangements I've ordered and will apply:

- JF will pay the cost of transporting CF to Nova Scotia for visits, while NF will pay the cost of CF's return transportation (pursuant to s.16.95 of the *Divorce Act*);
- JF must communicate his choice of summer dates, along with proof of pre-paid transportation arrangements to NF in writing by May 30<sup>th</sup> of each year. Should he fail to do so, he will forfeit the summer visit;
- JF must provide proof of prepaid transportation arrangements for CF over Christmas or winter/spring break at least 30 days in advance, otherwise he will forfeit that visit;
- The parents will equally share the cost for an adult to accompany CF while flying in economy class to and from Nova Scotia;

- JF must pay his share of the fare for the accompanying adult at least 14 days before the scheduled departure date, or the trip will be cancelled and he will forfeit his visit with CF;
- The parents will equally share any necessary expenses incurred because of flight delays when CF is traveling, including meals for him and the accompanying adult;
- The cost of flights for CF and the accompanying adult will include cancellation insurance;
- The parents may agree that one parent will purchase return flights instead of both purchasing higher one-way airfares, but in such case the non-purchasing parent must reimburse their half share of the total cost of the return tickets within 7 days of purchase;
- When CF is old enough to travel unaccompanied, NF must register him with the airline's unaccompanied minor program;
- NF will provide CF with a cell phone for CF to use to contact JF and while traveling, as well as for NF to contact CF while he's in JF's care;
- JF must ensure that CF has access to Wi-Fi while in his care;
- Within 30 days the parents must provide each other with their choice of email address for all communications regarding CF, as well as a phone number for emergency contact between the parents, and they must immediately notify each other if that information changes;
- Should CF require emergency medical attention while in the care of either parent, the parent with care of CF must immediately notify the other parent by text and phone, advising the nature of the emergency, treatment undertaken, future treatments planned, and prognosis. If CF is in his father's care at the time, he may make necessary decisions until NF is available to assume decision-making for the emergency. All other decisions regarding CF's health, general welfare, education, social activities, extracurricular activities, and religious instruction will be made by NF;
- Should CF require emergency medical attention while in the care of either parent, the parent with care of CF must immediately notify the other parent by text and phone, advising the nature of the emergency, treatment undertaken, future treatments planned, and prognosis. If CF is in his



father's care at the time, he may make necessary decisions until NF is available to assume decision-making for the emergency. All other decisions regarding CF's health, general welfare, education, social activities, extracurricular activities, and religious instruction will be made by NF;

- Should CF require non-routine medical care that conflicts with his scheduled travel dates, the parents will work together to reschedule the visit;
- NF must provide JF with the name, address and telephone number for CF's physician, dentist, and school within 30 days of relocating, and she must add JF's name to the list of authorized persons on those files;
- NF must advise JF of any extracurricular activities in which CF is registered or enrolled, and provide the names of the coaches and leaders involved within 30 days of enrolment or registration;
- JF will be entitled to contact third parties involved with CF's care and activities to obtain information about CF's participation and progress without NF's authorization;
- NF must advise JF of all major developments in CF's life, including: transfers of the family to another air force base or city, changes in CF's school, changes in CF's home address or other contact information, and non-routine healthcare interventions;
- NF must provide JF with copies of CF's annual school photos, as well as monthly updates and photos of CF;
- NF may apply for CF's Canadian passport without JF's authorization;
- If NF opts to apply for American residency or citizenship for CF, she must advise JF at least 30 days before submitting the forms to the applicable authority;
- Either parent may travel with CF during their parenting time, provided that if JF proposes to take CF outside of Canada or NF proposes to take him outside of the USA, they must provide the other parent with full details of the trip including dates of travel, destination, and emergency contact information;

- Each parent must sign any travel authorization requested by the other parent that meets the criteria set out herein for approved travel with CF, such form to be signed and returned within 7 days of receipt of same;
- All vehicle travel with CF must be in a licensed, insured vehicle that has a valid permit, and only by a licensed, sober, insured driver;
- NF must provide JF with a photocopy of any cards confirming health coverage or insurance coverage secured for CF after he relocates, and she must authorize JF to submit claims for eligible expenses he incurs for CF while in his care;
- NF must provide JF with copies of CF's vaccination records;
- CF's name shall not be changed (legally or in practice) without both parents' written agreement;
- Caregivers for CF (including the parents and their partners) must not use intoxicating substances, including marijuana, while in a childcaring role;
- NF may contact CF virtually while he's in his father's care, once daily for no more than 15 minutes each day, no earlier than 9 a.m. (AST) and ending no later than 8 pm (AST).

## **CHILD SUPPORT**

[43] NF testified that she's not asking for JF to pay child support in recognition of the high costs he will incur to exercise parenting time with CF. I accept that JF would encounter hardship if he's required to pay child support on top of transportation expenses.

[44] JF earned on average \$32,771.00 in the past three years. He would ordinarily pay child support under the Nova Scotia table of \$280.63/month. However, he will be required to pay CF's airfare of about \$3,000.00 per year (half of a return economy ticket X2), plus the cost of an accompanying adult (est. \$3,000.00) for a total of @\$6,000.00 per year. That equates to @\$500.00 per month, which is almost double the table amount.

[45] I therefore exercise my discretion to order that, in lieu of child support, JF will share in CF's transportation expenses as outlined above.

## **COSTS**

[46] I order each side to bear their own costs. NF's counsel will prepare the orders.

MacLeod-Archer, J.