SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Day v. Day*, 2025 NSSC 307

Date: 20250922
Docket: SFD No. 1201-75691
Registry: Halifax

Between:

Zachary Thomas Day

Applicant

v.

Ashley Norma Day

Respondent

Judge:	The Honourable Justice Cindy G. Cormier
Heard:	March 4**,** 2025 in Halifax, Nova Scotia
Final Written Submissions:	March 24, 2025 (September 18, 2024 / February 19, 2025)
Counsel:	Mitch Broughton, for the Applicant Zachary Day Esther Eagleson, for the Respondent Ashley Day

By the Court:

1 Description of case, issue, and decision

[1] I have been asked to render an interim decision on parenting. Other outstanding issues include child support (table and section 7 expenses), administrative recalculation, spousal support, and property division including the division of the proceeds of the sale of the matrimonial home (sold in July 2024 for $730,000, with the proceeds being held in trust), change of name, and costs of the proceeding.

2 Interim Issue:

[2] What interim parenting plan is in the best interests of H and N?

[3] Should H be permitted to continue in her regular dance program?

[4] Should N be permitted to try out for competitive sports teams?

3 Background

[5] The parties began living together in or around July or September 2007. They were married on or about August 1, 2009 and they separated in September 2022. Ms. Day began dating Blake Curran and Mr. Day also began dating Ms. Keizer in or around July 2023. Mr. Day told H about his relationship with Ms.

Keizer in or around October 2023. He claimed that shortly thereafter Ms. Day confronted him about his intentions "to create a new instant family."

[6] The parties' have two children, H who was 13 years old and N who was 10 years old when this matter was heard. Upon separation, the parties agreed to a "nesting" arrangement allowing the children to remain in the parties' matrimonial home, and this arrangement was in place until approximately mid February 2024.

[7] Ms. Day is a dental assistant and earns approximately $49,920 per year. Mr. Day is a director of sales and earns approximately $233,599.92 per year. On March 15, 2024, Mr. Day began paying child support of $2,677.62 per month.

[8] With the assistance of legal counsel, on or about January 3, 2024, the parties had negotiated an interim week on week off parenting plan. Throughout January and February of 2024, Mr. Day began gradually moving out of the parties' shared home to a home in Bedford with Mr. Keizer and her children M and C. Ms. Day has stated that Mr. Day provided her and the children with only one weeks' notice before he moved the parties children in with Ms. Keizer and her children during his parenting weeks. Mr. Day indicated his new residence is 23 kilometres from N's school and 26 kilometres from H's school, and he had not experienced difficulty transporting the children to their schools and activities.

4 Mr. Day's position

[9] In May 2024, Mr. Day filed a Petition for Divorce and a Notice of Motion for Interim Relief. He sought to address interim decision making responsibility, interim parenting time, and interim child support. He sought primary care of the children.

[10] Mr. Day alleged "parental alienation" by Ms. Day. As an example, he expressed concern that in November 2024, N initially refused to attend a scheduled parenting time with Mr. Day. Mr. Day stated that only "through great effort and patience" was he able to convince N to attend. He also expressed his belief that the parties' daughter's "dance family" disapproved of him and his new partner and this caused strain between him and the parties' daughter, H.

[11] In his Parenting Statement filed in May 2024, Mr. Day requested interim decision making authority. He also requested Ms. Day's parenting time be supervised and be limited to two hours per week. In the alternative, Mr. Day suggested that Ms. Day's parenting time should take place "every other weekend" from Friday after school until Sunday at noon, and on her "off week," that Ms. Day should have parenting time on Tuesdays after school until the following morning.

[12] In addition, Mr. Day expressed concern about Ms. Day's refusal to allow the children to travel to the US with him during his parenting time. He requested an order dispensing with the need for Ms. Day's consent for him to travel with the children outside of Canada. I understand this issue was subsequently resolved.

[13] Mr. Day also requested the following, that:

1. communication between the parties be conducted in writing in a respectful, child centric manner;
2. neither party speak to the children about the proceedings;
3. neither party speak negatively about the other party / or their "romantic partners" to the children or in the children's presence and / or arguably allow others to do so; and
4. neither party message the children using disappearing messages.

[14] Mr. Day has alleged that Ms. Day's actions "put the children into a crisis of loyalty and fractured the co-parenting relationship." He argued that it would "take a significant time to repair the harm done, even with the Court's intervention."

5 Ms. Day's position

[15] Ms. Day argued that she is better positioned to provide the children with "stability, structure, routine, and to keep the children engaged in their

extracurricular activities," as she continues to reside in the children's school district. Ms. Day proposed that the parties have joint decision making, however, she asked that she be permitted to make the final decision if the parties could not agree.

[16] Much like Mr. Day, Ms. Day's "initial position" was for primary care with sole decision-making authority. In her final submissions, Ms. Day maintained that it was in the children's best interests to be "maintained in their present community." She argued that Mr. Day should exercise his parenting time every second weekend from 3:00 pm on Friday until drop off at school on Monday morning / and should also have parenting time on Wednesdays on his "off week."

[17] In her final submissions, Ms. Day argued that in the alternative "this Court should maintain the status quo in this matter and maintain shared parenting." In support of her alternative argument, she pointed out that the parties had "engaged in a week on / week off shared parenting arrangement for over a year and "neither party had withheld the children from the other."

[18] Ms. Day proposed exchanges should take place on Mondays rather than on Sundays so as to avoid conflict. Mr. Day did not agree the children should take their belongings to school with them on Mondays, and he preferred the exchange

remain midday on Sundays to allow the children to have contact with his extended family on a weekly basis.

[19] Ms. Day also sought:

1. a court order for family counseling for Mr. Day with the children; and
2. an order allowing H to continue her dance program.

6 Preliminary issues

[20] An interim hearing to address interim parenting was initially scheduled on September 25, 2024, however, the hearing was expanded to two days and adjourned to March 4 and 6, 2025. At the conclusion of the evidence on March 4, 2025, counsel agreed to release March 6, 2025 and proceed with written submissions.

[21] Although affidavit evidence is usually quite limited at an interim hearing, the parties reached an agreement to allow previous affidavits filed with the court to be admitted as evidence at the interim hearing on parenting – evidence which far exceeded the usual limit of 5 pages.

