

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Toxqui v Hofmann*, 2025 NSSC 163

Date: 20250505

Docket: HFD *SFH1201*, No. 073125

Registry: Halifax

Between:

Ivan Agustin Camacho Toxqui

Applicant

v.

Christine Hofmann

Respondent

COSTS ENDORSEMENT

Judge: The Honourable Justice Cindy G. Cormier

Written Submissions: Ms. Hofmann - February 11, 2025
None filed by Mr. Toxqui

Counsel: Ivan Toxqui, self-represented Applicant
Christine Hofmann, self-represented Respondent

By the Court:

1 Introduction

[1] The proceeding which is the subject of this cost application was started by the father, Ivan Agustin Camacho Toxqui, in January 2024. He filed a Notice of Variation Application pursuant to section 17 of the *Divorce Act* and Section 15 of the *Maintenance Enforcement Act*.

[2] The parties have two children together M (8) and E (4) and the children have lived primarily with their mother since the parties separated in October 2020. The father sought: a shared parenting arrangement; retroactive variation of child support and / or termination of child support; and pursuant to section 15 of the *Maintenance Enforcement Act* to address a dispute between the parties about the amount of arrears as of **October 1, 2023**.

[3] The mother, Christine Hofmann, objected to the father's request to move to a shared parenting arrangement. In October 2024 and in November 2024, the mother wrote to the court stating that the children were "flourishing under the current structure, and any alteration could destabilize their routine and sense of security." However, the mother requested changes / clarifications to the existing Corollary Relief Order, and specifically to address the issue of childcare during her

required travel for work and / or an order clarifying the parties' authority to travel with the children.

2 Issue

[4] Should I award costs to either party?

2.1 Appearances

[5] The parties appeared before me for a conference on March 14, 2024 and they appeared before a settlement conference judge on April 26, 2024. No agreement was reached.

2.1.1 Agreement on Child Support October 28, 2024

[6] The matter was referred to case management and on October 28, 2024, the parties agreed to a Consent Variation Order (Family Proceeding) which was issued November 26, 2024, terminating Mr. Toxqui's obligation to pay Ms. Hofmann childcare costs in the amount of \$158.00 per month effective September 1, 2023.

[7] With the cooperation of Ms. Hofmann, the issue could have and should have been resolved through the Maintenance Enforcement Program. Mr. Toxqui was successful.

2.2 Agreement on Travel January 9, 2025

[8] There was no agreement with respect to changing the regular parenting time to a shared arrangement. The mother claimed the father had not presented any evidence to prove a material change of circumstances and the matter should be dismissed.

[9] However, after some discussion, the parties agreed to the following clauses being included in a Travel Order:

1. Either party may travel with the children for up to one (1) month without the consent of the other party.
2. The traveling party must provide the other party with three (3) months notice in writing of the anticipated travel.
3. Each party is limited to exercising the one (1) month of travel with the children once per year.
4. The provisions for holiday parenting time and March break provided in the Corollary Relief Order are to be respected when scheduling travel.

Both parties sought clarification. Mr. Toxqui was opposed to an order dispensing with his consent on a go forward basis. There was mixed success.

2.3 Regular Parenting

[10] I discussed with the parties several issues related to the admissibility of the proposed evidence at the hearing. I also reviewed the evidence with a view to identifying whether a material change of circumstances related to the existing parenting arrangement had been identified by either party. Following my review and some discussion, Mr. Toxqui declined my invitation for him to proceed with the formal presentation of his evidence in support of his request for a shared parenting arrangement. This was the most important issue before the court. Mr. Toxqui chose not to present evidence on the issue. Ms. Hofmann was successful as the issue was dismissed by the court.

3 Civil Procedure Rules

[11] Civil Procedure Rule 77.03(3) provides that, “Costs of a proceeding follow the result.” Costs are in my discretion. A decision not to award costs must be principled.

[12] On February 21, 2025, Ms. Hofmann filed cost submissions. Mr. Toxqui did not file any submissions on costs.

4 Quantum of costs

[13] Ms. Hofmann sought costs in the amount of: **\$1,600** for legal consultation; time off work for hearings, 11 hours at hourly rate of \$67.70 = **\$744.70**; and

compensation for her time as a self represented litigant, 62 hours at an hourly rate of \$67.70 = **\$4,197.40**; and disbursements (including expert fees **\$860**; printing, copying, and administrative expenses of **\$200**) for a total costs award of **\$7,602.10**.

She argued:

Given that the Civil Procedure Rules permit lump sum awards in circumstances where tariff-based amount may not adequately reflect the costs incurred, I respectfully request a lump sum cost award.

5 Circumstances of the Parties and the Children

[14] The mother was born in Biel, Switzerland in 1979, and her mother (the children's grandmother) resides in Switzerland.

[15] The father was born in Puebla, Mexico in 1986.

[16] The parties began living together in March 2015, and they were married on September 2, 2017 in Toluca, Mexico. Mr. Toxqui applied for his Canadian Permanent Residency through the spousal sponsorship program, and he immigrated to Canada when Ms. Hofmann returned to Canada in early 2018. He became a Permanent Resident of Canada on or about March 2, 2023.

[17] The father had previously been employed in various positions including, but not limited to, the following: a commercial pilot; a baggage handler at Swissport at the "GTA airport"; and a "mover" for a Toronto company (Rent-a-Son). The

father obtained his Canadian pilot license in 2019, and he worked with EVAS Air until he lost that job.

5.1 Separation

[18] The parties **separated in October 2020**. The children have been in the mother's primary care since the parties' separation.

[19] The father suggested that following the parties' separation, the mother initially limited his parenting time to approximately four hours per week. The father then began exercising his parenting time two evenings each week (Mondays and Thursdays) and one overnight every other weekend.

5.2 The Children's Regular Routine

[20] The children have attended a CSAP French school. The mother speaks fluent French, and she volunteers at the children's school for special events and regularly attends the children's school when parents are invited to do so. The mother has also regularly picked the children up from school if they are sick or kept them if there is a school "snow day" or a school Professional Development day. The mother suggested she has paid for: the children's clothing; their extracurricular activities; all birthday party gifts; and "childcare." As noted above,

the father was court ordered to contribute to childcare costs until in October 2024, the order was retroactively terminated as of September 1, 2023.

