

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Weagle v Kendall*, 2024 NSSC 220

Date: 20240812

Docket: SFHPSA-116050

Registry: Halifax

Between:

Joseph Daniel Weagle

Applicant

v

Olivia Byrd Kendall

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Daniel W. Ingersoll
Heard:	June 10, 11, and 12, 2024, written submissions, June 14, 25 and 28, 2024
Written Release:	August 12, 2024
Summary:	Mother sought authority to relocate child, age 5, to Ottawa. Father opposed relocation. Court determined that father bore burden to establish that relocation is not in the child's best interests. Relocation framework and legislative best interest factors considered. Relocation request denied. Father granted primary care as mother was moving. Shared decision making ordered.
Key Words:	Parenting and Support Order, Parenting, Relocation, Mobility, Primary Care.
Legislation:	<i>Parenting and Support Act</i> , R.S.N.S. 1989, c. 160

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Counsel: Nicholas Darbyshire for the Applicant
Bryen Mooney for the Respondent

By the Court:

Introduction

[1] Joseph Weagle and Olivia Kendall separated in 2019 after a two-year relationship. They are parents to Adele, who is five years old.

[2] Ms. Kendall has had primary care of Adele since the parties separated. She will be relocating to Ottawa in August of 2024 and seeks an order permitting her to relocate Adele to Ottawa. Mr. Weagle says that Adele should not relocate to Ottawa but rather should remain in Nova Scotia and transition to his primary care.

Litigation Background

[3] Mr. Weagle filed an Application in 2019 seeking increased parenting time with Adele and in 2020 sought a shared parenting arrangement.

[4] In 2020, Ms. Kendall amended her response to Mr. Weagle's Application seeking permission to relocate Adele to the Ottawa area. Ms. Kendall also sought sole decision-making authority for Adele.

[5] This matter proceeded to trial in May of 2022. At trial, Ms. Kendall sought permission to relocate Adele to the Ottawa area, or in the alternative, continued primary care of Adele in Nova Scotia with sole decision-making authority. Mr. Weagle opposed relocation, seeking instead a shared parenting arrangement in Nova Scotia with shared decision-making authority. The trial judge granted Ms.

Kendall's relocation request but ordered shared decision making. The trial judge released her decision on December 5, 2022 (*Weagle v Kendall*, 2022 NSSC 383).

[6] Mr. Weagle appealed the relocation decision.

[7] Ms. Kendall relocated to Ottawa with Adele in March of 2023. The Nova Scotia Court of Appeal overturned the relocation decision on June 28, 2023 (*Weagle v. Kendall*, 2023 NSCA 47) and reinstated the parenting arrangement in place prior to trial. On August 24, 2023, Justice MacKeigan granted an order (the August 24, 2023, Order) requiring Adele's relocation back to Nova Scotia.

[8] The matter was remitted for rehearing which proceeded before me on June 10, 11 and 12, 2024.

Summer parenting

[9] Mid-trial, the parties advised me that they had reached a decision regarding Summer 2024 parenting. The parties agreed that Mr. Weagle will have two weeks of block parenting time with Adele from June 30 to July 14, at which time Adele will return to her mother's care for two weeks of block parenting time. Mr. Weagle will have two further weeks of block parenting time with Adele from August 2, until August 16. Parenting time for Adele during the last two weeks of the summer remains unallocated pending receipt of this decision.

Proposed Relocation

[10] To resolve the competing requests regarding Adele's future I must resolve the following issues:

- a. Who bears the burden of proving that relocation is or is not in Adele's best interest?
- b. Is Adele's relocation to Ontario in her best interests?
- c. If not, what parenting arrangement is in Adele's best interests?
- d. Who must pay child support in respect of Adele, and in what amount?

The Burden

[11] Before addressing whether relocation is in Adele's best interests, I must first determine which party bears the burden of proving that a relocation is or is not in her best interests.

[12] Section 18H (1A) of the *Parenting and Support Act*, R.S.N.S. 1989, c. 160 (the Act) identifies the possible burdens of proof that apply in relocation cases.

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

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

(a) where there is a court order or an agreement that provides that the child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies; 16 parenting and support R.S., c. 160 APRIL 1, 2022

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

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

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

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

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

[13] Ms. Kendall says that Mr. Weagle bears the burden of proving that relocation is not in Adele's best interest. Ms. Kendall looks to Section 18H (1A) (b) and (d) as the basis of her position that Mr. Weagle bears the burden.

[14] First, with respect to Section 18H (1A) (b), Ms. Kendall says Mr. Weagle bears the burden of proving Adele's relocation is not in her best interests because Adele spends the vast majority of her time with her mother pursuant to the August 24, 2023, Order. That order directed that Adele return to Nova Scotia and be in Ms. Kendall's primary care so long as Ms. Kendall resided in Nova Scotia. Ms. Kendall says she is in substantial compliance with that order and that as a result Mr. Weagle bears the burden.

[15] Alternatively, but to the same effect, Ms. Kendall says Mr. Weagle bears the burden of proving Adele's relocation is not in her best interests pursuant to Section 18H (1A) (b), because Adele spends the vast majority of her time with Ms. Kendall

pursuant to an informal or tacit arrangement between the parties which has existed for many years.

[16] In response, Mr. Weagle says Ms. Kendall bears the burden of proving relocation is in Adele's best interest or in the alternative that both he and Ms. Kendall bear an equal burden of proving what is in Adele's best interests.

[17] First, Mr. Weagle says Ms. Kendall bears the burden of proving what is in Adele's best interest because Ms. Kendall's lawyer took that position at a conference prior to the trial dates being set. At that conference, Ms. Kendall's lawyer advised me and opposing counsel that Ms. Kendall bore the burden of proving relocation was in Adele's best interests. Mr. Weagle says that commitment is binding on Ms. Kendall, and she should not now be permitted to resile from that position.

[18] Secondly, and in the alternative, Mr. Weagle says both parties bear an equal burden of proving what is in Adele's best interest. He says Adele's parenting arrangement was imposed by Ms. Kendall and that his application to achieve a shared parenting arrangement has been before the court for several years. Because the current parenting arrangement was imposed on him Mr. Weagle says both parties bear an equal burden to establish what is in Adele's best interests.

[19] To resolve the issue of who bears the burden I must determine;

- a. Whether Ms. Kendall accepted that she bears the burden and if so, whether she can now resile from that position,
- b. Whether there is a court order directing that Adele spend the vast majority of her time with Ms. Kendall,
- c. Whether there is a tacit or informal arrangement between the parties that Adele would spend the vast majority of her time with Ms. Kendall,
- d. Whether other reasons exist to require that both parties bear an equal burden of proving what is in Adele's best interests.

[20] I will consider each of these issues.

Did Ms. Kendall accept that she bears the burden and if so, can she now resile from that position?

[21] Ms. Kendall accepts it was stated at a conference before me that she bears the burden of proving relocation was in Adele's best interests but says she can resile from that position because the assumption of that burden was a misstatement of the law and is not binding on her as it is inconsistent with the law.

[22] The Act addresses the burden. I must apply the Act in allocating the burden. As the party seeking to relocate Adele, the Act would only assign the burden of

proof solely to Ms. Kendall if Adele spent substantially equal time in the care of each party pursuant to a court order, agreement, or a tacit or informal arrangement. Because Adele did not spend substantially equal time in the care of each party the Act would not place the burden of proving that relocation was in Adele's best interests solely upon Ms. Kendall. As a result, the facts of this case do not support a conclusion that Ms. Kendall bore the burden.

[23] I find it is appropriate to apply the burden of proof as required by Section 18H (1A) of the Act, which in this case would not place the burden solely on Ms. Kendall. I find Ms. Kendall can resile from the position taken at conference regarding the burden as that position was not consistent with the Act.

Was there a court order directing that Adele spend the vast majority of her time with Ms. Kendall?

[24] Ms. Kendall says a court order exists which stipulates that Adele spends the vast majority of her time in her mother's care and for that reason Mr. Weagle bears the burden of proving relocation is not in Adele's best interests.

[25] Mr. Weagle says no such order exists.

[26] The Court of Appeal in overturning the relocation decision, gave the following direction regarding future parenting at paragraph 61 "Given the parties were previously without an order, pending re-hearing they shall, subject to any

written agreement between them or other interim court order, revert to the parenting arrangement the judge described at para. 10 of her decision.” (*Weagle v. Kendall, supra*)

[27] In addition to the Court of Appeal’s stipulation that the existing parenting arrangement would continue pending trial, I must also consider the August 24, 2023, Order. That order required Adele be returned to Nova Scotia and she would be in Ms. Kendall’s primary care provided Ms. Kendall resided in Nova Scotia.

[28] I find that Ms. Kendall did relocate to Nova Scotia and has been in compliance with the August 24, 2023 Order, placing Adele in her primary care.