[22] Exhibits filed at the interim hearing included:

- Exhibit 1 - Affidavit of Chantal Keizer, affirmed July 29, 2024, 5 pages with 3 pages of attachments;

- Exhibit 2 – Reply Affidavit of Chantal Keizer affirmed on September 16, 2024, 2 pages;
- Exhibit 3 – Supplemental Affidavit of Chantal Keizer affirmed on February 12, 2025, 5 pages;
- Exhibit 4 – Affidavit of Zachary Day affirmed on July 29, 2024, five pages, attaching approximately 91 pages of screen shots;
- Exhibit 5 – Reply Affidavit of Zachary Day affirmed on September 16, 2024, 9 pages, 17 pages of screen shots, and 11 additional pages attached as exhibits to the affidavit;
- Exhibit 6 – Supplemental Affidavit of Zachary Day affirmed February 12, 2025, 6 pages, over 200 pages attached as exhibits;
- Exhibit 7 – Additional Exhibits included in the Exhibit Book of the Respondent, Ashley Day:
    - Affidavit of Zachary Day affirmed May 17, 2024 – not being relied upon by Mr. Day;
    - Parenting Statement of Zachary Day signed May 21, 2024;
    - Parenting Statement of Ashely Day Signed on July 9, 2024;
    - Affidavit of Donna Marlene Russell, sworn August 28, 2024, 5 pages;
    - Reply affidavit of Ashley Day sworn August 29, 2024, 7 pages, 17 pages of attachments;
    - Affidavit of Matt Denine sworn August 29, 2024, 3 pages.
- Exhibit 8 - Affidavit of Blake Curren sworn February 12, 2025, 3 pages.
- Exhibit 9 – Supplementary Affidavit of Ashley Day sworn February 12, 2025, 3 pages, 14 pages of attachments.
- Exhibit 10 – Email from Zachary Day to Ashley Day dated January 30, 2024 – requesting counseling be arranged for the children.

[23] In January 2025, the case management judge ordered Voice of the Child reports be prepared for both children for a final hearing. There was insufficient

time for the Voice of the Child Reports to be prepared prior to the interim hearing held in early March 2025.

[24] Ms. Day raised a concern about the lack of expert evidence related to Mr. Day's suggestion that "parental alienation" is a concern in this matter.

6.1 Credibility

[25] Mr. Day referenced *Baker-Warren* v. *Denault*, 2009 NSSC 59, as approved in *Hurst* v. *Gill* 2011 NSCA 100, when asking the Court to make adverse credibility findings against Ms. Day. At paragraph 19 in *Baker-Warren* (supra) the Honourable J. Forgeron determined the following were some of the factors to be balanced when a court assesses credibility:

> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: Re: Novak Estate, 2008 NSSC 283 (S.C.);
>
> b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
>
> c) Did the witness have a motive to deceive;
>
> d) Did the witness have the ability to observe the factual matters about which he/she testified;
>
> e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
>
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: Faryna v. Chorney [1952] 2 D.L.R 354;
>
> g) Was there an internal consistency and logical flow to the evidence;

> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and 2009 NSSC 59 (CanLII) Page: 10
>
> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?
>
> [20] I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: R v. Norman (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in Re: Novak Estate, supra, at para 37: There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See R. v. D.R., [1966] 2 S.C.R. 291 at 93 and R. v. J.H. supra).
>
> [21] Ultimately, I have considered the totality of the evidence in making credibility determinations. I have thoroughly reviewed the viva voce and documentary evidence in conjunction with the submissions of counsel, and the applicable legislation and case law.

Based on my review of the entirety of the evidence, I have relied on some but not all of the witnesses' evidence. I have also attached different weight to different parts of the witnesses' evidence while considering the submissions from both parties, the applicable legislation, and the applicable case law.

6.2 Witnesses

[26] The witnesses at the interim hearing included the father, Zachary Day, and his partner, Chantal Keizer. The mother Ashley Day also testified, and she called Matt Denine, Donna Marlene Russell, and Taylor Blake Curren as her witnesses.

[27] Ms. Day had initially proposed calling a number of other witnesses, including the parties' daughter's counselor, Susan Cameron, however, there was insufficient time to do so at the interim hearing in March 2025.

7 Summary of Mr. Day's witnesses' evidence

[28] Chantal Keizer, Mr. Day's partner, confirmed she had not observed Ms. Day parent the children in Ms. Day's home. Until October 2024, she had observed Ms. Day outside Ms. Day's home during parenting exchanges which were mostly at the children's extracurricular events. Ms. Keizer described Mr. Day as calm during his parenting time but Ms. Day as emotionally dysregulated.

[29] As an example of Ms. Day acting unreasonably, Ms. Keizer described an incident which occurred in or around December 2023, while the parties were still following a "nesting arrangement" in Cole Harbour and the children were visiting with Mr. Day at Ms. Keizer's home in Bedford. Ms. Keizer explained that they had experienced inclement weather one particular evening, and Mr. Day had suggested the children stay at Ms. Keizer's home. Ms. Keizer observed that Ms. Day had stated to H that she could not remain at Ms. Keizer's home overnight despite the inclement weather.

[30] Ms. Keizer suggested it was unreasonable that after Mr. Day refused to drive the children home, Ms. Day had driven to Ms. Keizer's home to retrieve H, while N remained for the evening. Ms. Keizer described Ms. Day's demeanor as confrontational during her exchanges with Mr. Day.

[31] In her evidence, Ms. Day alleged that the children had been scheduled to return home that evening / that Mr. Day had had sufficient notice of the inclement weather, and he should have arranged to return the children to their home in Cole Harbour. Ms. Day suggested it was H who did not want to remain in Bedford. I accept that perhaps H did not wish to remain at Ms. Keizer's home in Bedford that evening, and H did not want to express her feelings to her father or to Ms. Keizer and that it is likely Mr. Day and Ms. Day could have planned better and / or communicated better.

[32] Ms. Keizer provided examples of Ms. Day speaking to Mr. Day in a critical manner when discussing issues such as N's hockey photos and H missing dance to travel to Moncton, New Brunswick for N's hockey tournament. Mr. Day's lack of response to Ms. Day's inquiries could at times be perceived as somewhat passive aggressive, and Ms. Day's attempts to dictate to Mr. Day what must happen and / or Ms. Day's angry responses to Mr. Day taking a position different than hers are also problematic.

[33] Mr. Day has acknowledged he had planned a trip to Moncton which interfered with H's dance schedule. He also scheduled other activities for H which had also interfered with H's dance schedule. Mr. Day did so despite believing that if H missed too many dance practices she could be asked to leave her dance team. Ms. Day has clarified it is her belief that if H misses practices, she may not have an adequate opportunity to learn the necessary choreography, and as a result, H may not be able to participate in certain dance events with her team / small group.

[34] Mr. Day acknowledged others had described H as an elite dancer and that H was usually scheduled to dance five to six times per week. He acknowledged that H had communicated to him that she wanted to remain with her cohort of dance participants, many of whom she had been enrolled with for several years. However, Mr. Day claimed that H had been coerced and influenced to think that dance was the most important thing in her life.

[35] Mr. Day agreed he had initially planned to slowly introduce H and N to his new partner, Ms. Keizer. He had intended to start taking the children to Ms. Keizer's home on weekends, however, he stated that ultimately he decided to accelerate exposing the children to Ms. Keizer and her children as he believed Ms. Day was trying to paint Ms. Keizer and her children in a negative light.

[36] Mr. Day did acknowledge that H's bedroom at Ms. Keizer's home does not have a window, but he stated that there are sprinklers in her bedroom despite the lack of egress. No expert evidence was provided on building code requirements, however, I find it is commonly accepted that most building codes require a least one egress window in any sleeping room to provide a safe escape route in case of fire.