5.3 Consent Interim Order August 24, 2021

[21] In June 2021, the parties agreed to a term granting Ms. Hofmann primary care of the children, and Mr. Toxqui parenting time every Monday and Thursday after school until 7:00 pm and overnight Saturday to Sunday every second weekend.

5.4 Consent Order November 21, 2021 - Travel

[22] A Consent Order was granted ordering Mr. Toxqui to execute a Consent to Travel Letter allowing Ms. Hofmann to travel to Columbia with the children between December 22, 2021 and January 5, 2022. According to the order, the travel was “travel permitted under the Consent Interim Order issued August 24, 2021.”

5.5 Settlement Conference May 2022

[23] In May 2022, further to settlement conference discussions and the agreement of the parties, the father’s weekday parenting time on Monday and Thursday evenings continued, but his weekend parenting time expanded from one overnight (Saturday to Sunday) to two overnights every second weekend (Friday to Sunday).

[24] The father was employed with Gordon Food Service Canada Limited at the time the parties reached their agreement. His work schedule was Monday to Friday between approximately 3:00 am and 4:00 pm. The mother worked mostly from home for McDonald's Restaurants of Canada, and she had a flexible work schedule except for a requirement to at times travel for work.

[25] Post Covid December 2022 / prior to the parties finalizing their agreement in April 2023, the mother confirmed with the father that she was required to travel for work 20% of her work time. The mother reported that for a period between approximately December 2022 and June 2023, the father charged the mother a daily fee if she asked him to care for the children while the mother was travelling for work during her own parenting time.

5.6 Delay in finalizing CRO / Travel

[26] Mr. Toxqui suggested that the delay in the court issuing the Consent Corollary Relief Order was due to Ms. Hofmann asking that a new term be added to the Consent Corollary Relief Order, requesting a term allowing her to travel internationally with the children without Mr. Toxqui's consent.

[27] According to correspondence provided by Mr. Toxqui's lawyer to the court and Ms. Hofmann following the settlement conference and the agreement reached

in May 2022, Ms. Hofmann made various requests for changes to the draft Corollary Relief Order prepared by Mr. Toxqui's lawyer. For instance:

1. Ms. Hofmann requested the inclusion of Maintenance Enforcement Program clauses in the Corollary Relief Order; and
2. Ms. Hofmann had requested a travel clause be added to the order.

There was a delay in finalizing the parties' agreement reached in May 2022.

5.7 Notice of Application March 2023

[28] On March 6, 2023, prior to the parties filing, Ms. Hofmann filed a **Notice of Application**, attaching a letter to the court dated August 16, 2022 inquiring about the draft Corollary Relief Order. She included an Affidavit, stating in part that she has had primary care of the children since the parties separated in October 2020 (87%), and she requested the issue of travel to Switzerland in the Summer of 2023 and / or "summer travel outside of Canada" be dealt with prior to the Consent Corollary Relief Order – consented to on May 19, 2022 – being issued by the court.

[29] On March 21, 2023, Mr. Toxqui's former legal counsel filed a letter in reply to Ms. Hofmann's query about the draft Consent Corollary Relief Order and additional clauses. Mr. Toxqui's legal counsel explained that after the parties had

reached a full and final agreement: Ms. Hofmann had requested the inclusion of a clause registering the Corollary Relief Order with the Maintenance Enforcement Program (MEP) office; there was a delay due to legal counsel sickness / death in family; and Ms. Hofmann then raised new issues be dealt with, including travel.

5.8 Uncontested Motion for Divorce

[30] On April 4, 2023 Mr. Toxqui's legal counsel filed on his behalf a **Notice of Withdrawal of Response or Answer**; an Uncontested Motion for Divorce; an Affidavit Supporting an Uncontested Divorce with draft Consent Corollary Relief Order attached; a Consent to Uncontested Divorce Based on Written Agreement signed by both parties; and a designation of Address for Delivery signed by Ms. Hofmann.

5.9 Consent Corollary Relief Order issued April 12, 2023

[31] On April 12, 2023, the Corollary Relief Order was issued reflecting the terms of the final agreement which was placed on the court record at a settlement conference in May 2022, and any other agreements reached between the parties between May 2022 and April 4, 2023.

6 Notice of Variation Application April 21, 2023

[32] On April 21, 2023, Ms. Hofmann filed a **Notice of Variation Application** seeking to address the issue of consent to travel without Mr. Toxqui's permission.

In support of her application, on April 25, 2023, Ms. Hofmann filed messages sent between Ms. Hofmann to Mr. Toxqui from December 27, 2022 through April 25, 2023. She filed the messages as evidence of her effort to obtain Mr. Toxqui's permission to travel to Switzerland with the children to her mother's, Fanny Hofmann's, home during the summer of 2023.

6.1 Parties Messaging / Negotiations related to Travel Summer 2023

[33] On December 27, 2022, Ms. Hofmann wrote to Mr. Toxqui advising him that the children had been gifted plane tickets by their maternal grandmother and / or aunt to Switzerland for the summer (2023). She advised the father she was considering travelling the first part of M's summer break, and that she fully intended to make up Mr. Toxqui's missed parenting time.

1. On January 9, 2023 Mr. Toxqui replied, stating:

We have to finish our pending stuff with court before going out of country. up to you.

Mr. Toxqui was expressing concern about Ms. Hofmann's failure to comply with her financial obligations to him per their agreement reached in May 2022.

2. On February 7, 2023 Ms. Hofmann responded:

We will be spending the month of July in Switzerland. I will arrange for video calls during our stay and you'll be able to compensate your parenting time upon our return.