[29] The parenting arrangement set out in the August 2023 Order provided that Adele would spend, on average 54 hours in a two-week period in her father’s care (excluding additional shared time for holidays) which equates to approximately 16% of the available hours in a two-week period. Based on this parenting arrangement Adele was in her mother’s care for the vast majority of her time.

[30] I find that because Adele has, since at least the issuance of the August 24, 2023 Order, spent the vast majority of time in Ms. Kendall’s care, clause 18H (1A) (b) requires that Mr. Weagle bear the burden of proving relocation is not in Adele’s best interests.

Was there a tacit or informal arrangement between the parties that Adele would spend the vast majority of her time with Ms. Kendall?

[31] Ms. Kendall also looks to clause 18H (1A) (d) and says that because Adele is in her primary care and because she has consistently acted as Adele's primary care parent, Mr. Weagle bears the burden of proving relocation is not in Adele's best interests.

[32] Mr. Weagle says he did not agree to an informal or tacit arrangement where Adele would spend the vast majority of her time with Ms. Kendall. He says Ms. Kendall imposed the current arrangement on him, and trial was his only means of challenging that imposed arrangement.

[33] In overturning the relocation decision, the Court of Appeal in *Weagle v. Kendall, supra* referred to the "arrangement" in place between the parties, and at paragraph 5 of the decision noted Mr. Weagle's parenting time with Adele was based on an informal arrangement between the parties.

[34] I find that the facts establish an informal arrangement did exist between the parties wherein Adele would spend the vast majority of time in her mother's care. Given such an informal arrangement existed, I find clause 18H (1A) (d) also places the burden on Mr. Weagle of proving relocation is not in Adele's best interests.

Are there other reasons to require that both parties bear an equal burden of proving what is in Adele's best interests?

[35] Clause 18H (1A) (e) provides that for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child. I have found that clauses 18H (1A) (b) and (d) place the burden of proving relocation is not in Adele's best interests on Mr. Weagle. Because I have found that clauses (b) and (d) apply, clause (e) has no application.

[36] In order to prevent Adele's relocation, Mr. Weagle must prove relocation is not in her best interests.

The double bind question

[37] Section 18H (3) of the Act prohibits me from asking or permitting Ms. Kendall being asked, if she would relocate to Ottawa without Adele if I prohibit Adele's relocation. This question is referred to as the double-bind question. As noted by Justice Beaton on behalf of the Nova Scotia Court of Appeal in *Weagle v. Kendall*, *supra* the Act prohibits the court or the opposing party asking the [double bind] question but does not prohibit the relocating party, as part of its litigation strategy, putting the information forward voluntarily (paragraph 43). Justice Beaton concluded the Act does not prohibit the (double bind) information

from being offered, nor does it prohibit it from being used by the judge when offered. In this case Ms. Kendall has volunteered she intends to return to Ottawa in August of 2024. Mr. Weagle notes Ms. Kendall has advised the court she intends to move regardless of whether Adele's relocation is permitted or denied.

[38] In light of Ms. Kendall's stated plan, I must decide first if it is in Adele's best interests to relocate to Ottawa. If the answer to that question is yes, Adele will relocate and remain in her mother's care. If the answer to that question is no, Adele will not relocate. The practical reality will be that Mr. Weagle will have to assume Adele's primary care in Ms. Kendall's absence.

Is relocating to Ontario in Adele's best interests?

[39] In considering Ms. Kendall's relocation request I must give paramount consideration to Adele's best interests (Section 18H (1)).

[40] Justice Beaton, on behalf of the Nova Scotia Court of Appeal in *Weagle v. Kendall, supra*, identified the best interests of the child as the sole question that drives relocation cases:

1 Relocation cases are driven, like all parenting cases, by the question of the best interests of the child(ren). In its recent decision in *Barendregt v. Grebliunas*, 2022 SCC 22 the Supreme Court of Canada recognized the burden presented to judges in cases of relocation:

[8] Determining the best interests of the child is a heavy responsibility, with profound impacts on children, families and society. In many cases, the answer is difficult -- the court must choose between competing and often compelling visions of how to best advance the needs and interests of the child. The challenge is even greater in mobility cases. Geographic distance reduces flexibility, disrupts established patterns, and inevitably impacts the relationship between a parent and

a child. The forward-looking nature of relocation cases requires judges to craft a disposition at a fixed point in time that is both sensitive to that child's present circumstances and can withstand the test of time and adversity.

[41] Justice Karakatsanis in *Barendregt*, *supra*, observed that the best interest inquiry is “‘highly contextual’ because of the multitude of factors that impinge on the child’s best interest” (paragraph 97). Justice Karakatsanis also observed that the inquiry into whether a relocation is in a child’s best interests is a highly fact-specific and discretionary inquiry (paragraph 152).

[42] Section 18H (4) of the Act directs me to assess Adele’s best interests on this relocation question by considering ten factors. The first of those ten factors is an assessment of the best interests factors set out in Section 18(6) of the Act.

[43] In considering Ms. Kendall’s relocation request I must remain focused on Adele’s best interests and not focus on the implications of the relocation on her mother (see *Weagle v. Kendall*, *supra* paragraph 56).

[44] I must take all relevant factors into account and compare and balance the advantages and disadvantages of each competing parenting plan to determine whether relocation is in Adele’s best interests (*D.A.M. v C.J.B.*, 2017 NSCA 91). In *D.A.M. v. C.J.B.*, *supra*, the Court of Appeal accepted that the balancing that should occur required that “the disruptive impact the proposed relocation could have on the child had to be weighed against the benefits the child was likely to enjoy if relocation was permitted” (paragraph 33).

[45] I must also give effect to the principle that Adele should have as much contact with each parent as is consistent with her best interests (Section 18(8) of the Act and *D.A.M. v C.J.B.*, *supra* at paragraph 75).

Adele's best interests

[46] I will now consider the best interest factors which are particularly relevant to Adele's situation. While I have considered all the identified best interest factors set out in Section 18(6) of the Act, the weight I attach to individual factors will depend on the circumstances.

Adele's physical, emotional, social and educational needs, including the need for stability and safety, taking into account her age and stage of development and her history of care;

[47] In considering the history of Adele's care and her needs including her age and stage of development, I note Adele is five years old and has just completed Grade Primary at the Harrietsfield Elementary School. The evidence establishes that Adele is a happy, healthy little girl.

[48] The parties agree Adele has lived primarily with her mother since her parents separated when she was five months old. Ms. Kendall has been primarily responsible for booking and attending Adele's medical appointments.

[49] Adele has had parenting time with her father since her parents separated. Initially this parenting time was supervised at Ms. Kendall's insistence. Adele has

had unsupervised parenting time with her father since 2020, following his participation in urinalysis which was positive only for marijuana. Mr. Weagle says the parenting time he has had with Adele has been regular, consistent, and meaningful. There is no evidence to contradict Mr. Weagle's position. I accept that description of his parenting time with Adele.

[50] With respect to Adele's physical, emotional, social, and educational needs including her need for stability and safety I find that Adele's needs have been met in Nova Scotia. The parties have ensured that her physical, social, and educational needs have been met.

[51] Adele's emotional needs have been met in a co-parenting context in which she has, in recent years, been in her mother's primary care but has spent consistent time with her father, his partner, her half siblings and her extended paternal family. Adele's need for stability, safety and her emotional needs have been met within this family arrangement.

[52] I must now consider if Mr. Weagle has established Adele has needs that cannot be met or better met in Ottawa.

[53] Ms. Kendall says that Mr. Weagle has not demonstrated any concerns related to Adele's needs that indicate that residing with her mother in Ottawa is not in her best interests.

[54] Mr. Weagle agrees, and I accept, Adele's physical needs as well as her needs for safety and security can be met just as well in Ottawa as Halifax. He says Adele's emotional need for security is not met by her relocation to Ottawa. Mr. Weagle says Adele has already changed schools once and would face another period of adjustment if forced to change schools again.

[55] Apart from his position that moving Adele from her school will not meet her need for emotional security, Mr. Weagle has not identified any other specific emotional needs of Adele with respect to this particular factor which cannot be met in Ottawa.

[56] I will address Mr. Weagle's position that there is a serious disadvantage to Adele moving schools again when I consider the relocation factor set out in clause 18H (4) (d) which directly addresses the affect on Adele of removal from her family, school, and community.

[57] Subject to my findings with respect to other best interest and relocation factors, the evidence establishes Adele does not have any physical, emotional, social, or educational needs that cannot be met in Ottawa.

[58] In addition to considering whether Adele's needs have been met in Nova Scotia and could be met in Ottawa if she relocates, I must also consider if Adele's needs are better met by relocating to Ottawa.