[37] Mr. Day acknowledged that between 2009 and 2016, he was away for work six nights of every six to eight weeks (or five nights every six weeks with very sporadic travel events mixed in – roughly 45-50 nights away a year). He suggested that between 2016 and 2018, he was home with the children more frequently than Ms. Day was.

[38] Mr. Day stated that in his current role as Director of Sales, he travels to Ontario 32 to 35 nights per year. However, he indicated he has four siblings and his two parents who can assist with child care. Mr. Day explained that he and / or Ms. Keizer often work from home and are available for the children although they do at times lock the door to their work space to ensure they are not interrupted.

[39] Mr. Day attached records of payments he has made for individual counseling and / or counseling with H and her counselor. It appears he has been attending counseling since May 2022.

8 Summary of Ms. Day's witnesses' evidence

[40] Matt Denine, the father of one of H's dance friends observed it was Ms. Day who attended dance with H and socialized most often with other parents of the children who attended H's dance classes. He acknowledged that Ms. Day did express concerns about Mr. Day to him and / or the group of parents. Mr. Denine suggested he had a general understanding that the children should not be missing their dance classes and that the children were expected to commit to attend practices and events with the team, unless they were sick.

[41] Mr. Denine stated that Ms. Day had expressed concern that the dance school was not able to contact Mr. Day on the days he had care of H and H had a scheduled dance class. In or around March 8, 2024, he stated he saw H crying in the parking lot adjacent to where her dance class was being held. When he inquired about why H was crying, he was advised that H's father, Mr. Day, had taken H out of her regular dance classes at her chosen program.

[42] Donna Marlene Russell, the children's maternal grandmother, at times cared for the children when either Ms. Day and / or Mr. Day were unavailable. She generally corroborated some of the facts already communicated by Ms. Day about Ms. Day acting as a primary care parent before the parties separated and about Ms. Day continuing to be the parent who planned the children's activities even after the parties' separation. At times, Ms. Russell repeated what Ms. Day had told her about specific events, and she did not necessarily have first hand knowledge or at least both parties' perspectives about the event and / or fact.

[43] I find it is more likely than not that Ms. Russell did confront Mr. Day about his position on H's dance program, and she did suggest it was unfair of him to "take dance away from her" after watching her participate. In that respect, Ms. Russell was inserting herself in a disagreement between the parties in a manner which was not helpful to the parties or to H.

[44] Blake Curran is Ms. Day's partner but he does not live with Ms. Day. He suggested they had agreed it was in the best interests of their respective children that they both continue to live in their children's school districts and near their children's extracurricular activities (Cole Harbour). He testified that he was unaware of the troubling texts Ms. Day sent to the children about / or in connection with Mr. Day and / or Ms. Keizer. I believe Mr. Curran may not have been privy

to the texts from Ms. Day to H and / or N which were presented to him on cross-examination.

[45] Ms. Day accused Mr. Day of reviewing her text messages with the children without her consent and / or accessing her iPad without her consent in order to access some of the above-noted text messages. In *Power* v. *Power*, 2025 NSSC 236, J. Ingersoll reviewed the issue of surreptitiously obtained evidence at paragraph 17. He noted that in *C.C. v. S.P.R.* 2022 BCSC 1057, Justice Gibb-Carsley admitted three surreptitiously made recordings after applying the following four-part test:

> i. the recordings must be relevant;
>
> ii. the participants must be accurately identified;
>
> iii. the recordings must be trustworthy; and
>
> iv. the court must be satisfied that the probative value of the recordings outweighs its prejudicial effects.

I find that: the text messages sent by Ms. Day to the children were relevant; the participants could be identified; there was no reason to doubt the texts were authentic; and the probative value did outweigh any prejudicial effect.

[46] Mr. Curran testified about various exchanges he had observed between H and / or N and Ms. Day and / or comments the children had made to him and / or

independent observations he had made about the children's reactions and / or demeanor. Although I accept Mr. Curran's statement that he did not recognize or had not seen the very negative texts Ms. Day had been sending to the children about Mr. Day and / or Ms. Keizer, given the totality of the evidence before me, I find it is highly unlikely that Mr. Curran has never heard Ms. Day say something negative about Mr. Day and / or Ms. Keizer in the children's presence and / or he has never seen Ms. Day behave in a manner that may cause the children to react negatively toward their father and / or Ms. Keizer. I find that the children are well aware of Ms. Day's feelings of frustration and anger toward Mr. Day and / or Ms. Keizer.

[47] As recently noted in *Power* v. *Power*, 2025 NSSC 236, a judge must consider the probative value of the evidence versus the prejudicial effect of the evidence. Given the circumstances surrounding the parties' separation, given the lack of detailed information surrounding the circumstances / context which existed when the children shared their thoughts with either Ms. Day in Mr. Curran's presence and / or shared their thoughts with Mr. Curran directly, I cannot reliably interpret Mr. Curran's observations about the children's comments and / or reactions.

[48] In this case, I have not attached any significant weight to the evidence from Mr. Curran and/or from the other witnesses about the children's comments regarding their father and Ms. Keizer and / or about Ms. Day. A more appropriate way of obtaining the children's thoughts about their circumstances at their mother's home and / or at their father's home would be through the children's participation in the preparation of Voice of the Child reports as ordered by Justice O'Neil in January 2025.

[49] I accept Mr. Curran's testimony about the exchange he had with Mr. Day and Ms. Keizer about the children's interest in and their success in their chosen sports and / or activities. In particular, I accept Mr. Curran's testimony that Ms. Keizer expressed to him that H's dance program was "very demanding and very expensive." I also accept that in that same conversation with Mr. Curran, Ms. Keizer advised Mr. Curran that she and Mr. Day had vacationed to an all inclusive resort which was quite expensive "but worth every penny."

[50] Ms. Day has suggested that although Mr. Day claims she is "putting the children in the middle" she does not involve them "if possible." And if she does involve the children, that it is Mr. Days' refusal to communicate with her that "triggers their involvement."

9 Conflict regarding extracurricular activities / lifestyle

[51] Ms. Day has described herself as the children's primary care parent prior to and after the parties' separation in September 2022 and arguably after the parties' physical separation in mid to late February 2024. Mr. Day has stated he has always been substantially involved with the children's care and continued to be substantially involved in their care after the parties separated in 2022, leading up to the parties' agreement in early January 2024 to continue to share the care of the children on a week on week off basis.

[52] I find Ms. Day's concerns about Mr. Day leaving the "nesting arrangement" with very little notice in February 2024, and changing the status quo with respect to H's dance involvement in / or around May 2024, effectively changing the status quo regarding the children's participation in their previous activities, to be valid concerns. Barring any written agreement stating otherwise, I find there was a reasonable expectation that when the parties agreed to share the care of the children on a week on / week off basis, there was an expectation that the children would continue to be able to participate in their activities at the same level they had previously.