3. On February 12, 2023 Mr. Toxqui replied: "I don't agree."

4. On February 16, 2023 (8:13 am) Ms. Hofmann wrote to Mr. Toxqui:
I'm ok to go by myself, I have to take care of some personal things in Switzerland. I can give you the list of camps M did in July last year, I won't pay for them as my mom offered to pay for the kids trip to Switzerland and take care of them while I work from there.
5. On February 16, 2023 (6:23pm) Mr. Toxqui replied: "Ok".
6. On February 17, 2023 (3:01pm) Mr. Toxqui added:
Could you please confirm what your intentions are? Are you just leaving for a month? Dates? Any plan on providing child-care while you are out of the country?
7. On February 17, 2023 (3:49pm) Ms. Hofmann responded:
As mentioned, my mom and sister are willing to pay for the trip (Christmas present) and they would be caring for the kids while I work part-time in Switzerland. If you want the kids to stay in NS you will cover their cost. E is still in daycare, M will need 4 camps.
8. On February 17, 2023 (5:47pm) Mr. Toxqui responded:
Now you are trying to make it seem like "I want the kids in NS" good luck with that. (my emphasis)
Just for the record, I'm not signing any travel authorization until we finish all our pending stuff, that includes paperwork, payments and a change of attitude on your side (making decisions without consulting me, harming the kids and using them as your weapon) if you really want to go, you better start working on that.
Have a nice day.
9. On February 19, 2023 (1:03pm) Ms. Hofmann wrote:
Apologize. I assumed you wanted the kids to stay in Halifax when you said "I don't agree." Can you please explain what it is you want?
10. On February 19, Mr. Toxqui replied:
I don't agree with your stupid attitude anymore
You need to confirm WHY you don't want to sign up E to pre-primary
You need to sign the agreement.
You need to pay in FULL the agreement
You need to give me evidence of you taking therapy (real one, not your stupid online courses that makes you an "expert") I'm done with your attitude of harming the kids and using them as your revenge against me (very well

documented, please don't try to dig deeper) I'll take as evidence ONLY when you have proof of SEVERAL therapy sessions with a LICENSED psychiatrist or psychologist and ME having an interview with them after that (paid by you).

And then... you can ask me every time you want to leave the country with the kids.

11. On April 25, Ms. Hofmann responded as follows:

I would like to provide more details on our trip to Switzerland this summer:

We are planning to leave July 6th, and will return on Thursdays August 3rd. We are staying at the children's grandmother Fanny Hofmann's house at (address given).

The purpose of the trip is for the children to experience my culture, visit family and practice their German and French with family and friends.

Also they will experience Swiss National Day on August 1st. We haven't been to Switzerland for 3 years due to Covid.

This will impact your parenting time and I'm suggesting the following compensation:

You can have the kids on the prior weekend before we leave (July 1 -2) which is usually my weekend. You can have video calls with the children 1 x per week on Thursdays at 2:30pm your time (7:30pm Swiss time). If you want more weekends in August to further compensate your parenting time, that's ok with me. Also as already agreed the kids will spend the week of August 14-20 entirely with you.

Please let me know if this works for you.

12. April 25, 2023 (12:39) Mr. Toxqui's response:

You better pay off the agreement and then we can discuss any travel abroad you ask me first, you don't tell me what's the plan.

13. April 25, 2023 (12:41) and (12:49) Mr. Toxqui states:

(12:41) I still need confirmation of your mental well-being. Your actions against the kids during the last two years raised several concerns.

(12:49) Do you really though(sic) that because you played "nice" for a few weeks everything is forgotten?

Now this "trip" is for the well being of the kids? Do you realize that you keep changing the reason? That makes me more scared about your mental stability. Please try to comply with my demands first. If you already forgot. You can find them at the beginning of this conversation and several chats around the same time (Dec 22-Feb 23)

Have a nice day

6.2 The Father's Position on Parenting

[34] On **May 1, 2023**, Mr. Toxqui filed a Parenting Statement. He confirmed the children were residing with Ms. Hofmann primarily and that his parenting time included “Mondays and Thursdays after school until 19:00h and every other weekend from Friday at 18:00 to Sunday at 18:00.” He also confirmed that he was **not seeking any changes to the children’s living arrangements, to his parenting time, no additional specified parenting time, no additional weekend time or weekday time and no changes to holiday or special occasion parenting time. He confirmed he was working Monday to Friday 3:00 am to 3:00 pm.** (my emphasis).

6.3 Ms. Hofmann's Position on Travel.

[35] In her conference letter filed with the court on May 23, 2023, in advance of the court appearance on May 30, 2023, Ms. Hofmann requested “permission for myself, Christine Hofmann, the custodial parent with 85% custody to travel with my children, M and E, to my home country of Switzerland this summer” stating at the end of her letter “I firmly believe that reasonable travel opportunities that align with the children’s best interests should not be needlessly restricted or subjected to constant court intervention.” She attached the parties’ messages reproduced above at paragraphs 30.

6.4 Alternate Dispute Resolution

[36] In his pre-conference summary filed May 23, 2023, Mr. Toxqui referenced paragraph 25 of the parties' Corollary Relief Order (clause directing alternative dispute resolution or counseling before filing a variation application under section 17 of the *Divorce Act*).

6.5 Conciliation

[37] On May 8, 2023, the parties attended a conciliation meeting to try to resolve the issue of Ms. Hofmann seeking to travel outside of Canada with the children in the summer of 2023. The conciliator observed that neither party appeared to understand the terms of their Consent Corollary Relief Order, however, they noted that Mr. Toxqui was represented by legal counsel while negotiating the terms of the parties' Consent Corollary Relief Order. The conciliator suggested to both parties that they should seek further legal advice regarding the terms of their Corollary Relief Order issued on April 12, 2023.

[38] Mr. Toxqui had referenced the Consent Corollary Relief Order and specifically paragraph 17 (dealing with summer vacation). He stated that he would not consent to the parties' children travelling internationally unless Ms. Hofmann complied with all aspects of the Consent Corollary Relief Order. In particular, Mr. Toxqui was concerned that Ms. Hofmann had not paid him \$9,000 as agreed

pursuant to their Consent Corollary Relief Order. He stated he was in debt by **\$18,000** after paying for legal counsel to assist him in responding to “Ms. Hofmann’s false accusations” against him.

[39] Mr. Toxqui also expressed concern about Ms. Hofmann allegedly changing her reason for wanting to travel to Switzerland with the children in the summer of 2023. He also raised a concern about Ms. Hofmann offering him only one video chat per week with the children if permitted to travel to Switzerland with the children.

[40] In his evidence, Mr. Toxqui referenced Ms. Hofmann’s **Notice of Application filed on May 6th, 2023 (actually March 6, 2023, which was before the Joint Application for Consent Corollary Relief Order was filed on April 4, 2023)**, and he referenced the court appearance before me on May 30th, 2023. He suggested there was never any issue with respect to travel and that he had agreed Ms. Hofmann could take the children to Switzerland in the summer of 2023.