[59] In considering if Adele's needs are better met by her relocation to Ottawa, I note Ms. Kendall says Mr. Weagle is less able to meet Adele's needs. Ms. Kendall tendered evidence of Mr. Weagle's historic involvement with drugs and his lack of reliability. She says Mr. Weagle and his witnesses have not been straightforward with respect to his historic drug use or the possibility that it continues.

[60] In addition, Ms. Kendall says Mr. Weagle's home life is chaotic and that there is less stability in Mr. Weagle's home. She says Adele does not have a bedroom at her father's home but rather sleeps with Mr. Weagle when at his home, that there are five children of different ages and needs in Mr. Weagle's home and that Mr. Weagle and his partner Ms. Beliveau exhibit erratic and unpredictable behaviour.

[61] Ms. Kendall says she is concerned about Mr. Weagle's level of supervision of Adele.

[62] Both Ms. Kendall and Mr. Weagle admit to past cocaine and marijuana use. Ms. Kendall admits to past use of mushrooms. Ms. Kendall says she no longer uses drugs but is concerned that Mr. Weagle still uses drugs.

[63] Ms. Kendall's concern that Mr. Weagle continues to use drugs is premised on her knowledge of his past use of drugs and a December 25, 2023, text message

she received from him while he had care of Adele. Ms. Kendall received two text messages in a row from Mr. Weagle on December 25, 2023. The first text was meant for Ms. Kendall, the second text was meant for Mr. Weagle's brother but was inadvertently sent to Ms. Kendall. The first text said (speaking of Adele), "She is "super busy playing" right now and wants to call you later." The second text said, "If Aimee comes over with some cash could she gets some of hat[sic] bottom bag shit." Ms. Kendall responded to the second text asking Mr. Weagle "What is hat[sic] bottom bag shit?" Sounds sketchy Like you texted the wrong person." Mr. Weagle responded saying "Bottom shelf shit lol And yes I was seeing if my brother had some homemade wine lol." Mr. Weagle was cross examined on these text messages and maintained his position that he meant to text his brother about wine.

[64] Ms. Beliveau on cross examination, testified she did not obtain bottles of wine from Mr. Weagle's brother and that she did not ever go pick up wine from him. Ms. Kendall says Mr. Weagle's text indicated either that he wanted a drink so desperately that he was prepared to purchase his brother's crappy wine or that he was looking to purchase something other than wine.

[65] Based on the evidence before me I cannot conclude that Mr. Weagle's text message was about marijuana. Mr. Weagle has a history of drug use but says that he no longer uses drugs. I do not have any evidence that he continues to use

drugs. I am not satisfied on the evidence that Mr. Weagle continues to abuse drugs.

[66] I note that although Ms. Kendall believes Mr. Weagle continues to do drugs, she has over time permitted his parenting time with Adele to increase and become unsupervised. Adele has continued to attend regularly at Mr. Weagle's home since those events and has, on three occasions since returning to Nova Scotia in August of 2023, had longer parenting time with Mr. Weagle at Ms. Kendall's request due to her having to attend in Ottawa for personal reasons. In addition, going forward Ms. Kendall says she is prepared to permit Adele to remain with her father for four weeks in the summer and rotating Christmas and March Break holidays. The offers of this additional parenting time are inconsistent with a concern that Mr. Weagle is using drugs or more generally is an inadequate parent.

[67] With respect to whether Adele's needs are met while in her father's care or will be met if she is in her father's care, I heard evidence from Mr. Weagle and his partner Aime Beliveau. They have had regular parenting time with Adele for several years. Adele's experience at the Weagle/Beliveau home is different than her experience at the Kendall home. Adele shares the Weagle/Beliveau home with her siblings and a dog whereas at her mother's home she is the only child.

[68] Mr. Weagle says that he is not the person he was in 2019. He says that today he is a family man, a hard worker who cares deeply for his children.

[69] The evidence establishes that Mr. Weagle is in a committed long-term relationship, rents a home, is employed on a full-time basis, and is actively engaged with his children and with his partner in their parenting experience and as well is actively and frequently engaged with his parents and siblings.

[70] Although Ms. Kendall says Mr. Weagle's home is chaotic and lacks stability Adele spent several weeks in her father's care in the summer of 2023. There is no evidence that Adele's needs were not addressed during this extended parenting time with Mr. Weagle.

[71] I accept that Mr. Weagle has matured after he left his relationship with Ms. Kendall. He does not deny his history of drug use. His evidence which was not contradicted, details his day-to-day engagement with his family in his home and with his parents and brother at their homes and at the family cottage.

[72] The question I must consider is whether Mr. Weagle can meet Adele's needs and properly care for her while in his care. The answer to that question, in my view, is yes. The evidence does not establish that Adele's needs are not met when in her father's care. As a result, I am satisfied that Mr. Weagle and his partner can meet Adele's physical, emotional, social, and educational needs if she continues to live in Nova Scotia.

[73] In summary, from a needs-based assessment, the evidence establishes that Adele's needs have been met in Nova Scotia. The evidence establishes that going forward Adele's needs can be met in Ottawa and can be met if she lives in Nova Scotia. I am not satisfied that Adele's needs can be better met by relocating to Ottawa.

The proposed plans for Adele's care

[74] I will first consider Ms. Kendall's plan for Adele in Ottawa.

[75] Ms. Kendall says she has demonstrated that Adele can have a very good life in the Barrhaven subdivision of Ottawa (hereafter Ottawa). Ms. Kendall and Adele moved to Ottawa in March of 2023. Adele returned to Nova Scotia for several weeks in the summer of 2023, returning to her mother's care in Ottawa in August of 2023. While in Ottawa, Ms. Kendall and Adele occupied the home Ms. Kendall purchased in Ottawa and Adele attended a pre-primary class at the nearby Jockvale Elementary School.

[76] Ms. Kendall intends to return to the home she purchased in 2023. If permitted to relocate to Ottawa, Adele will again attend Jockvale Elementary School and will be enrolled in the French immersion program. Jockvale Elementary School is a five-minute walk from Ms. Kendall's home. There is a community recreation centre and swimming pool, public library and sports field across from Jockvale Elementary School.

[77] If she relocates with her mother, Adele will not need to attend a preschool program but will attend an afterschool program. Ms. Kendall says that she will pick Adele up at the afterschool program between 4:00 and 4:30 pm.

[78] Ms. Kendall tendered evidence from her father, brother and friend all of whom testified they could assist in providing care to Adele if Ms. Kendall needed support. Ms. Kendall will be Adele's main childcare provider.

[79] Ms. Kendall says her parenting plan allows Adele to remain in contact with her father and his family. Ms. Kendall proposes Adele spend four weeks with her father each summer (consisting of two two-week blocks separated by at least one week) and shared holidays which are noted to be Christmas, March Break and Easter on a rotating basis.

[80] Ms. Kendall says the evidence establishes that Mr. Weagle has unsuccessfully attempted to diminish Adele's quality of life in Ottawa and the support system available to them.

[81] Ms. Kendall says Mr. Weagle has failed to provide his own plan for Adele should she remain in Nova Scotia, beyond continuing school in his school district and having a partner who is a stay-at-home parent to care for Adele.

[82] Ms. Kendall says Mr. Weagle has not demonstrated that her proposed plan to relocate Adele to Ottawa is contrary to Adele's best interests.

[83] I find that Ms. Kendall's plan for Adele is detailed. Ms. Kendall owns a home close to where Adele will attend school. Adele will attend an afterschool program at that school. Adele's uncle and his wife live nearby, and her maternal grandfather will be available to assist when he is in Ottawa. I accept that Ms. Kendall's father and brother will have some capacity to assist Ms. Kendall in caring for Adele.

[84] In addition to considering Ms. Kendall's post-relocation plan for Adele I must also consider Mr. Weagle's plan for Adele if she remains in Nova Scotia. Ms. Kendall says Mr. Weagle has not put forward a plan for Adele beyond her continuing in his school district and having a partner who is a stay-at-home parent for Adele.

[85] Mr. Weagle's plan for Adele's care, if relocation is not permitted, is for Adele to live with him during the school year and for her to spend the majority of the summer with her mother.

[86] Mr. Weagle's plan for Adele, if relocation is not permitted, will look much like her current care arrangement when in his care in terms of school and engagement at his home. If she remains in Nova Scotia, Adele will live with her father, his partner Ms. Beliveau, and with her two younger brothers and her older stepbrother (Ms. Beliveau's son from a prior relationship). She will see her older

half brother (Mr. Weagle's son who lives with Mr. Weagle's former partner) occasionally as he visits Mr. Weagle's home from time to time.