[53] Ms. Day has placed an emphasis on the children's extracurricular activities, and in particular, on H's dance and on N's sports, such as baseball. Ms. Day's

particular focus has been to put the children in the best possible position to be successful when participating in their chosen activities (including sleeping in their own bed / or getting to bed on time and / or with as little distraction as possible).

[54] Mr. Day's expectations are different. Curiously, Mr. day did not deny the children report that at times, they go to bed much later than they'd like to, as Mr. Day insists they not quit family board games early. This Court has traditionally been a proponent of good sleep hygiene.

[55] Ms. Day's evidence suggests that since the parties' separation, she has made assumptions that she need not consult or advise Mr. Day about developments or plans related to their children' extracurricular activities and / or also involving some medical and / or dental appointments. She assumed the parties would continue to parent in the same manner as they had previously.

[56] However, the parties have different views / priorities when it comes to allowing and / or encouraging their children to participate in elite level programs and / or sports travel teams. After leaving the "nesting arrangement," Mr. Day communicated concerns he has about H continuing with her "elite" dance program, and he has refused to take her to her practices on his parenting time.

[57] Ms. Day was, and continues to be, the parent who always ensured the children's participation in their chosen activities. Mr. Day did not know the details of the children's registration in their extracurricular activities, and in the case of school lunches, he failed to properly inform himself. Mr. Day has traditionally relied on Ms. Day to follow H's Facebook dance group chat and to advise him what he should know about the children's school lunch programs.

[58] Although Ms. Day is encouraged to pass relevant information on to Mr. Day, it is ultimately Mr. Day's responsibility to stay informed.

[59] Mr. Day either did not prioritize or he failed to notice H had dance commitments the weekend he planned to travel with her and the rest of his family to Moncton and / or when he planned to take H to a birthday party instead of her dance practice. It was not Ms. Day's responsibility to ensure Mr. Day was familiar with or obtained a copy of H's dance program contract for 2023 – 2024 before late January 2024; and it was not Ms. Day's responsibility to ensure Mr. Day obtained a copy of the "Elite Dancer Information Package."

[60] In addition, it is Mr. Day's responsibility to ensure N's sporting equipment and his emotional support toy travels back and from his home. Mr. Day's claim

that he did not know or understand that N not having his sports equipment or his emotional support toy would cause N anxiety is not reassuring.

[61] Mr. Day has suggested it was Ms. Day's responsibility to advise him of the need to sign N up for school lunches during his own parenting week, Ms. Day's animosity towards him was impacting the children. It is Mr. Day's responsibility to ensure he is on every contact list he needs to be on and that he is aware of both H's and N's school needs and their needs with respect to their chosen activities.

[62] The parties' inability to fully discuss issues and / or negotiate a resolution about the children's level of involvement in extracurricular activities or to discuss the children's day to day needs, or Mr. Day downloading his responsibilities to Ms. Day, has exposed the children to ongoing conflict and uncertainty. As a result, the children have at times been left to worry about whether they will receive the support they need to fully participate in school and programs their mother had always arranged for them to participate in prior to their parents' separation.

[63] Mr. Day and Ms. Keizer have clearly communicated to both children that continued participation in their previous competitive programming is not something they fully support. Ms. Day, and at times her family, have clearly communicated to the children and to Mr. Day that they feel he is wrong not to fully

support the children in their previous activities. This Court is willing to support the children's choices to continue or not continue to participate in their previous programs.

10 Passive aggressive / financial control vs. emotional coercion

[64] Both parties have been trying to "win" or have their point of view prevail. Now that the parties are separated, and especially since they are no longer in a "nesting arrangement," Ms. Day was relying on Mr. Day to support the children's participation and attendance at their respective activities on his time, and he has not.

[65] Ms. Day has expressed concern that Mr. Day does not respond to her attempted communications with him to organize the children's activities as she'd like him to. She admitted she has called H at times in order to reach out to Mr. Day. Ms. Day has suggested that although Mr. Day claims she is "putting the children in the middle," she does not involve them "if possible" and that it is Mr. Days' refusal to communicate with Ms. Day that "triggers their involvement." Mr. Day's lack of response does not give Ms. Day the right to place the children in the middle.

[66] Ms. Day has acknowledged sending text messages to the children that could appear as though she was "interfering in their relationship with their father." She has also acknowledged giving Ms. Keizer "the finger," stating she did so because of Ms. Keizer's response to N when he stated he had forgotten a favourite comfort toy at Ms. Keizer's home. Again, Ms. Day's response shows little insight or ability to address concerns in a constructive manner.

[67] Ms. Day has clearly felt entitled to interfere with the children's relationship with their father and with their relationship with their father's new partner, Ms. Keizer. Ms. Day did not seem to appreciate the need to form and to maintain a good working relationship with both Mr. Day and Ms. Keizer while they resolved their differences through the court process as necessary.

[68] However, Ms. Day has suggested that through her counseling sessions, she has considered her past choices and she has "stopped those texts completely." Presumably during her counseling sessions, she discussed the importance of forging a positive parenting relationship with both Mr. Day and Ms. Keizer generally and the importance of not sharing adult conversations / issues with the children through any means. However, Ms. Day's persistence in communicating adult issues with H via various online applications would suggest to me that Ms.

Day may not fully appreciate the ongoing damage placing H and N in the middle may cause to them or she may not be able to modify her behaviour.

[69] I find one of the most significant issues causing conflict between the parties relates to the parties' different perspectives on the children being involved in "high level" and / or competitive sports. This is an issue many parents disagree about. Parents often have different perspectives on where to spend their disposable income and / or how they want to spend their free time with their children. Often, it is one parent who takes the lead in organizing the children's extracurriculars and is more connected to the friend group / parent group connected to those activities and the other feels left out. In this case, Ms. Day has traditionally taken the lead and Mr. Day has not yet made the same connections.

[70] With respect to Mr. Day's complaints about Ms. Day not sharing important information / relevant information with him, I agree that both parties must share information with the other. However, H has danced with the same group of friends for approximately eight years and I find it is Mr. Day's responsibility to follow up and inform himself about her program more fully if he wishes to share that part of H's life.

[71] It is clear to me that it was Ms. Day who took the lead to ensure H and N had opportunities to participate in programs and / or sports at the highest level and that Mr. Day relied on Ms. Day to make most of those arrangements. If Mr. Day wishes to share the care of the children with Ms. Day, he must now engage fully to support the children in their chosen activities and / or at school.

11 Interim Hearings

[72] Mr. Day referenced the cases of *Foley* v. *Foley*, 2016 ONSC 4925 a "motion to change or variation," and *M.M.B* (v.) *C.M.V.*, 2017 ONSC 3991 which were "motions to change" or variations (in one case resulting in a 185 page decision which considered expert evidence from a jointly retained expert who had prepared a section 30 custody access assessment). In this case, the parties were asking the court to render an interim decision which would change the status quo which had been in place for over a year (agreement for week on / week off parenting reached in January 2024), and for the court to do so without the benefit of Voice of the Child Reports which had been ordered by another judge in January 2025.