[41] Mr. Toxqui claimed he had always been in support of the requested travel, but that Ms. Hofmann took advantage of the opportunity to limit his parenting time, he stated in part:

As just one example of many, during her summer 2023 trip to Switzerland which lasted 4 weeks, Christine used it as an opportunity to further limit my contact with

the children. Despite my **non-opposition to the trip**, Christine filed a Notice of Application on May 6th, 2023 (**sic March 6, 2023 Notice Application and April 21, 2023 Notice Variation Application**) seeking to vary the terms of the Corollary Relief Order to include a clause allowing her to travel out of Canada with the kids on a go forward basis. (my emphasis)

Mr. Toxqui's suggestion that he had never opposed Ms. Hofmann's summer 2023 trip to Switzerland and / or his representations at the hearing in January 2025 that there had never been an issue with respect to him giving his consent to Ms.

Hofmann to travel with the children, is not supported by the evidence and or the court's running file.

6.6 Order for Travel November 2021

[42] In November 2021, the Honourable Justice Elizabeth Jollimore (as she then was) granted a Consent Order allowing Ms. Hofmann to travel to Columbia with the children between December 22, 2021 and January 5, 2022. J. Jollimore commented in the recitals: "which is travel permitted under the Consent Interim Order issued August 24, 2021."

6.7 Notice of Variation Application "Travel" Summer 2023

[43] In advance of the appearance for the motion / hearing on January 9, 2025, Mr. Toxqui stated the following about the previous court appearance before me via telephone on May 30th, 2023, regarding travel:

On May 30th, 2023, at our phone conference with the judge that **lasted no more than 5 minutes**, her request wasn't even mentioned, because of that, during her

trip, Christine restricted my access to a handful of short video calls, stating that “the court reviewed and approved that schedule”, even though I requested her several times to have at least 1 video call every day for a few minutes before kid’s bedtime and downloading a kid friendly app so the kids could call me anytime from their tablets.

I reviewed the audio recording of the court appearance May 30, 2023 (10:46 am – 11:08 am). I had a transcript prepared for the parties prior to the hearing in January 2025.

[44] The court transcript reflects that on May 30, 2023, I advised both parties that I had read their pre-conference letters, both dated May 23, 2023, and I was not inviting either of them to make further representations before I had an opportunity to address both parties. In part I stated:

1. It appeared to me the only issue properly before me on May 30, 2023 was summer travel to Switzerland. I understood Mr. Toxqui had raised other issues, but I indicated I would not be addressing any other issues that day.
2. I asked Ms. Hofmann if she was willing to confirm she would make up Mr. Toxqui’s lost parenting time before leaving for Switzerland with the children and I asked if she was willing to promise additional video calls between Mr. Toxqui and the children during their trip

(which implied more than her suggested one call per week). Ms. Hofmann agreed.

3. I asked Mr. Toxqui if he would be willing to consent to the children travelling to Switzerland for the four weeks as requested by Ms. Hofmann based on the mother's confirmation / representations that she would make up his parenting time before the children left for Switzerland and she would **arrange more than one call per week**. Mr. Toxqui stated on the record "Yeah, I'm consenting that. I never was trying to block her in any way. I just tried..." I interrupted Mr. Toxqui, then I stated, "do you need an order for this or are you able to work this out amongst yourselves?" Mr. Toxqui responded "yeah, I'm fine to consent."

Based on the parties' agreement, no order was prepared by the court.

[45] Turning my mind to the other concerns Mr. Toxqui had raised in his pre-conference summary dated May 23, 2023, but which were not properly before me on May 30, 2023, I stated to the parties:

Great. Thank you very much. Please, please **remember that an order is an order, Ms. Hofmann. You need to follow it, and I'm not happy that you're not following it.** We probably wouldn't be here if you did follow it. Mr. Toxqui, I'm sorry that she's not following the order and that we had to have this discussion, but if she follows through that's great. **If you have to come back to us another**

time because she hasn't followed through, we might be in a different situation. Okay?

Given Mr. Toxqui's information suggesting Ms. Hofmann was not following all the terms of the Consent Corollary Relief Order and given that Mr. Toxqui did ultimately consent to the travel as requested by Ms. Hofmann, I was not prepared to grant an order dispensing with the need for Ms. Hofmann to obtain Mr. Toxqui's consent for future travel. However, Mr. Toxqui's claims that he has never opposed Ms. Hofmann's requests to travel with the children are not true.

7 Parties' Circumstances post CRO and Travel Summer 2023

7.1 Mr. Toxqui re-partnered

[46] Mr. Toxqui secured his own residence in or around May 1, 2021, and he began dating Mary Anne Phalen in July 2022. Mr. Toxqui has suggested that in or around **July 2023**, he and Ms. Phalen planned to move together to a new neighbourhood.

[47] Mr. Toxqui explained that Ms. Phalen had a son, W, who Mr. Toxqui described as "a very extroverted and playful kid." Mr. Toxqui observed that Ms. Phalen and Mr. Stuart, W's father, worked well "together for the well-being of their son" and **he had hoped Ms. Hofmann would agree to a similar arrangement with respect to M and E, and she would also agree to adjust child support.** (my emphasis).

[48] In **August 2023**, Mr. Toxqui advised Ms. Hofmann he wanted to negotiate changes to the parties' parenting arrangement included in their Corollary Relief Order. He was seeking a shared parenting arrangement. On or about August 22, 2023 Mr. Toxqui wrote the following, in part, to Ms. Hofmann:

NO JUDGE RULED ANYTHING, we came up with our own agreement, which worked well on the previous situation.

You must know that M and E are OUR kids, and we can reach agreements without anyone else's intervention, so I don't see any reason for getting this matter into any kind of court, you can voluntarily retire your application for child support and we can make our own decisions.

...

As a final note, **I just want to remind you that no matter how long and hard you want to make it, the result will be the same, I'll end up having my kids 50% of the time**, as there's no reason you can come up with to avoid it. I don't see a reason to spend more money or time to get to the same result.

...

The **transition will happen no matter how hard you try, the only difference will be time and money** (witch(sic) you'll end up paying) I don't see the point in trying to avoid it...

...