[87] Mr. Weagle says Adele has transitioned nicely into Grade One and has made friends at her school. Adele will continue at the Harrietsfield School and has started taking the bus to and from school. Adele will not require after school care but rather will go home after school as Mr. Weagle's partner has chosen to be a stay-at-home parent. Mr. Weagle's evidence is that Adele has her own bedroom at his home and has her own toys and books in her room.

[88] Mr. Weagle has described the day-to-day routine in his home as structured during the week but more relaxed on the weekend.

[89] Mr. Weagle says that if Adele spends the school year with him, he will enroll her in a Sparks group which meets on Tuesday evenings at 6:30pm in the recreation centre next to Adele's school.

[90] Mr. Weagle also says his family spends time at his parents' home and at his brother Jason's. Mr. Weagle says his brother Jason has a granddaughter who is just a month in age apart from Adele and that these two girls "love spending time together." Mr. Weagle also says his parents, uncle and cousin all own cottages on the same road in Hackett's Cove. He says his children, his brother's children and his parents spend time at his parents' cottage in July and August and on cross

examination testified that the cottage is also used on extended weekends. On redirect examination Mr. Weagle testified that the weekend prior to the trial he had been at his parent's cottage with Adele, his two younger boys, his brother and his brother's youngest son.

[91] If relocation is not permitted, Mr. Weagle proposes the following parenting arrangement for Adele and Ms. Kendall: one weekday and one weekend video conference, a five-week summer visit (expanding to seven weeks in 2025), every March break, and a period of time at Christmas break.

[92] I find that both parents have put forward plans for Adele that take her needs into account. I am not satisfied that the plan for Adele's care in Ottawa is better than Mr. Weagle's plan for Adele or that Adele's needs are better met in the Ottawa based plan.

Each parent's willingness to support the development and maintenance of the child's relationship with the other parent;

[93] The evidence establishes that both parties support the development and maintenance of Adele's relationship with the other parent.

[94] This factor is neutral in terms of assessing whether relocation to Ottawa is in Adele's best interests.

Cultural, linguistic, religious and spiritual upbringing and heritage, including the child's Aboriginal upbringing and heritage, if applicable;

[95] Adele is an indigenous child.

[96] Mr. Weagle acknowledges Adele's indigenous heritage and questions the importance that Ms. Kendall places on Adele's heritage as Ms. Kendall is actually moving further away from Mi'Kmaq territory. He says Ms. Kendall's plan does not address how she will maintain Adele's cultural continuity as a Mi'kmaw child.

[97] That said, Mr. Weagle acknowledges Ms. Kendall, and her father are best suited to teach Adele about her Mi'kmaw heritage. He says his proposed plan whereby Adele would spend the summer with her mother would give Adele time to participate in indigenous events.

[98] Ms. Kendall says Mr. Weagle has not established that Adele moving to Ottawa is against her best interests with respect to her indigenous heritage. Ms. Kendall says there is no indication that Adele cannot continue connecting with her culture and heritage while residing in Ottawa. Ms. Kendall says Ottawa provides a unique place to learn about and connect with her heritage, but offered no details of how Adele would be better able to access indigenous support or programming in Ottawa or what that support or engagement would entail.

[99] Ms. Kendall's father deposed that recently he was accepted as a First Nation member and noted that neither Ms. Kendall nor Adele currently have status. He deposed that he is connected to an indigenous centre in Ottawa which offers

cultural programs and health and other services to indigenous people and which Adele could access if living in Ottawa.

[100] I find that fostering Adele's understanding of her indigenous heritage and her connection with other indigenous persons is important and in her best interests. Although I have been provided with few details of how Ms. Kendall would promote this understanding and these connections, I accept that this could be better accomplished by living with her mother.

Child's views and preferences;

[101] The parties agree that this factor is irrelevant given Adele's age.

Nature, strength and stability of the relationship between the child and each parent;

[102] Mr. Weagle says Adele has a strong relationship with both of her parents.

[103] Ms. Kendall says she and Adele have an exceptionally strong relationship given her history as Adele's primary care giver. She does not suggest that Adele does not have a close relationship with her father. While she acknowledges that time with her father is very important, she says that it is not in Adele's best interest to lose her relationship with her mother given the strength and stability of that relationship. Ms. Kendall says this mother/daughter relationship is so strong that it is in Adele's best interests to let her relocate to Ottawa. Ms. Kendall says

that to deprive Adele of her mother's primary care relationship in Ottawa is not in her best interests.

[104] I accept that Adele has a close, stable, and positive relationship with both parents. I also accept that Adele has a strong relationship with her mother given the fact that Adele has been in her mother's primary care for most of her life.

[105] Although it is not in Adele's interest to be separated for long periods of time from either parent, in this case there is no option to avoid that result.

[106] The Act requires I look beyond Adele's relationship with her parents and consider the nature, strength, and stability of her relationships with extended family (both maternal and paternal).

Nature, strength and stability of the relationship between the child and extended family (siblings, grandparents and other significant persons in the child's life);

[107] Mr. Weagle says Adele's relocation is not in her best interests because of the negative impact relocation will have on her relationships with her younger brothers, her paternal grandparents, and paternal uncle and his family. Mr. Weagle says Adele's relationships with her younger brothers will be harmed by her relocation. He says Adele has a close relationship with his parents and his brother and his family. Mr. Weagle describes his family as being a close-knit family who spend a lot of time together.

[108] Ms. Kendall says Mr. Weagle overemphasizes the relationship between Adele and her siblings, particularly her two older siblings. Ms. Kendall acknowledges it is very important for Adele to maintain a connection with her siblings and extended family but says this can be done by spending every second holiday and four weeks in the summer, supplemented in between with video or telephone conferencing.

[109] I find Adele has a rich extended family experience in Nova Scotia. All of Adele's siblings are on her father's side. Her father has three other children, two of whom live with him. These two children are younger than Adele. Adele's older sibling lives with his mother and does not spend much time at Adele's father's home. In addition to these three siblings, Adele has a step sibling (Ms. Beliveau's son) who also lives with Adele's father and Ms. Beliveau. Adele sees her younger siblings and her stepbrother when she has parenting time with her father. The evidence establishes that Adele has a strong bond with her younger siblings, and a healthy bond with Ms. Beliveau's son and her father's oldest child.

[110] The evidence also establishes that Adele has a strong bond with her father's partner Aimee Beliveau.

[111] The evidence establishes that Adele has a strong bond with her paternal grandparents. The evidence establishes that Adele frequently has family time with her aunts and uncles and with her cousins.

[112] Justice Varpio in *Poluck v Poluck*, 2022 ONSC 2582 considered the importance of a child's relationship with a sibling and the importance of siblings seeing each other frequently:

139 A premium must be placed upon the importance of promoting the brothers' relationship. The boys may not be close until they are older, but the benefits they will reap from a strong sibling relationship will be meaningful. Indeed, strong sibling relationships give individuals emotional stability. Even if the goal of emotional bonding has yet to materialize, the long-term benefits of this phenomena are significant.

140 This factor therefore augurs strongly in favour of Gavin living in Sault Ste. Marie so that he can develop a strong relationship with Tucker. While the Mother and Ms. Riseborough will undoubtedly attempt to ensure that the two boys have as much contact as reasonably possible if Gavin were to move to Schaumburg, the vital importance of the boys seeing each other every second week must be given considerable weight.

[113] In *Tass v Jackson*, 2023 ONSC 6564, Justice Change held (in refusing a relocation request by the mother) that:

72 As outlined above, based on the applicant's view of the respondent's and R.J.'s relationships with the children and their roles in the children's lives, compounded by the two-and-a-half-hour to three-and-a-half-hour distance, the proposed relocation poses a significant risk to the children's relationships with their father and their half sister.

....

90 In the case-at-bar, I accept that the proposed move to Sarnia brings with it potential benefits, including for T. and R.; however, the significant risk to two of the children's closest relationships is far too high a cost for them to pay. In my view, the potential benefits that await T. and R. in Sarnia would cost them their current relationships with their father and their half-sister. Such a trade cannot possibly be in the children's best interests.

....

93 Accordingly, for the reasons outlined above, I find that it would not be in the children's best interests to relocate to Sarnia. Simply and summarily put, the risk to their relationships with their father and their half-sister is far too great.

[114] Justice Gates in *Nicol v Tremblay*, 2021 ABQB 6 dismissed a mother's application to relocate in part because of the proposed relocation's effect on sibling relationships:

99 Based on the numerous authorities that have considered this issue, I am satisfied that there is no principle that dictates that siblings, including half-siblings, should never be separated. As many of the cases suggest, this is just one factor that is to be taken into consideration in assessing the best interests of the child.

100 While the resulting separation of the siblings is not determinative of the issue before me, I place significant weight on the importance of keeping these two siblings together. Siblings are the only life-long relationship that most people ever have. As such, it is a very significant relationship that should be supported and nurtured. All of the authorities that have been provided to me underscore the importance of ensuring that siblings have the opportunity to enjoy the support and affection of each other.