[73] Mr. Day referenced the case of *Gillespie* v. *Paterson*, 2007 NSSC 368, decided by J. Scarevelli, as an example of the court changing the primary caregiver. The matter can be distinguished from this one as it was not an interim decision and the judge had significant expert evidence to rely on.

…

> [17] A Parental Capacity Psychological Assessment dated July 2006 was filed with the Court. Reports from Dr. Pure, the Child Clinical Adolescent Psychologist, were filed with the Court. These professionals, as well as Mr. Paterson and his common-law partner, Ms. Blackburn, testified at trial.
>
> …

[74] In *Gillespie* (supra) J. Scarevelli quoted extensively from the Parental Capacity Psychological Assessment prepared by D. Garland. For instance, J. Scarevelli referenced D. Garland's recommendations:

> [25] … She has been qualified as an expert in parental capacity and child needs assessment many times in the courts in Nova Scotia from 1999 to 2007. She conducted interviews and psychological assessments of the parties, as well as, interviews with several collateral sources including Ms. Blackburn, Dr. Pure, the child's school guidance counsellor and the child care provider…Ms. Garland states in her report under Summary and Conclusions:
>
> > Ms. Gillespie and Mr. Paterson have both indicated a belief that the child's interest would best be met by placement in their homes respectively with sole custody. Each parent has cited the **difficulties in communication and ongoing conflict as partial reason for the desire of each for sole custody** of the child. Ms. Gillespie has indicated that Mr. Paterson has not been actively involved in the child's life until recently. While Mr. Paterson has indicated that Ms. Gillespie has consistently attempted to minimize or eliminate his involvement in the child's life, in addition to concerns he has over Ms. Gillespie's mental health. Both Mr. Paterson and Ms. Gillespie have provided collateral sources, co-workers have identified each of them as good people, who place their daughter as a priority. From the observations it was also clear that the child is loved by both parents who have difficulty believing the other parent is capable of good care. **The strengths of Ms. Gillespie seem to be the weaknesses of Mr. Paterson and vice versa.** Ms. Gillespie shows capability engaging in challenging the child's interest appropriately. Mr. Paterson's strengths appear to lie in structure and consistency. The ideal would be for each parent to incorporate the strengths of the other in his or her interactions with the child. **The child would be described as having a secure attachment and relationship with her primary care giver, Ms. Gillespie. Ms. Gillespie has provided the child's daily care since birth and continues to have a positive relationship with her daughter**. Concerns around Ms. Gillespie's mental health were brought

> forward by Mr. Paterson. Ms. Gillespie stated that her mental health concerns are resolved and identified Mr. Paterson as the primary reason for some of her difficulties. These messages coupled with the positive information provided regarding Ms. Gillespie's emotional health suggest that a psychiatric evaluation might be best in order to identify or eliminate concern around Ms. Gillespie's previous diagnosis of dissociative identity disorder. Additionally, the MMP I-II identified that Ms. Gillespie likely meets the criteria for a diagnosis of depression or anxiety and depression, very treatable conditions. Ms. Gillespie was identified as a good candidate for therapy as she would likely become engaged and benefit.

[26] Ms. Garland goes on to state that in regard to Mr. Gillespie's relationship with her daughter, it would be positive in nature, but with the current level of conflict between Mr. Paterson and Ms. Gillespie, there is potential risk for alienation.

> Ms. Gillespie has the time and makes the effort to be a fun parent, behaviour that is typically observed in an access parent. While Mr. Paterson tends to portray himself as the bad guy, that is he enforces bedtimes, regular bathing, homework, food choices, etc., which does not need to be identified in such a negative manner as it tends to set him up in opposition to the very positive interactions of Ms. Gillespie. Mr. Paterson had elevations in the PSI that suggest there are stressors in his relationship with his daughter, some of which appear to be related to parental expectations of the child and of being a parent. **Both parents identified the child as currently experiencing emotional distress and unhappiness which needs to be addressed immediately.**

Ms. Garland states further that when children of the child's age are aware of conflict between their parents, they begin to draw their own conclusions and form their own opinions as to who is right or wrong.

> When parents continue in their conflict and repeatedly expose their child to their anger and frustration, these curious pre-teens will listen into conversations or read documents left lying about, etc. This can be the beginning of serious repercussions. **Children of this age, when they form an opinion will take action such as choosing a side**. They become quite entrenched in their opinion and will even take action, such as refusing to visit a parent. **Eventually, these opinions and behaviours of the child aided by the behaviours of the parents, can lead to alienation of an access parent. Parental alienation is what occurs when one parent, usually the residential one, convinces the child that the other parent is not trustworthy, dependable and not loveable.** Alienation can result from unconscious unresolved childhood issues of a parent or it can result from deliberate and malicious intent. Either way, **if it persists, can seriously distort a child's personality and ability to function as an adult**. The sooner such behaviour is recognized and addressed, the better

> the outcomes are for the child. With regard to the child, **there appears to be an alliance forming with Ms. Gillespie, which with some encouragement could develop further into alienation. The actions or inactions of the access parent may also play into the development of this problem.**

[27] Ms. Garland states further the overall results of this Assessment have indicated Ms. Gillespie and Mr. Paterson have both strengths and weaknesses, but each has the capability to parent their daughter. They do require a specific custody and access agreement, as it is likely that without one, this conflict will continue to grow unchecked. If the conflict continues to grow, it will probably escalate and the victim will be the child.

[28] Accordingly, in her report of July of 2006, Ms. Garland made the following eight recommendations:

> 1. It is recommended that Connie Gillespie and Jamie Paterson have joint custody of their daughter. The child's daily care is remaining with her mother unless Ms. Gillespie's physical health precludes her ability to provide care. Physical health in this case refers to her diagnosis of cancer and its treatment. Should Ms. Gillespie become physically unable to care for the child then the child's primary residence should be with her father. **The recommendation for joint custody results from two concerns. The first is the poor communication between these parents. The second concern is avoiding the opportunity for either to form an alliance with the child and potentially alienate her from the non-residential parent.** It currently appears as though Ms. Gillespie is attempting to, at the least, form an alignment with the child. This typically leads to alienation of the non-residential parent. Therefore, joint custody tends to be the best option. **However, should such attempts at alignment continue to the extent that it is impacting on the daughter/father relationship, as determined by the child's treating psychologist, then primary daily care should be considered with Mr. Paterson.** This is not to provide a point of contention, but rather to eliminate the danger of parental alienation.
>
> 2. It is recommended that Mr. Paterson continue to have regular access with the child, but that access should be expanded to facilitate their relationship. Additionally it is important for the child to have some time alone with her father. Attached is a recommended access schedule.
>
> 3. **It is recommended that the child continue in therapy** with Dr. Kiran Pure. Ms. Gillespie has voiced her personal discomfort with Dr. Pure, however, this should not be a determining factor in the choice of the child's therapist.
>
> 4. **It is recommended that the child be referred to a pediatrician to provide an objective second opinion regarding the child's potential**

health difficulties, weight, possible sleep apnea, etc. The pediatrician could also offer a qualified opinion with regard to a diagnosis of ADHD, in addition to any possible suggestion of bias from previously seen doctors. **Both parents would be required to be involved in an investigation of treatment of any concerns related to the child that either parent identified.**

5. **It is recommended that the child become involved in planned regular activities**, other than her Church involvement. This could be swim classes, dance class, girl guides, music, soccer, etc. These activities again should involve both parents. The child has clearly perceived the message that her parents are in conflict. **They need to move past the conflict and focus on mutual enjoyment of their daughter**.