I didn't call M's therapy "nonsense"

(my emphasis)

The parties' Consent Corollary Relief Order does not stipulate or in any way suggest Mr. Toxqui is entitled to demand or request Ms. Hofmann consider or enter into negotiations with him with the intent of changing the parenting arrangement to a 50/50 arrangement.

[49] On **September 14, 2023**, Ms. Hofmann advised Mr. Toxqui that she had scheduled therapy sessions for M with Katelyn Rowe at Lesley Hartman & Associates Inc. On September 15, 2023, Ms. Hofmann declined to engage in discussions regarding expanding Mr. Toxqui's parenting time to a schedule approximating them having equal time with M and E.

[50] In **October 2023**, Mr. Toxqui moved in with Ms. Phalen and part-time with her son W. In her affidavit sworn September 2024, Ms. Phalan suggested that although W initially lived mostly with her, that she and W's father, Mr. Stuart, began sharing "50/50 parenting time"... "as he got older."

[51] Ms. Phalen then went on to say that W "potentially has ADHD" and that after she and Mr. Toxqui moved in together, they worked together to address some of W's challenging behaviours including, but not necessarily limited to: "hitting, emotional outbursts, and general disrespect for the rules," and Ms. Phalen suggested she had observed W's behaviour improved at "home, at school, and during social activities."

7.2 Ms. Hofmann re-partnered

[52] Ms. Hofmann began dating Daniel Schloss in early 2023, and in or around March 2024, Ms. Hofmann moved in with Daniel Schloss in Armdale. Mr.

Schloss' daughter, B, was four years old, and Ms. Hofmann was pregnant with the couple's child at that time.

7.3 Review Clause included in the Corollary Relief Order April 12, 2023

[53] Ms. Hofmann acknowledged that although Mr. Toxqui had applied to vary the Corollary Relief Order pursuant to section 17 of the *Divorce Act*, that the Consent Corollary Relief Order also included a clause requiring that a “review of their parenting terms and the schedule of parenting time was to take place on or before July 1, 2024” and a further review clause which states that the parenting schedule may be renegotiated if “he returns to working as a pilot, resulting in a **new work schedule** for him and **different availability** for parenting time.”

[54] Specifically, in her affidavit sworn in March 2024, at paragraph 14, Ms. Hofmann references the review clause related to any change in Mr. Toxqui's employment schedule and she suggests there has been no change. I agree.

...

Review of Parenting Terms

23 The parties **shall review their parenting terms and the schedule of parenting time on or before July 1, 2024**, which contemplates the timeline when Elias will commence school.

24 If and when Ivan Toxqui **returns to working as a pilot, resulting in a new work schedule for him and different availability for parenting times, the parties will negotiate a new schedule using mediation or family counseling.**

25 Nothing in this order limits either party from seeking a variation based on a change in circumstances, as noted in section 17 of the Divorce Act. Before seeking court intervention, the parties shall attempt to resolve the variation issue through negotiations, Alternative Dispute Resolutions, or counseling. Ivan Toxqui and Christine Hofman shall communicate with the other parent as soon as possible if she or she is relocated for work reasons and provide confirmation of the work-related relocation from his or her employer

26 If court **intervention is necessary as a result of either party breaching the terms of this order, the responsible party may be ordered to pay costs** to the other party. (My emphasis)

[55] No evidence was provided about Mr. Toxqui returning to work as a pilot.

According to Mr. Toxqui's Statement of Income and Parenting Statement filed in January 2024, he was working with Gordon Food Services Monday through Friday and his hours were between 3:00 am – 3:00/4:00 pm generally but his schedule could vary by two hours without any advance notice.

[56] Nothing about Mr. Toxqui's or Ms. Hofmann's work hours has changed materially since April 4, 2023. Mr. Toxqui's and Ms. Hofmann's availability remains mostly the same.

[57] I note that paragraph 26 of the Consent Corollary Relief Order suggests that a breach of the order resulting in a need for court intervention may result in an order for costs. Mr. Toxqui did not file cost submissions / or any requests related to costs being awarded due to any failure by Ms. Hofmann to follow the terms of the Consent Corollary Relief Order after it was issued in April 2023. However, I

did consider his success with respect to the childcare issue and his partial but more limited success with respect to the travel order.

8 Notice of Variation Application filed by Mr. Toxqui January 2024 – shared care / child support

[58] On January 10, 2024, Mr. Toxqui filed a Notice of Variation Application pursuant to section 17 of the *Divorce Act*. He filed another Parenting Statement, seeking shared parenting, and termination of child support (the mother's 2023 income \$130,714 and the father's 2023 income \$87,962).

[59] Mr. Toxqui expressed concerns about Ms. Hofmann's parenting, including:

Ms. Hofmann failed several times by 1. not following the parenting time schedule. 2. Ms. Hofmann changed E's daycare provider without consulting with Mr. Toxqui. 3. For business trips, Ms. Hofmann allowed her mother time with the kids instead of giving Mr. Toxqui the first right of first refusal 4. Ms. Hofmann is continuing to post on social media about the marriage breakdown, implying she was abused and that Mr. Toxqui is a narcissist. 5. Ms. Hofmann has been psychologically abusive towards the kids by setting up scenarios to make the kids cry and suffer just to blame Mr. Toxqui and to turn the kids against him. 6. Ms. Hofmann does not always communicate with the children in a common language when both parties are present (English/ Spanish); 7. Ms. Hofmann refused to comply with collecting the kids from Mr. Toxqui's residence during weekday parenting time and did not want to continue to receive child support payments via e-transfer as agreed on May 2022, this forced Mr. Toxqui to make those changes in April 2023 so Ms. Hofmann would finally sign the papers.

8.1 Logbook

[60] Mr. Toxqui filed what he described as a "logbook of significant events, which contained a chronological compilation of the dates and events that occurred

that day.” Dates of events were included from **October 26, 2020** (separation date) through to January 5, 2024.

[61] Mr. Toxqui suggested “everything is backed up with text evidence (with more than 100 conversation screenshots) from WhatsApp, Our Family Wizard app, text messages and emails. None were attached as exhibits to his “logbook.”