101 In this instance, I take into consideration that these two siblings are both girls, unlike the situation in Jones and Zinck, but similar to the circumstances in McPhail and also N.M. I also take into consideration that there is a 7-year age difference between the two girls in this instance, as well as the fact that CJ has been a part of Cassandra's entire life. On the evidence before me, there is a close bond between the sisters. In my view, CJ's relocation to Manitoba would have a significant negative impact on this evolving and important relationship.

....

130The potential separation of siblings is a very important consideration in this case.

[115] In addition to considering the nature, strength, and stability of Adele's relationships with her siblings and her father's family I must also consider Adele's extended family relationships in Ontario.

[116] Adele's maternal grandfather lives in Ottawa, as does her mother's brother and his wife. This uncle and his wife are about to have their first child. Adele's grandfather's cousin also lives in the Ottawa area, but I am satisfied based on Adele's uncle's testimony that this individual and his family will not be a significant presence in Adele's mother's life in Ottawa.

[117] Ms. Kendall also identified a number of other relatives that live in Ontario. I do not have any evidence of how much Adele has seen or will in the future see any of these relatives.

[118] With respect to Adele's relationship with her maternal grandfather (Mr. Kendall) and Ms. Kendall's brother, the evidence establishes that Mr. Kendall has had a number of extended visits in Nova Scotia with Ms. Kendall and Adele prior to March of 2023. I accept that Adele and her grandfather have a close relationship in part due to the fact that Mr. Kendall attended here in Nova Scotia for these extended visits. This relationship was fostered without Mr. Kendall living in Nova Scotia. With respect to Adele's relationship with Ms. Kendall's brother and his family I accept that Adele saw them frequently after she moved to Ottawa, but I am not aware of how often Adele saw them prior to relocating to Ottawa in March of 2023.

[119] I find that in this case the separation of siblings is an important consideration. I find that given the nature, strength and consistency of Adele's relationships with her siblings, it is not in her best interest to be separated from her father's children or Ms. Beliveau's child.

[120] In addition, I find that given the nature, strength and stability of her relationship with her father's extended family it is not in Adele's best interest to be separated from her paternal grand parents, or her extended paternal family with whom she has had regular and consistent contact for most of life except for the period in 2023 when she relocated to Ottawa with her mother.

The ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co operate on issues affecting the child;

[121] Although Ms. Kendall says she and Mr. Weagle do not co-parent well due to Mr. Weagle's inability or unwillingness to engage with her, I find that the parties are able to communicate on issues affecting Adele. Ms. Kendall's affidavit attaches a number of communications with Mr. Weagle which establish that she feels free to raise issues with Mr. Weagle and that he and his partner, Ms. Beliveau are responsive to Ms. Kendall.

[122] I find that the parties' ability to cooperate on issues affecting Adele is a neutral factor in that it neither supports nor detracts from a conclusion that it is in Adele's best interest to relocate to Ottawa.

Civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child;

[123] The parties agree this factor does not apply to this relocation analysis.

Impact of family violence, abuse or intimidation, regardless of whether the child has been directly exposed;

[124] Ms. Kendall says there is no family violence, abuse or intimidation in her home but suggests the evidence supports a conclusion of a lack of stability and potential family violence or at the very least inappropriate behaviour in Mr. Weagle's home. She is concerned that Mr. Weagle continues to use drugs. Ms. Kendall's evidence refers to three incidents which support her view of potential

family violence. These instances include an incident where Adele said Mr. Weagle threw Ms. Beliveau onto the bed and another incident where Ms. Beliveau made a comment to her son which Adele repeated in Ms. Kendall's presence, and an incident where she saw Mr. Weagle hit his older son Aiden in the head.

[125] Mr. Weagle says Ms. Kendall seeks to assail him with exaggerated or false allegations of family violence in the hopes of bettering her trial position.

[126] With respect to Ms. Kendall's evidence that she saw Mr. Weagle hit his son Aiden on the head on a few occasions with an open hand, she confirmed on cross examination that this first happened shortly after she started dating Mr. Weagle (which was in 2017) and that in that interaction Aiden was upset and screaming, and Mr. Weagle lost his patience. She also said Mr. Weagle is not the kind of person who smacks his son all the time. The incident which Ms. Kendall addressed in her evidence happened a number of years ago. She provided no details of any subsequent interaction between Mr. Weagle and his son Aiden, nor did she cite any inappropriate or excessive discipline of Adele.

[127] Ms. Kendall's suggestion that Mr. Weagle threw Ms. Beliveau onto a bed was based on something she heard from Adele. Mr. Weagle was cross examined on this issue and denied throwing Ms. Beliveau onto a bed. I am not satisfied that

the evidence supports a conclusion that Mr. Weagle threw Ms. Beliveau onto a bed.

[128] I am not satisfied that Ms. Beliveau's comment to her son which she admits making in and of itself constitutes family violence, abuse, or intimidation. Ms. Beliveau acknowledged the inappropriateness of her comment. There is no evidence that Adele has overheard any other inappropriate comments by Ms. Beliveau.

[129] I am not satisfied that the evidence tendered by Ms. Kendall supports a conclusion that family violence, abuse or intimidation is occurring within Mr. Weagle's home.

The Other Relocation Factors

[130] Having considered the best interest factors set out in Section 18 (5) I must now consider the other nine specific relocation factors set out in Section 18H (4). I will now review those factors.

The Reasons for the Relocation

[131] Ms. Kendall's notice of her intention to relocate with Adele identified the following reasons for her move:

- a. The ongoing issue of inconsistent child support payments,
- b. Mr. Weagle's alleged employment instability,

c. Mr. Weagle's refusal to contribute to section 7 expenses,
particularly childcare,

d. Ms. Kendall's lack of personal support in Nova Scotia.

[132] Ms. Kendall says she has no support in Nova Scotia. She deposed that her family and friend support system are in Ottawa or proximity to Ottawa. In contrast, Ms. Kendall says Mr. Weagle's family demonstrates animosity toward her. They have not been helpful to her.

[133] Ms. Kendall is employed with Canada Mortgage and Housing Corporation (CHMC) as an account representative. She says that to progress within CMHC she must work within Ottawa's Head office. She says there is no ability to progress or advance within CMHC in Nova Scotia. If she resides in Ottawa, she could advance with CMHC or consider transfers within other government departments. She says advancing within or outside of CMHC will give her access to increased income. She says that because of her difficulty in receiving consistent child support from Mr. Weagle and because of his employment instability, it is imperative she take steps to adequately provide for Adele.

[134] Ms. Kendall also says Ottawa affords several opportunities for Adele such as access to a number of universities, exposure to a bilingual city, and the opportunity to appreciate, learn about and connect with her indigenous heritage.

Ms. Kendall says Ottawa specifically and Ontario more generally offers lower personal income tax, lower sales tax and a lower cost-of-living.

[135] In her reply affidavit Ms. Kendall deposed that her move was “about financially supporting Adele, connecting her to her family in Ontario, providing her consistency and stability in her everyday life and in her future plans. It is to provide me a secure support system so that I can properly care for Adele and support her as the main constant in her life.”

[136] Ms. Kendall relocated to Ottawa in March of 2023 and began working there. She says Adele thrived while they lived in Ottawa.

[137] Ms. Kendall relocated back to Nova Scotia in August of 2023, after the relocation decision was overturned. She said that after relocating back to Nova Scotia, she had difficulty at her job and was placed on unpaid leave for several months. She was permitted to return to work remotely on a six-month part-time contract and is expected to return to work full-time in Ottawa on August 1, 2024.

[138] In considering Ms. Kendall’s reasons for relocating, I am mindful of Karakatsanis J’s comments in *Barendregt, supra* wherein she cautioned against casting judgment on a parent’s reasons for moving, or allowing those reasons to deflect from the true focus of a relocation application:

[129] That said, the court should avoid casting judgment on a parent’s reasons for moving. A moving parent need not prove the move is justified. And a lack of a compelling reason

for the move, in and of itself, should not count against a parent, unless it reflects adversely on a parent's ability to meet the needs of the child: *Ligate v. Richardson* (1997), 34 O.R. (3d) 423 (C.A.), at p. 434.

[130] Ultimately, the moving parent's reasons for relocating must not deflect from the focus of relocation applications — they must be considered only to the extent they are relevant to the best interests of the child

[139] Mr. Weagle says Ms. Kendall's reasons for relocating show that relocating is in Ms. Kendall's best interests but not Adele's. Mr. Weagle says although Ms. Kendall speaks of potential employment opportunities in the Ottawa area, she has not produced any evidence of such opportunities. Nor has she provided evidence that potential employment opportunities only exist in Ottawa.