6. **It is recommended that Ms. Gillespie seek assessment and treatment** for probable depression. Her mood likely has some situational components (assessment, health). Nevertheless, she would probably find some benefit in treatment.

7. **It is recommended that Mr. Paterson and the child become involved in therapy to assist them in negotiating and dealing with the issues that have emerged in their blended family**, in addition to any difficulties resulting from their relationship.

8. It is recommended that **all information regarding the child's health, education, religious training, etc., be provided to both parents**. **Medical appointments, in particular, should be supplied in advance of attendance and outcomes of such appointments provided to the parent who did not attend, in a timely manner**.

[29] Ms. Garland testified at trial, subsequent to her report of July 2006, that she learned that Ms. Gillespie does not, in fact, have cancer. She confirmed that Ms. Gillespie portrayed herself as having a significant cancer diagnosis which would be anxiety provoking for the child and would contribute to her alignment with her mother. She stated that evidence of Ms. Gillespie shaving her head would have made it more realistic for the child.

[30] At the time of trial Ms. Garland learned of Ms. Gillespie's admission to Abbie Lane with a reported serious eating disorder. Ms. Garland was concerned that the child who has an obesity issue may develop an eating disorder, as she disclosed to her father that she was going to become a vegetarian.

[31] Ms. Garland expressed concern that Mr. Paterson did not continue to have regular access or expanded access to his child as recommended in her report. She also expressed concern that Ms. Gillespie continued to voice displeasure of the services of Dr. Pure in front of the child. She stated this placed the child in a loyalty bind.

> [32] Ms. Garland stated that by **opposing her recommendation the child see a pediatrician, Ms. Gillespie was not placing the needs of her child first**. She further expressed concern that Ms. Gillespie did not seek assessment and treatment for her own mental health issues until February of 2007, and that she discharged herself prior to completing any treatment program.
>
> [33] Ms. Garland stated that a transition of the child from her mother's home to her father's home would be difficult for the child, as she is very anxious and needy, and told by her mother that she will live with her at all costs. Ms. Garland recommended at trial that any Order for access by Ms. Gillespie to the child be initially clinically supervised by a clinical therapist to avoid further stressors and anxiety being placed on the child relating to alignment and alienation issues. Access should not be in the mother's home according to Ms. Garland. She indicated both parents would benefit from independent therapy on alienation and alignment.
>
> …
>
> [51] In the present case, the **Court has had the benefit of evidence from professional experts to help identify the physical and emotional needs of the child.** These include necessity of the child to have continued adolescent therapy counselling to deal with the stress and emotion resulting from parental conflict and self image issues. A psychological evaluation to evaluate the presence of ADD to address the school issues. A stable home environment providing structure and routine in matters of hygiene, bedtime, school work and activities, and an environment that does not create or contribute to alignment or alienation issues to the detriment of a parent, and allows the child to maintain a relationship with both parents. (my emphasis)
>
> [52] I find from the evidence that Mr. Paterson is the parent best able to meet the child's needs at this time. Ms. Gillespie in the past has been resistant to the adolescence counselling therapy being conducted by Dr. Pure, and effectively sabotaged the proposed treatment plan to address the child's obesity issue. She refused to agree to the psychological evaluation for school purposes. **Contrary to the Interim Order of Justice Gass, she has involved the child in these legal proceedings, which has caused the child great anxiety and stress. She has conducted herself in a manner throughout these proceedings to create an alignment between her and the child which if continued could lead to alienation from her father.** Ms. Gillespie is demonstrating an unwillingness to facilitate access to the father or to keep him apprised of school activities. Ms. Gillespie appears to have serious mental health issues that prevent her from acting in the best interests of the child, at this time. (my emphasis)

As noted above, a final decision was rendered after the judge heard extensive evidence regarding the parties' respective positions. Although Ms. Day has

behaved in ways which may have aligned the children with her somewhat, the facts in this case do not raise the same level of concern. In particular, the children have continued to have contact with their father and his new spouse.

[75] In this case, I find there is insufficient evidence before me to support the father's argument that it is not in H's best interest to continue to fully participate in her dance program during his parenting time or otherwise and / or the facts do not support his choice not to prioritize H's and N's full participation in their previous competitive activities. I find the father's sudden choice to prioritize other activities over the children's stated and historical preferences has most likely contributed to some of the difficulties in his relationships with the children.

12 Interim Best Interests

[76] Mr. Day referenced the case of *MacDonald* v. *MacNeil*, 2012 NSSC 171, an interim parenting decision of J. Forgeron rendered pursuant section 18 of the *Maintenance and Custody Act*. The best interest test outlined in section 16 of the *Divorce Act* is similar and applies in this case:

> **Best interests of child**
>
> - **16 (1)** The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.
> - **Primary consideration**

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

- **Factors to be considered**

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

  - **(a)** the child's needs, given the child's age and stage of development, such as the child's need for stability;
  - **(b)** the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
  - **(c)** each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
  - **(d)** the history of care of the child;
  - **(e)** the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
  - **(f)** the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
  - **(g)** any plans for the child's care;
  - **(h)** the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
  - **(i)** the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
  - **(j)** any family violence and its impact on, among other things,
    - **(i)** the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
    - **(ii)** the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
  - **(k)** any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

- **Factors relating to family violence**

  (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

  - **(a)** the nature, seriousness and frequency of the family violence and when it occurred;

- **(b)** whether there is a pattern of coercive and controlling behaviour in relation to a family member;
- **(c)** whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
- **(d)** the physical, emotional and psychological harm or risk of harm to the child;
- **(e)** any compromise to the safety of the child or other family member;
- **(f)** whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- **(g)** any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
- **(h)** any other relevant factor.

- **Past conduct**

  (5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

- **Maximum parenting time**

  (6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

- **Parenting order and contact order**

  (7) In this section, a parenting order includes an interim parenting order and a variation order in respect of a parenting order, and a contact order includes an interim contact order and a variation order in respect of a contact order.