[62] Many of the concerns being raised by Mr. Toxqui appeared to be concerns predating the parties’ Joint Application for Divorce, attaching their agreement, concerns which existed before May 1, 2023 when Mr. Toxqui filed his Parenting Statement referenced at paragraph 31, wherein he stated in part that he was:

not seeking any changes to the children’s living arrangements, to his parenting time, no additional specified parenting time, no additional weekend time or weekday time and no changes to holiday or special occasion parenting time. He confirmed he was working Monday to Friday 3:00am to 3:00pm.

[63] In his affidavit filed on January 10, 2024, Mr. Toxqui referenced the proceedings up to April 2023 and the parties’ Joint Application filed on April 4, 2023, claiming:

These attempts by Christine led to a prolonged process that ended in April 2023 when we reached our final Corollary Relief and Divorce Order but had already caused a huge financial burden which was a combined total of almost **\$50,000** CAD in unnecessary expenses.

Mr. Toxqui needed to prove a material change in circumstances since the granting of the last order.

[64] Mr. Toxqui also focussed on concerns which existed prior to the parties' separation in 2020, suggesting Ms. Hofmann "twists his words, taking everything out of context to make it seem like there is a conflict." He claimed he had "evidence in the form of videos, screenshots, written conversations and documentation as necessary to prove the statements made above."

8.2 Concerns Related to Summer 2023 trip to Switzerland

[65] Mr. Toxqui suggested that following the court appearance summarized above at paragraphs 41 and 42, Ms. Hofmann wrote the following to Mr. Toxqui in response to his requests regarding the children's travel to Switzerland during the summer of 2023:

We're going to follow the plan submitted and reviewed by the Court: video calls Mo & Thu. Kids will not have access to their tablets at my mom's in Switzerland – it's only for traveling. I will give you a link for video calls, they'll do it from my laptop.

[66] Mr. Toxqui replied to Ms. Hofmann by stating:

There was no plan submitted and reviewed. To my understanding and the judge said we weren't here if you (Christine) were following the agreement in the first place, can you guys sort it out?

You really want to fight that against the judge if I submit a complain(sic)?

No judge will approve that stupidity and you know it, please stop being a bad person, as already told you several times... the damage is for the kids, you are doing nothing to me.

[67] In his "logbook" which he submitted to the court, Mr. Toxqui acknowledged he had declined additional in person parenting time with the children as promised

and offered by Ms. Hofmann in advance of the children's trip to Switzerland in 2023 and / or he declined any make up time after the children's trip in 2023. Mr. Toxqui acknowledged that instead he had requested bedtime calls every night from Switzerland.

[68] Although Mr. Toxqui is correct when he states that I did not approve any specific contact and / or number of calls, Ms. Hofmann did arrange more than one call per week for the father with the children while they were in Switzerland for a month in the summer of 2023: a call on Mondays and one on Thursdays, consistent with the children's usual weekday contact with their father.

[69] I can say that when there is significant and / or ongoing conflict between parties, it is seldom in the children's best interests for there to be an increase in opportunities for that conflict to take place. I have often found that unless parents get along quite well, telephone calls every evening can be difficult for everyone instead of supportive and can cause stress for children and their caregivers.

8.3 Concerns included in Logbook dated after April 4, 2023

[70] I did review the concerns noted in Mr. Toxqui's logbook since April 4, 2023.

[71] Mr. Toxqui suggested that on September 4, 2023, Ms. Hoffman took one of his parenting days away without notice. He did not provide any context or indicate whether the day was made up.

[72] On a positive note, Mr. Toxqui acknowledged Ms. Hofmann had sent the children to stay with him between November 3 and November 9, 2023 while she was away on business, and the children had spent additional time with him December 7, 2023 through December 10, 2023.

[73] Mr. Toxqui expressed concern about Ms. Hofmann being late for a drop off on January 1, 2024, dropping the children at 3:00pm rather than noon on that date. Again Mr. Toxqui did not indicate the context or whether the time was made up.

[74] Of greater concern was Mr. Toxqui's suggestion that Ms. Hofmann might be "coaching" M about an incident alleged to have happened when M was 6. He claimed that as a result, Mr. Toxqui received a visit from "child services" on January 5, 2024 about the alleged incident.

[75] However, I was not provided with further details about any possible investigation by child protection services. Again, the alleged incident itself would have occurred before the parties had filed their uncontested divorce documents on

April 4, 2023, but any malicious reporting to authorities by either party would always be of great concern to the court.

8.4 The availability of the father's new partner

[76] In his affidavit filed January 10, 2024 Mr. Toxqui's "concluding remark" was:

37 The new living arrangement with my partner, Mary Anne Phalen, allows me to take care of the kids during the time I'm at work, and also provides a stable environment for M, E, and W. Everything is set up for them, including a separate room for M and a shared room for the two boys, as well as a backyard in a family-friendly neighborhood including awesome neighbors with 5 kids from 3yo to 12yo.

Mr. Toxqui's evidence focussed on his new partner's availability to care for the parties' children, rather than his own changed / or Ms. Hofmann's changed ability or availability to parent the children.

[77] Mr. Toxqui appeared to be arguing that his new partner, Mary Anne Phalen, should be able to take the place of Ms. Hofmann while he was at work and that despite the children being in Ms. Hofmann's primary care since the parties separated in October 2020, that his partner, Mary Anne Phalen, should now be able to stand in Ms. Hofmann's place during part of Ms. Hofmann's regular status quo parenting time while he is at work.

[78] At the same time, Mr. Toxqui has also insisted on his “right of first refusal” if the mother is away for work, on several occasions contacting the police to enforce his understanding of the Consent Corollary Relief Order giving him the “right of first refusal” as a priority over Ms. Hofmann’s mother and / or her live in partner.

[79] As noted above, more recently, Mr. Toxqui confirmed Ms. Hofmann was following his interpretation of the right of first refusal contained in the parties’ Consent Corollary Relief Order. She had offered him time with the children when Ms. Hofmann was not able to parent due to work / travel commitments:

38 On a couple of occasions, because Christine traveled for work in the last month and the kids were on vacation, we already had opportunities to spend several days in a row during school days with the three kids, and we found all of them adapted very well to the new place and schedule we follow at home. Thanks to Mary Anne, who is a very dedicated and loving mom, it is very easy for us to make sure the kids are always busy with fun and educational activities in a safe and loving environment.