[140] Mr. Weagle observed Ms. Kendall suggests that Ottawa is a better place to live without producing any evidence relevant to Adele to establish that proposition.

[141] Mr. Weagle says Ms. Kendall does not have a stable, reliable support base in Ottawa. Mr. Weagle observes that Ms. Kendall's support team are not as available to her as she suggests. Mr. Weagle says Ms. Kendall and her father both exaggerated the proximity of her family to Ottawa. Mr. Weagle says that in her initial affidavit Ms. Kendall deposed that she had family members support in Ottawa or proximity to Ottawa but admitted on cross examination that none of the identified relatives (other than her brother and family) live in proximity to Ottawa.

[142] With respect to the family that Ms. Kendall does have in Ottawa, Mr. Weagle says Ms. Kendall's father divides his time between Canada and the Philippines and it is not clear how much of the year he will be available to assist Ms. Kendall in caring for Adele. Mr. Weagle says Ms. Kendall's brother and his wife are expecting their first baby, which will reasonably impact their ability to assist with Adele's care. Mr. Weagle says Ms. Kendall's intention to rely on her friend is without merit as this person has never had Adele in her home overnight nor ever cared for Adele. Mr. Weagle notes that this friend works full time and has two children of her own.

[143] I find that the evidence which Ms. Kendall has advanced has focused primarily on the advantages she will realize from relocating.

[144] I find that Mr. Weagle has been paying by way of garnishment monthly child support in the amount of \$251.03 as ordered by Justice Cormier together with \$100 per month to satisfy his arrears. Justice Cormier's child support order was set at \$251.03 to take into account the travel costs which Mr. Weagle would incur as a result of Adele's relocation. Although the relocation decision was overturned the child support ordered by Justice Cormier has not yet been modified.

[145] I find that a number of Ms. Kendall's reasons for relocating such as financially supporting Adele, providing her with consistency and stability in her

everyday life and in her future plans, and connecting her to her Ontario family are neither borne out as being achieved by a move to Ontario nor more likely to occur as a result of a move to Ontario.

[146] While Ms. Kendall deposed that her employment opportunities are greater in Ottawa, I find there is no immediate employment advantage to Ms. Kendall from moving. Ms. Kendall deposed she must now return to Ottawa to keep her position; however, the evidence does not establish that Ms. Kendall's original decision to move to Ottawa was necessary in order for her to keep her position with CMHC. The evidence does not establish that Ms. Kendall could not financially support Adele from Halifax or that she could better support Adele from Ottawa.

[147] With respect to Ms. Kendall's position that her move is "about providing [Adele] consistency and stability in her everyday life and in her future plans" I do not accept that the move is necessary to achieve any of those positive outcomes. Nor do I accept that relocating Adele to Ottawa will create more consistency and stability in her everyday life and in her future plans. The evidence does not establish that Adele's life in Nova Scotia lacks consistency and stability, nor does it establish that Adele's future plans (which are not at all apparent at age 5) are better achieved in Ottawa. Ms. Kendall's desire to move to provide consistency and stability in Adele's everyday life suggests that Adele will have more

consistency and stability if her father and her paternal family are not part of her everyday life, or that their presence in her life creates inconsistency and instability. I do not accept that Adele's father's presence in her life or the presence of her paternal family creates inconsistency or instability in her everyday life.

[148] With respect to Ms. Kendall's position that she has no support in Nova Scotia and that her friends and family support system are all in Ottawa or near Ottawa I am not satisfied that Ms. Kendall's Ottawa support system is as robust as she suggests.

[149] Ms. Kendall's father lives in her home in Ottawa. He does not own a home of his own. On May 17, 2024, Ms. Kendall deposed that her father visits the Philippines to escape Canadian winters. She deposed that he plans to buy a condo in Ottawa in 2025 or 2026. In an affidavit sworn on May 27, 2024, Mr. Kendall deposed that he divides his time between Canada and the Philippines.

Notwithstanding the evidence that Mr. Kendall divides his time between Canada and the Philippines and goes there to escape Canadian winters, on cross examination Mr. Kendall denied that he spends part of each year in the Philippines. He stated he has only been there twice in the last four years and that one of those two visits was extended because of a medical issue. I find that Mr. Kendall resiled from his sworn evidence that he divides his time between Canada

and the Philippines as that position was inconsistent with Ms. Kendall's position that Mr. Kendall is a critical part of her Ottawa based support system. I accept that Mr. Kendall will have some availability to assist Ms. Kendall when he is not traveling out of the country.

[150] I accept that Ms. Kendall's brother and his wife live and work in Ottawa and would have some availability to assist Ms. Kendall in her care for Adele even though they will be having their first child soon.

[151] With respect to the proximity of Ms. Kendall's extended family to Ottawa and their availability to serve as her family support system I am not satisfied that the family she has identified are as available as she suggests. Ms. Kendall deposed that she had family support in Ottawa or proximity to Ottawa. On cross examination Ms. Kendall conceded the persons she identified as living in Ottawa or in proximity to Ottawa actually live a considerable distance from Ottawa. Although these relatives live hundreds of kilometers away from Ottawa Ms. Kendall insisted, they would be available to care for Adele. None of these persons confirmed their availability to care for Adele and Ms. Kendall did not explain how relatives who live a considerable distance from Ottawa can reasonably be expected to assist in Adele's care. I am not satisfied that Ms. Kendall can provide better care to Adele in Ottawa because she has relatives who live hundreds of kilometers away from Ottawa.

[152] Although Ms. Kendall deposed that her entire support network is in Ottawa or in proximity to Ottawa, and that that support system is strong and stable, the evidence establishes that prior to March of 2023 Ms. Kendall had not lived in Ottawa as an adult. She lived briefly in Ottawa when she was in high school. Ms. Kendall deposed that she attended a Secondary School when she moved from the United States to Ottawa, but she returned to the United States to “finish my high school years.” Ms. Kendall did not specify when she moved to Ottawa as a child or how long she stayed but I am satisfied that she did not remain in Ottawa for a lengthy period of time as a child.

[153] After high school Ms. Kendall remained in the United States and attended university in Oklahoma. She moved from Oklahoma to British Columbia in 2009 (where her father and brother were then living) and stayed there for two years while she attended an art institute and then a small college in Vancouver. She then moved to Newfoundland and then back to British Columbia to attend university in Victoria before moving to Nova Scotia. Ms. Kendall did not depose what year she moved to Halifax, but it appears that she moved to Nova Scotia in 2015 as she deposed that she moved to Nova Scotia two years before meeting Mr. Weagle in 2017.

[154] Ms. Kendall deposed that she spent summers and holidays in Ontario as a child when she lived in the United States.

[155] With respect to Ms. Kendall's nonfamily supports, it appears that Ms. Kendall has not developed any relationships in Nova Scotia that she considers a support system despite the fact that she lived here for nearly nine years (2015 to March of 2023 and again since August of 2023). Although Ms. Kendall says she has no support in Nova Scotia after living here for many years, it appears she was able to find a supportive friend within a short time of relocating to Ottawa. Ms. Kendall filed an affidavit from Dayna Page who lives in the same neighbourhood as Ms. Kendall's home in Ottawa. Ms. Kendall met Dayna Page sometime after she relocated to Ottawa in March of 2023. Ms. Page attended the trial virtually. On cross examination Ms. Page was asked if she could take a day off work to care for Adele if Adele was sick. Ms. Page answered that she did not know and that it would all depend.

[156] Ms. Kendall's evidence in support of relocation describes the past year as being an unhappy one for Adele as she lived in the North End of Halifax where she had no friends and attended school in Williamswood away from her primary residence. In considering that evidence I note that Ms. Kendall sold her home in Dartmouth in 2023 (where Adele had lived since 2019) and moved to Ottawa in March of 2023 after the Court granted her permission to relocate but before the appeal of that decision was decided. The Appeal decision was rendered on June 28, 2023. In August of 2023 Ms. Kendall advised Mr. Weagle that she intended to

remain in Ottawa and that Adele would fly back and forth on alternate weekends and that Adele's weekly in person contact with her father would thereafter be virtual contact, not in person. Mr. Weagle did not agree with this approach and filed an emergency motion seeking Adele's return to Nova Scotia. On August 24, 2023, Justice MacKeigan ordered Adele's return. Thereafter, Ms. Kendall relocated to Nova Scotia and found a furnished Air BnB home in the Hydrostone area in the North End of Halifax which she rented for the year. Adele had not lived in the North End prior to September of 2023. Ms. Kendall chose not to live in or near her old neighbourhood in Dartmouth where Adele had lived for most of her life and chose not to live near Adele's school in Williamswood. Ms. Kendall provided little evidence of her attempts to integrate Adele into the North End Community in which she lived since September of 2023. Adele was in Ottawa for a few months in 2023 and made a number of friends in her community but appears to have not made any neighbourhood friends in the ten months she lived in the North End of Halifax.