[77] J. Forgeron's additional commentary in *MacDonald* (supra) is also relevant when considering interim parenting time pursuant to the *Divorce Act*:

> [12] The best interests principle has been described as one which has an inherent indeterminancy and elasticity: **MacGyver v. Richards**, 1995 CanLII 8886 (ON CA), 22 O.R. (3d) 481, paras 27 to 29. The test is a fluid concept that encompasses all aspects of a child, including the child's physical, emotional, intellectual, and social well being.
>
> [13] During interim proceedings, the status quo gains pre-eminence. The court is focussed on determining what interim, parenting arrangement will be the least

> disruptive, and most supportive of the child: **Pye v. Pye**, [1992] NSJ No. 133 (T.D.); **Stubson v. Stubson**, [1991] NSJ No. 210 (T.D.); **L.S.W. v. I.E.W.**, [1989] NSJ No. 492 (F.C.); **Foley v. Foley**, 1993 CanLII 3400 (NS SC), [1993] N.S.J. No. 347 (S.C.); **A.M. v. A.Y.** 2012 NSJ No. 33; **Horton v. Marsh**, 2008 NSSC 224.
>
> [14] The status quo which ordinarily must be maintained is the status quo which existed, without reference to the unilateral conduct of one parent, **unless the best interests of the child dictate otherwise**: **Kimpton v. Kimpton**, [2002] O.J. No. 5367 (S.C.J.). (my emphasis)
>
> [15] The status quo, however, **is not the only factor to be considered when fashioning an interim parenting arrangement**. In **Foley v. Foley**, ***supra***, Goodfellow, J. provided a series of factors for courts to consider and balance when determining the best interests of a child, in the context of an interim motion. (my emphasis).
>
> [16] In **Gibney v. Conohan**, 2011 NSSC 268, O'Neil A.C.J. reviewed the law surrounding shared parenting in the context of an interim motion. He noted that although there is **no presumption in favour of joint custody**, the legislature has recognized the importance of children having maximum contact with both parents. This presupposes that both parents are competent, caring, and loving. O'Neil, A.C.J. further stated that jurisprudence on shared parenting has evolved based upon the changing dynamics of family life and parental roles. There is an increased acceptance that fathers have the ability to parent their children. After finding that the parties were comparable as parents, O'Neil A.C.J. ordered shared parenting for children who were 9 and 7, on an interim motion.

Ultimately in *MacDonald* (supra), J. Forgeron ordered that the parties to share the care of the child. In this case in January 2024, the parties had agreed to share the care of the children.

[78] As J. Forgeron did in *MacDonald* (supra) I will review the evidence in this matter under the following subheadings:

a) Past Experience as Primary Care Parent;
b) Parental Misconduct;
c) Parent/Child Relationship;
d) Physical and Financial Environment;

e) Social, Cultural, and Moral Development;
f) Educational Needs;
g) Time Availability;
h) Willingness to Facilitate Contact; and
i) Family Connections.

In addition, as noted above, pursuant to the *Divorce Act*, I am obligated to specifically consider the issue of family violence pursuant to the *Divorce Act* section 16(4).

12.1 Past Experience as the Primary Care Parent

[79] I accept that overall Ms. Day may have had more responsibilities in caring for the children prior to the parties' separation in September 2022 and afterwards, leading up to Mr. Day moving in with Ms. Keizer. However, I do find Mr. Day was always substantially involved with both children, and as a result, in January 2024, the parties agreed to share the care of the children on a week on / week off basis.

[80] Despite the issues identified by both parties, I find that both parents are for the most part competent, caring, and nurturing parents who are well equipped to ensure that the primary needs of both H and N are met. Both parties are able to ensure H and N are offered good nutrition, are well rested, are clean, and are properly clothed. Both are able to ensure a similar routine is implemented and

maintained. However, it remains to be determined whether Mr. Day will be willing to support the children's continued involvement in their former activities on an interim basis and whether he will choose to advance his argument at a final trial that continued participation in those activities is not in the children's best interests.

[81] Both Mr. Day and Ms. Day have traditionally been active and involved parents. However, Mr. Day's choice to keep H out of her regular dance program is not supported on the evidence thus far.

[82] The parties disagree on whether organized dance and / or competitive activities should be prioritized over unstructured family time. This issue will need to be further explored with H and N through the Voice of the Child reports and possibly with professionals who are providing the children with support.

[83] In the interim Mr. Day has changed the long term "status quo" regarding the children's activities. For instance, Mr. Day has argued that the dance program H routinely attended is too strict, is unhealthy for her, and that the management is biased toward Ms. Day.

[84] Again, I find there is insufficient evidence to conclude that the dance club H has traditionally attended was and / or is any less supportive / healthy than any

other dance program available for H's level of dance. On an interim basis, without further evidence, I find that if it is possible for H to do so, it is in H's best interest to continue to participate with her usual dance program during both parents' parenting time. Mr. Day shall either take H to all her practices on his parenting time / or arrange for H to be taken to her classes during his parenting time / or he shall allow Ms. Day to have H in her care to facilitate H's attendance for dance.

12.2 Parental Misconduct

[85] Mr. Day argued that Ms. Day did "disparage him to the children, that she isolated the children from their extended family on his side," and that she involved the children in the court proceedings. I believe Ms. Day's ongoing behaviour after Mr. Day left the home was quite problematic but can be partly attributed to Mr. Day's failure to allow H and N to fully participate in their previous activities.

[86] Mr. Day argued that he did not believe Ms. Day's acknowledgement she should not have sent some of the messages to the children was heartfelt. He suggested this court should find Ms. Day was being untruthful and / or that she lacked insight about the impact her communications would have on the children. Mr. Day has valid concerns about some of Ms. Day's communications with the children and about her insight.

[87] On the other hand, Mr. Day has suggested he is committed to H's dance – he just believes she should be registered in a different program – referencing concerns related to H's panic attacks, body image, eating habits, and sexualized dances. I do not agree there is sufficient evidence before me to find it is in H's best interest to not continue to fully engage in her previous dance program on an ongoing basis. In this instance, I believe Mr. Day lacks some insight.

[88] I find:

1. Ms. Day "displayed inappropriate responses in front of H and N. Ms. Day was at times impulsive and at times she acted angrily and provided H and N with a bad example, and Ms. Day did, at times, place H and N in the middle of a loyalty conflict. Ms. Day must gain better control of her emotions despite any frustration she may be experiencing with Mr. Day and / or Ms. Keizer.

2. Ms. Day did act in a manner which may have eventually resulted in H and N refusing to spend time with Mr. Day because she initially believed she was entitled to do so. However, I find H and N need to have liberal time with both of their parents based on their best interests, not based on only Ms. Day's perception of their best interests.

3. At times, Ms. Day did not voluntarily provide Mr. Day with updates on H's and / or N's health, education, and general welfare. In particular, once Mr. Day refused to take H to her dance program, Ms. Day not only did not advise Mr. Day about H's progress but she prohibited H from doing so.

4. Over a year elapsed since the parties' entered their agreement to share the children's care after Mr. Day left the "nesting arrangement." Ms. Day has acknowledged some wrongdoing on her part, she reported having attended counselling, and the court is hopeful that she learned better coping skills so that H and N are shielded and protected from her upset and anger. I believe that Ms. Day is capable of making the necessary changes because of her deep love for both H and N and that co-parenting counseling would be of use to Ms. Day.