[80] On January 9, 2025, I gave Mr. Toxqui the opportunity to proceed with a formal hearing of the matter if he felt he could elicit the evidence necessary or he could argue that there had been a material changes in circumstances. Mr. Toxqui acknowledged his proposed evidence did not support a conclusion that there had been a material change to the children’s circumstances and / or to either parent’s circumstances and / or ability to care for the children since April 2023. I suggested to Mr. Toxqui that he could choose to proceed and hope to elicit evidence from the

witnesses. Mr. Toxqui declined to call Ms. Phalen as his first witness and / or to proceed with taking the stand himself.

8.5 Request to Address Travel

[81] I advised the parties that the information provided by Ms. Hofmann suggested it would be a mischaracterization for Mr. Toxqui to suggest there was “non-opposition to the trip” in the summer of 2023. In addition, as noted above, my review of the parties’ court file indicates that there is a record of the parties having to appear in court to elicit Mr. Toxqui’s cooperation for Ms. Hofmann to travel with the children, for instance a Consent Order was granted in November 2021, and the parties appeared before me in May 2023.

[82] After some discussion the parties agreed to the following clauses being included to a **Travel Order**:

- a. Either party may travel with the children for up to one (1) month without the consent of the other party.
- b. The traveling party must provide the other party with three (3) months notice in writing of the anticipated travel.

- c. Each party is limited to exercising the one (1) month of travel with the children once per year.
- d. The provisions for holiday parenting time and March break provided in the Corollary Relief Order are to be respected when scheduling travel.

9 Law

9.1 Solicitor and client costs

[83] In *Lockerby v. Lockerby*, [2011] NSJ No. 131, the Honourable Justice Jollimore, as she then was, discussed costs on a solicitor client basis at paragraph 24 and 25:

24 In *Young*, [1993] 4 S.C.R. 3 Justice McLachlin, as she then was, commented on an award of solicitor and client costs at paragraph 66, saying that costs on this basis are generally awarded “**only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties.**” The reprehensible conduct may be in the circumstances giving rise to the cause of action, or in the proceedings themselves.

25 Solicitor and client costs are limited to rare and exceptional circumstances.

[84] I find there is evidence that both parties have at times either overtly failed to follow through with certain terms and / or they have failed to understand the intent and / or spirit of the Consent Corollary Relief Order. However, this is not one of those “rare and exceptional circumstances” where I would award “solicitor and client” costs.

[85] In *Lockerby*, the Honourable Justice Jollimore, as she then was, decided in part as follows:

...

[50] ...Left to my own to allocate costs, I am comfortable with assigning eighty-percent of the trial to the parenting and property division issues. The remainder of the trial dealt with child support (retroactive and prospective) and Ms. Lockerby's claim for spousal support. For Mr. Lockerby, the portion of his costs award that relates to child support is one-third.

[51] Mr. Lockerby's incurred disbursements of \$5,513.74. Rather than put the parties to the further effort of having disbursements taxed, I order Ms. Lockerby to pay sixty percent of this amount (\$3,308.24) to reflect the fact that **sixty percent of the trial's time was devoted to those matters where I am awarding costs. In total, Ms. Lockerby shall pay costs of \$26,058.24.**

[86] In this case, I am comfortable assigning **sixty percent (60%)** of the trial preparation time to the issue of Mr. Toxqui's pursuit of a 50/ 50 parenting arrangement, with Ms. Hofmann being the successful litigant. Another **twenty percent (20%)** I will assign to the issue of retroactive child support, with Mr. Toxqui being the successful litigant. Finally, I will assign a final **twenty percent (20%)** to the travel issue where I find there was mixed success (**15%/5%**), with Ms. Hofmann being more successful, thereby reducing Ms. Hofmann's costs request initially from \$7,602.10 / 25% based on the success realized / importance / preparation time attributed for each issue = **\$5,701.575 before considering other issues.**

[87] In *Lockerby, supra*, the Honourable Justice Jollimore, as she was then, went on to determine:

[33] Ms. Lockerby's conduct has been vindictive and ill-considered. I have considered it and made my decisions accordingly. **It has not been reprehensible, scandalous or outrageous as would be required to support an award of solicitor and client costs.**

[88] In this case, I find the father's conduct was at times vindictive and ill-considered, for instance, when he stated in part to the mother's partner:

...every now and then I text her shit to make her angry, it's my only way to get some revenge. I'm sure she made a big deal over what I said about you, to make you feel bad. I'm sorry if that caused some issues between you and Christine. You're right, I don't know you but sometimes I just get angry when people are used against the well being of my kids. You're not the first person Christine is using...

However, I do not find that Mr. Toxqui's behaviour was such that I should award solicitor and client costs.

9.2 Tariff C

[89] In *C.M.(P.) v. C.M.*, [2021 NSSC 96](#), Muise J. noted that the Court in *Irwin v. Irwin*, [2020 NSSC 27](#), at paragraph 11, stated:

Arriving at a **costs assessment in family matters is difficult given the often-mixed outcome and the need to consider the impact of an onerous costs award on the families; and the children in particular.** The need for the court to exercise its discretion and to move away from a strict application of the tariffs is often present. (emphasis mine)

[90] Muise J went on to state in part about *Irwin*:

...

[16] In that case, the Court did stray from the tariffs to do justice between the parties.

...

[18] **It differed from the case at hand in that it involved a three-day hearing and five pre-trial appearances**, and “Ms. Irwin prolonged the proceeding”.

[19] **The hearing of evidence over three days brought in the applicability of Tariff A, rather than Tariff C**, despite it being a variation application. The Court referred to the comments on that point in **Moore v. Moore**, 2013 NSSC 281, at paragraph 14, and in **Armoyan**, *supra*, at paragraph 20.

[20] Ms. Irwin prolonging the proceedings militated in favour of augmented costs.

[21] Tariff A costs of \$21,000 were requested.

[22] However, at paragraphs 19 and 20, the Court concluded and stated:

[19] I am satisfied a costs award in the amount of \$7,000 inclusive of HST and disbursements is appropriate. This is on the low end of the range.