[157] Ms. Kendall says that after she and Adele relocated to Ottawa in March of 2023 "Adele immediately made friends." Ms. Kendall deposed that Adele would often ask to remain longer at her afterschool program because Adele was having fun with her friends. Ms. Kendall says Adele made a best friend and that Adele and this best friend would meet up in the morning and walk into the school

building together. Ms. Kendall also gave evidence regarding a refugee family that moved into her community in April of 2023, and that Adele considers this family's youngest son to be her "favourite brother". Ms. Kendall tendered an affidavit from Ms. Page who deposed that her daughters met Adele in the playground near Ms. Kendall's Ottawa home (she does not say when, but I find it must be sometime after March of 2023) and that they got along together immediately and started to develop meaningful friendships.

[158] In contrast to Ms. Kendall's evidence of strong friendships Adele created in Ottawa, I find that Ms. Kendall was dismissive of Mr. Weagle's evidence regarding the relationships Adele created in the ten months she attended the Harrietsfield Elementary School. Although Adele made friends at a local playground in Ottawa Ms. Kendall offered no evidence of Adele making any friends in her new North End Community, or Ms. Kendall's efforts to assist Adele in making neighbourhood friendships, Harrietsfield Elementary School friendships (other than taking Adele to one birthday party) or maintaining any friendships from her prior community in Dartmouth.

[159] Ms. Kendall also dismisses Mr. Weagle's evidence regarding Adele's relationships with her extended family. For example, Mr. Weagle's mother, Christine Weagle, deposed that Adele loves seeing her cousin Sophia who is also five years old. Christine Weagle deposed that Sophia and Adele see each other

about once a month and are inseparable when they play together. In her reply affidavit, Ms. Kendall deposed that Sophia and Adele are not close. She also deposed that Adele has not mentioned Sophia. I find that Ms. Kendall's dismissal of Christine Weagle's evidence regarding Adele's engagement with Sophia is without merit. I accept that Adele frequently sees her extended paternal family and that includes her cousin Sophia. The fact that Adele may not mention Sophia to her mother is not a basis for me to conclude that Adele does not see Sophia or to conclude that Adele and Sophia do not enjoy seeing each other.

[160] I have given careful consideration to Ms. Kendall's reasons for relocating. I find that Adele does not gain a strong advantage from moving to Ottawa. Ms. Kendall gains an advantage of being closer to her brother and her father when he is in Canada. These relationships will benefit Adele, but I am not satisfied that fostering these relationships justifies removing Adele from her life in Nova Scotia.

The Effect on the Child of Changed Parenting Time and Contact Time Due to the Relocation;

[161] Adele has parenting time with her father every week on Tuesday evening and every second weekend. Relocating to Ottawa would end her regular in person parenting time with her father and with her father's partner Ms. Beliveau and with her siblings.

[162] Ms. Kendall says Mr. Weagle has not demonstrated that the proposed change to the parenting arrangement is not in Adele's best interest. She says the months she spent in Ottawa in 2023 demonstrated that Adele can maintain consistent contact and regular parenting time with Mr. Weagle.

[163] There is no dispute that Adele lived in Ottawa from March of 2023 until August 25, 2023, except for the 5-week period of July 6th to August 12, 2023, when she had parenting time with her father. Ms. Kendall says Adele can maintain a meaningful connection with her father and his family from Ottawa. I do not accept this brief period as proof that eliminating Adele's consistent and regular parenting time with her father and her father's family would have no negative effect on Adele. The question to be answered is what effect the change will have on the child. I find that removing Adele's regular contact time with her father and his family will not be a positive life experience for Adele and that it will have a negative effect on her.

The Effect on the Child of the Child's Removal from Family, School and Community due to the Relocation;

[164] In addition to considering the effect on Adele of a change in her parenting arrangement I must consider the effect on Adele of removing her from her school, her family, and her community.

[165] Ms. Kendall says Mr. Weagle has at times overemphasized Adele's connection to her father, siblings, and extended family. She says Mr. Weagle has failed to prove that Adele's connection with her father's family could not be maintained while she resides in Ottawa.

[166] I have already addressed the fact that Adele has three half siblings and a step sibling from whom she would be separated if she were to relocate. I find that it would be emotionally harmful for Adele to be removed from her siblings with only occasional visits during the school year.

[167] With respect to her school, Adele attended Harrietsfield Elementary School since September of 2023 where she is about to complete Grade Primary. Ms. Kendall suggests Adele's experience at Harrietsfield Elementary School has been less positive than her three months attending Jockvale Elementary School in Ottawa.

[168] Ms. Kendall says the feedback about Adele's experience at Harrietsfield Elementary School is in contrast to her more positive experience in Ottawa. Ms. Kendall tendered Adele's recent report card and Adele's June 28, 2023, Kindergarten report card.

[169] I find that the issues Ms. Kendall identifies in Adele's Harrietsfield Elementary School experience appear to have been present in somewhat similar form when she attended Jockvale Elementary School.

[170] This fact is borne out when Adele's most recent report card is compared to her Kindergarten report card. Adele's current report card noted that she needs improvement in four areas: Interacting Positively, Working Collaboratively, Using Time Efficiently and Following Instructions/Directions/Rules and Routines. These areas of needed improvement were explicitly or implicitly identified in Adele's Jockvale Elementary Kindergarten report and are consistent with areas of improvement and focus identified in her Kindergarten report.

Adele's current report card also notes Adele needs consistent reminders to follow class rules and routines. This is similar to the comment made in Adele's Kindergarten report card that Adele is working on following classroom routines.

[171] I note that Adele was four years old when the Ontario Kindergarten report was issued. The Kindergarten report notes that Adele was working on following classroom routines, and strategies for exercising self control in reference to calming herself down after being upset. The report notes that after an educator helps calm her, she is able to talk about how she feels. That report says that "Over the summer, Adele is encouraged to talk about the practices and strategies that she can use to help self-regulate during the day."

[172] That report also noted that the team will continue to guide Adele when working in a group as sometimes she can be quick to tears when engaging in play with others.

[173] I find that Adele experienced many of the same challenges in her Ontario Kindergarten class as she experiences at Harrietsfield Elementary School.

[174] The evidence does not support Ms. Kendall's suggestion that Adele's problems are much different this year than last, nor does the evidence establish that any difficulties experienced by Adele are caused or exacerbated by the Harrietsfield Elementary School or Adele's commute from the North End to the Harrietsfield Elementary School. Adele's most recent school report tendered at trial says that "Adele is beginning to transition into grade primary nicely." That comment indicates that Adele is maturing into her grade level – that she is making progress toward a desired goal.

[175] If Adele relocates to Ottawa, she will enter grade one at Jockvale Elementary School. Adele has been away from that school for over a year. The transition back to Jockvale Elementary School would be Adele's third school transition in less than two years. If she remains in Nova Scotia, Adele will return to the same school where she has just completed grade primary.

[176] The Harrietsfield Elementary School has been working with Adele this past school year to manage her behaviours. I do not see that it is in her best interests to leave that school and attend a school in Ontario. Adele is familiar with the Jockvale Elementary School but has not attended there since she was four. I find transitioning to a new school and leaving her existing school will be a stressful experience for Adele, with little justification for the stress.

[177] Although Adele has only been at the Harrietsfield School for one year she has made friends at the school. She has had play dates with children at the school and has been invited to three birthday parties. That she has developed friendships this year is not surprising as she is described in her Term 1 School Report Card as a social, friendly, and caring student.

[178] Adele would certainly make friends and reengage with existing friends if she relocated to Ottawa. However, she has just started to form friendships at her School in Nova Scotia which would be severed if she relocates. Leaving her friends behind will not be an easy or pleasant experience for Adele.

[179] Although the option of video conferencing and telephone contact is helpful for families who live apart, it is not a substitute for in person engagement for children as young as Adele and her younger half siblings.

[180] I find that it would be difficult for Adele to leave her family, school, community, and friends in Nova Scotia. I am concerned that Ms. Kendall fails to appreciate the negative impact which this permanent transition would have on Adele.

The Appropriateness of Changing the Parenting Arrangements

[181] Ms. Kendall says given the fact she had been Adele's primary care giver and has demonstrated Adele's ability to maintain a meaningful connection with Mr. Weagle and her Nova Scotia family (when she lived in Ottawa in 2023) the proposed parenting arrangement seems completely appropriate. Ms. Kendall says Mr. Weagle has not demonstrated that her proposed change in Adele's parenting arrangement is not appropriate.

[182] Mr. Weagle does not support a change in his parenting relationship with Adele which would result from her relocation to Ottawa.

[183] I find that the change in parenting arrangement which would result from a relocation to Ottawa is not justified in these circumstances. Mr. Weagle has satisfied me that Adele's relocation is not in her best interests and as a result a reduction in his parenting time is not appropriate.

[184] Remaining in Nova Scotia and transitioning to her father's care will be difficult for Adele. I accept that she and her mother are very close and that being separated from her mother will be difficult for Adele. But I must consider Adele's

best interests “in the round” and not just from the perspective of the child’s relationship with one parent. The best interests and relocation factors mandate that I engage in a comprehensive assessment of all Adele’s relationships and circumstances. When Adele’s best interests are considered together with the other relocation factors, I find that being separated from her mother and remaining in Nova Scotia with her father, her siblings, and her extended paternal family while attending the Harrietsfield school and fostering her existing friendships is in her best interests.

[185] As Ms. Kendall is relocating in August of 2024, and Mr. Weagle has satisfied me that relocation is not in Adele’s best interest, it is appropriate that she remain in Nova Scotia. As her father will be her only parent in Nova Scotia, he out of necessity must assume primary care of Adele. Because her mother is moving and Adele is not, I find that it is in her best interests to remain in the primary care of her father living with him, his partner and her three half siblings. I find that changing the parenting arrangement is appropriate given Ms. Kendall’s relocation to Ottawa.

Compliance with Previous Court Orders and Agreements by the Parties to the Application

[186] Mr. Weagle says Ms. Kendall did not comply with the directive given by the Court of Appeal in *Weagle v. Kendall, supra* that Mr. Weagle have parenting

time every second weekend and one day each week. Mr. Weagle says that notwithstanding the Court of Appeal's directive Ms. Kendall advised him that following his summer parenting which ended on August 12, 2023, she would not provide in person weekday contact between he and Adele, and that she intended to have Adele fly back and forth between Halifax and Ottawa every second weekend pending the rehearing of the matter.

[187] Mr. Weagle swore an affidavit on August 22, 2023, in support of his request for an emergency order forcing Ms. Kendall to return Adele to Nova Scotia. In that affidavit he swore that the Court of Appeal ordered that Adele's parenting schedule would revert to the informal schedule as described at paragraph 10 of Justice Cormier's decision (*Weagle v Kendall* 2022, NSSC 383). Justice Cormier confirmed that Mr. Weagle had Adele in his care every second weekend and one weekday per week with shared holidays and extra parenting time as agreed between he and Ms. Kendall. Mr. Weagle also swore that he had Adele in his care every Friday from 3:30 pm to Sunday at 6:00 pm and every Tuesday from 3:30 pm to 6:30 pm and a shared schedule for holidays and other parenting time as arranged.

[188] I find that Mr. Weagle was entitled to, but did not have, in person midweek parenting time with Adele between August 12, 2023, and August 25, 2023. I find that Ms. Kendall attending in Halifax with Adele for Mr. Weagle's in person

parenting weekend, arriving on a Friday flight at 2:12 pm and leaving on Sunday at 6:15 pm, would have ended his weekend parenting time much sooner than 6:00 pm.

[189] Mr. Weagle objected to Ms. Kendall's unilateral reduction in his in-person parenting time and obtained an order mandating Ms. Kendall to return Adele to Nova Scotia.

[190] Ms. Kendall did not contest any of these facts. In her affidavit Ms. Kendall swore that after the Court of Appeal overturned the relocation decision, she came up with an interim parenting plan. She deposed she created a schedule and coordinated flights.

[191] Mr. Weagle says Ms. Kendall's non-compliance is significant because it illuminates her lack of concern for Adele's stability and discloses a possibility of what Ms. Kendall may do if I order something with which Ms. Kendall disagrees. He says Ms. Kendall's willingness to follow court orders is questionable.

[192] Ms. Kendall says Mr. Weagle cannot claim that she failed to comply with any previous Orders or agreements. She says she relocated to Ottawa following Justice Cormier's decision permitting Adele's relocation and complied with Justice MacKeigan's order requiring Adele's return to Nova Scotia.

[193] I find that the Court of Appeal direction regarding Adele's parenting arrangements were unequivocal and binding on both parties. I find that Ms. Kendall did not comply with the Court of Appeal's direction. It was not open to Ms. Kendall to come up with an interim parenting plan. The Court of Appeal had taken that step. There was nothing for Ms. Kendall to decide or come up with other than a plan to transition Adele back to Nova Scotia, which she only did once ordered to do so by Justice MacKeigan. Ms. Kendall complied with Justice MacKeigan's order, but that order was only required because Ms. Kendall had not complied with the decision of the Court of Appeal.

[194] The Act requires that I consider each parties' compliance with previous court orders. Ms. Kendall demonstrated an unwillingness to follow the Court of Appeal's parenting direction.

Other factors that are not relevant

[195] The parties agree that the factors set out in clauses 18H (4) (g) and (j) are not relevant to this relocation analysis. There are no restrictions placed on Adele's relocation in a previous court order or agreement as contemplated by clause 18H (4) (g) and it is agreed that Ms. Kendall gave the required notice of changes to decision making and parenting time caused by the relocation thereby eliminating clause 18H (4) (j) as a factor.

[196] Clauses 18H (4) (h) and (J) direct me to consider the additional expenses that may be incurred by the parties due to relocation and the transportation options available to reach the new location. Mr. Weagle does not cite these two factors as reasons why relocation should not be permitted.

[197] I retain jurisdiction to consider the costs associated with Adele traveling between Ottawa and Halifax when I consider prospective child support to be paid in light of my parenting decision.

Conclusion regarding Relocation Request

[198] After reviewing the evidence, the relocation framework and the legislative best interest factors, I find that it is not in Adele's best interests to relocate to Ottawa. Ms. Kendall's request to relocate Adele to Ottawa is denied.

Primary care of Adele

[199] I have determined Adele should not relocate to Ontario. I order that Adele remain in Nova Scotia. As Ms. Kendall is moving, I order that Adele be placed in her father's primary care in Nova Scotia.

[200] As weekly in person contact between Ms. Kendall and Adele will not be possible, Ms. Kendall shall have parenting time on the following schedule:

- i. By video at least two evenings per week for a minimum of 30 minutes (Monday to Thursday), and at least one time per weekend for a minimum of 30 minutes (Friday to Sunday);
- ii. In person on the following schedule:

- (a) Ms. Kendall shall have parenting time with Adele between August 16, 2024, until September 1, 2024, at which time Adele will transition to Mr. Weagle's home.
- (b) In the summer of 2025, Ms. Kendall shall have Adele in her care for five (5) weeks starting on Sunday, June 29, 2025, until Saturday, August 9, 2025.
- (c) For all future summers, Ms. Kendall shall have seven (7) consecutive weeks of block parenting time at dates to be determined by the parties.
- (d) Ms. Kendall shall have Adele in her care for eight (8) days every March Break.
- (e) Mr. Weagle shall have Adele in his care every Easter weekend (Good Friday to Easter Monday).
- (f) In even-numbered years, Ms. Kendall shall have Adele in her care for the first part of Christmas break until December 27th at which time Adele will return to Mr. Weagle's care.
- (g) In odd-numbered years, Mr. Weagle shall have Adele in his care for the first part of Christmas break until December 27th at which time Adele will be in Ms. Kendall's care until at least one day prior to the start of school classes in January.
- (h) Ms. Kendall shall have additional parenting time with Adele in Nova Scotia as agreed upon by the parties.

[201] for the parties to exercise their allotted parenting time; specifically,

- i. Ms. Kendall shall be responsible for booking all necessary flights for air travel.

- ii. Ms. Kendall will advise Mr. Weagle of the flight details (flight numbers, date and time of arrival or departure, etc.) at least two months prior to the date of travel.
- iii. Ms. Kendall shall pay for all costs associated with her parenting time and shall ensure that she or a person approved by her, and Mr. Weagle will travel with Adele until such time as Adele is deemed old enough to travel by plane unaccompanied by a family member; and,

[202] As noted, I reserve jurisdiction to take Ms. Kendall's costs associated with travel to facilitate parenting time into account when considering child support.

[203] A conference will be convened shortly to address child support.

Decision making

[204] The parties agree that they should have joint decision-making authority for Adele. Mr. Weagle seeks an order that the parties will defer to a third-party expert if they are unable to agree on an issue requiring a decision. Ms. Kendall proposes that she be permitted to make the final decision if the parties cannot agree, or in the alternate that the parties defer to the applicable third-party professional if they cannot agree on what is in Adele's best interests with respect to a major decision. I find that it is appropriate for the parties to have joint decision-making authority and that in the event they cannot agree on a major decision that they defer to a third-party professional (including but not limited to a physician, teacher or any other professional involved in Adele's care and development).

Costs

[205] Costs will be addressed after child support is fixed.

Daniel W. Ingersoll, J.