[20] The Court is influenced by a desire to balance the need for a costs award in favour of Mr. Irwin with the desirability of minimizing hardship to Ms. Irwin. **A costs award must be meaningful for the successful party and also serve as a deterrent to those accessing the Courts to ensure litigation is not initiated with a view to pursuing claims without merit and the costs award should reflect as much as is appropriate the factors enumerated in Rule 77.07(2) *supra*.**

[23] In the case at hand there was **no hearing of oral evidence or submissions. The parties submitted affidavits and written submissions only. They then appeared by telephone for an oral decision and a follow-up status review. In these circumstances, Tariff C remains the applicable Tariff.** Tariff A would not be an appropriate tariff to apply. (emphasis mine)

[91] In the case of *Irwin*, *supra*, Mr. Irwin sought to have Ms. Irwin’s table amount of child support increased. In response, Ms. Irwin claimed she was no longer working, and she filed an undue hardship application requesting to be relieved of her child support obligation of \$1,150 per month. She later abandoned her application.

[92] I believe that in this case, Tariff C is the applicable Tariff. The issue of retroactive child support - childcare and the issue of travel were both dealt with by consent of the parties and the parenting issue, Mr. Toxqui's request for shared care, did not proceed to a formal hearing. However, court time was required for more than a half day (appearances listed above).

9.3 Self representation

[93] The case law dealing with cost awards for lay litigants, including: *Crewe v Crewe*, [2008] NSJ No 568 at para 26; *Bishop v. Purdy*, [2015] N.S.J. No 603 at para 11; and *Izyuk v. Bilousov*, 2011 ONSC 7476, [2011] O.J. No 5814 at para 40, suggests that in addition to indemnification, there are other relevant factors and objectives I must consider when using my discretion to consider requests for an appropriate award of costs.

[94] When considering cost awards for self-represented parties, the case law suggests I should consider:

1. Whether the self-represented party "devoted time and effort to do the work ordinarily done by a lawyer retained to conduct litigation, and that, as a result, they (he) incurred an opportunity cost by forgoing remunerative activity," *Crewe v Crewe*, [2008] NSJ No 568 at para 26; but that costs for self-represented parties are not the same as

damages for lost income and, “remunerative loss is not a ‘condition precedent’ to an award of costs...” although “...loss of income may be one measure....” and “the difficulty in valuing the time and effort of the lay litigant is not a good reason to decline to value it.” One of the factors to be taken into account is an “applicable hourly rate” based on “what the lay litigant’s reasonable expectations were as to the costs he would pay if unsuccessful,” and another factor is “the quality of the self-represented litigant’s work and documentation must be considered, and its impact on hearing time and trial results.” If “the self-represented litigant demonstrates he/she did the work ordinarily done by a lawyer, then they will be justified receiving an award of costs,” *Bishop and Izyuk v. Bilousov* (supra) at para 40;

2. That an award of costs may be used to: partially indemnify successful litigants; encourage settlement; and discourage and sanction inappropriate behaviour by litigants, *Bishop and Izyuk v. Bilousov* (supra) at para 40; and
3. That an award of costs may be used to discourage a party with counsel, opposite an unrepresented litigant, perceiving they are

immune from costs or will face only nominal costs, *Bishop* and *Izyuk* v. *Bilousov* (supra) at para 40.

[95] Ms. Hofmann sought costs in the amount of: **\$1,600** for legal consultation; time off work for hearings 11 hours at hourly rate of \$67.70 = **\$744.70**; and compensation for her time as a self represented litigant 62 hours at an hourly rate of \$67.70 = **\$4,197.40**; and disbursements (including expert fees **\$860**; printing, copying, and administrative expenses of **\$200**) for a total costs award of **\$7,602.10**. No invoices were attached for any legal consultation and no affidavit sworn.

[96] As noted above at paragraph 83, I assigned **sixty percent (60%)** of the trial preparation time to the issue of Mr. Toxqui's pursuit of a 50/50 parenting arrangement, with Ms. Hofmann being the successful litigant. Another **twenty percent (20%)** I assigned to the issue of retroactive child support, with Mr. Toxqui being the successful litigant. Finally, I assigned **twenty percent (20%)** to the travel issue where I found there was mixed success **(15%/5%)** with Ms. Hofmann being more successful, thereby reducing Ms. Hofmann's costs request from \$7,602.10 / 25% based on the success realized / importance / preparation time attributed for each issue = **\$5,701.575. I am not prepared to order full indemnity** on legal costs. At 60%, the award would be \$3,420.94.

10 Conclusion

[97] I have reviewed Civil Procedure Rule 77 and the applicable case law, and I have considered the argument submitted.

[98] The main issue in this litigation was not a monetary claim, however, I am satisfied that the amount as ordered does justice between the parties when considering the following factors:

1. The extent of the proceedings and fees involved, including the parties' preparation, costs for self represented parties, and the father's decision not to present any evidence to support his application for shared parenting;
2. The most important issue in this matter were the non-monetary issues, shared parenting / travel with the children;
3. The pre-trial conduct of the parties which affected the extent and expense of the proceeding including Ms. Hofmann's failure to adjust child-care costs through the Maintenance Enforcement Program, the reasonableness of Mr. Toxqui's position on shared parenting;
4. The mother's past history of not fully complying with orders and / or dictating terms despite the father's position and the father's history of

attempting and / or refusing to provide his consent for the children to travel, acknowledging he has done so to try to enforce a prior agreement regarding division of property; and

5. The divided success of the parties: including the success realized by the father in relation to the retroactive recalculation of child support (childcare) 20%; the partial success with respect to travel 15%/5%; and the mother's success with respect to retaining primary parenting 60%.

10.1 Party and party costs

[99] I have relied on Rule 77.07(1), and my discretion to raise or lower the tariff costs, applying factors such as those listed in Rule 77.07(2), including:

...the parties' conduct that affected the speed or expense of the proceeding.

[100] Applying Tariff C, I am ordering the father to pay the mother \$2,000.00 + **\$860 for the expert fees = \$2,860.00** which is not too far of a notional 60% (\$3,420.94) of the costs award requested by Ms. Hofmann. **Ms. Hofmann must file the receipt / invoice for expert fees (\$860) within two weeks of receipt of this decision**, failing which the cost award will be reduced to \$2,000.00. Mr. Toxqui shall pay \$100 per month to Ms. Hofmann beginning May 1, 2025 until the full amount of \$2,860.00 is paid in full (or \$2,000 if the receipt is not received).

[101] The court shall prepare the Order.

Cindy G. Cormier, J.