5. Mr. Day raised concerns about Ms. Day making H and / or N feel guilty by repeatedly telling them that she missed them. Ms. Day must in future simply reaffirm her love for H and N and not overuse the words "I'm missing you," thereby giving the children permission to enjoy their time with their father and their new blended family.

[89] I do not agree with Mr. Day's concern about Ms. Day prioritizing H's involvement with her dance school in lieu of her relationship with him. In the interim, until there is a final determination, if Mr. Day wishes to share the care of H and / or N with Ms. Day, he will need to follow through by supporting the children's pre-existing routines / activities with assistance from his family or Ms. Day as agreed and / or as necessary.

12.3 Parental / Child Relationship

[90] I believe Mr. Day's choice to no longer prioritize the children's previous organized activities / his choice to change the norms or status quo which existed while the family lived together prior to the agreement reached in January 2024, has had a significant impact on his relationship with both H and with N, not to mention his relationship with Ms. Day. His choice to move out of the children's school district, and his choice to no longer prioritize facilitating the children's attendance at their previous competitive programs, impacted his relationships with the children.

[91] I find it was Mr. Day's decisions coupled with Ms. Day's choices / behaviour which caused what Mr. Day referred to as a "family crisis." It's most likely the children's behavioural issues are linked to the above-noted choices, and, as Mr. Day argued, there is a potential for "long term damage to their development,

that absent court intervention, the situation will continue to deteriorate." However, as of the hearing date, Ms. Day confirmed the children had been adhering to the shared parenting schedule without incident for more than one year, with neither party withholding either child.

[92] Much like J. Moreau in the case of *KH* v. *KN* 2022 NSSC 305, I find involvement in dance is likely very important to H, and in particular that continuing to be registered with her former dance teammates is most likely extremely important to H. I accept that Ms. Day is the parent most likely to facilitate H's involvement with her previous dance program and H's involvement with members of that program. I find Mr. Day has been unwilling to consider what H has to say and / or what H's counselor might have to say in support of H.

12.4 Physical and Financial Environments

[93] In *MacDonald* (supra) J. Forgeron commented:

> Both parties have clean and appropriate homes for Jacob. The parties live in close proximity to each other, and to Jacob's school. Each is able to provide financially for Jacob. The court has no concern with either party meeting the financial needs of Jacob…

In January 2024, when the parties reached an agreement to share care of the children when Mr. Day left the home, Ms. Day understood Mr. Day's new partner was not living in the children's regular school district or community. In addition, I understand child support was negotiated by the parties back in March 2024.

[94] However, although Ms. Day knew Mr. Day likely intended to live with his partner, she did not necessarily know that H's bedroom at Ms. Keizer's home does not have a window and the issue of lack of egress from the child's bedroom must be addressed further. Mr. Day must provide proof he has alerted the local fire safety persons and evidence of their recommendations about whether the room is safe for H.

[95] I find that in January 2024, the parties' acquiesced and / or agreed to the children continuing to attend school in their former school district, and there was an expectation the children would continue to participate in their regular activities as they had previously. Mr. Day's proximity to the children's school / activities based on a move to his new partner's home was understood by both parties and there was consent to that arrangement.

[96] Aside from Mr. Day's refusal to allow the children to participate in their previous activities on his time, in all other respects, I find that the parties continue to be able to meet H's and N's basic needs on an interim basis. I find Mr. Day's choice to prioritize his spending on and / or time with the children differently has created instability / conflict in the child's lives.

[97] Ms. Day has argued that the cost for H's dance is approximately $12,000 per year and not $25,000 as Mr. Day suggested. She argued that the cost is manageable based on Mr. Day's income of $233,599.92 and the parties' agreement to share the cost proportionately. Further, Ms. Day has suggested that any extra costs Mr. Day incurred for travel to Boston for H's dance competition was his choice as Ms. Day was willing to take H to the competition at her expense but Mr. Day chose to take her.

[98] Mr. Day expressed concern that Ms. Day did not always advise him of appointments for the children. Initially, Mr. Day stated that although he was not particularly concerned about being advised with respect to routine bookings for dental cleanings, he was concerned about H approaching him to sign a consent form in relation to her "getting braces" for her teeth.

[99] Mr. Day suggested he was initially worried about the impact of H getting braces as she was "already a picky eater." I do not find Mr. Day's argument persuasive. Without expert evidence regarding a potential health risk to H having braces on her teeth, I find that if H's dentist and a registered orthodontist determine H needs braces, then the parties should share the cost proportionately. I was advised the parties had resolved this issue. If not, I am ordering the parties to share any orthodontic costs which exceed insurance reimbursement proportionately.

[100] I understand that any difficulties obtaining medical and dental records and / or any appointments being scheduled without consulting with the other parent and or obtaining the other parent's consent were resolved prior to the interim hearing.

12.5 Social, Cultural, and Moral Development

[101] In this case, Mr. Day has made arguments that it is not in H's best interest to continue to participate in dance with her group of teammates, and / or it is not in N's best interests to compete for positions on competitive / travel sports' teams. I have found there is insufficient evidence to support Mr. Day's position.

[102] In *MacDonald* (supra) J. Forgeron found:

> [35] Both parties are equipped to provide and ensure the social, cultural, and moral development of Jacob. Both are committed to ensuring that Jacob attends activities which will meet his needs. Both parties have placed priority on Jacob's extracurricular activities. Ms. MacNeil also has commenced taking Jacob to church on Sundays; Mr. MacDonald did not appear to be opposed to this decision. Both parents also recognize Jacob's need to have unstructured play and to have regular interaction with friends.
>
> [36] The plans of each party are comparable.

In this case, I find Mr. Day may not be prepared to ensure the children continue to fully participate in programs they have participated in previously. However, based on the evidence, Ms. Day is prepared to continue to ensure the children fully participate in their previous programs / have age appropriate contact with their friend groups / continue in their previous school district. Both parents are ordered

to support the children in their regular attendance (including being on time for the start of their practices / games / competitions) based on the expectations of their respective programs.

12.6 Educational Needs

[103] In *MacDonald* (supra) J. Forgeron found:

> [38] Jacob has reading difficulties. In the past, he attended speech language therapy, and was taken to those lessons by Ms. MacNeil. A school assessment has determined that Jacob no longer requires speech language therapy. Jacob does, however, struggle with reading. Both parents are committed to helping Jacob improve his reading skills. Indeed, Mr. MacDonald regularly read to Jacob as part of Jacob's bedtime routine.
>
> [39] Jacob's educational needs will be met in the capable hands of both of his parents.

Both Ms. Day and Mr. Day must ensure N attends his educational sessions regularly and on time.

12.7 Time Availability

[104] It is unclear to me whether Mr. Day's reluctance to commit to taking H to her regular dance sessions and / or allowing N to try out for a competitive travel team, is related to his time availability and / or his new commitments to his new partner and her children. However, Mr. Day has stated he has the assistance of his siblings and his parents if he is away for work. In addition, I understand that both

Mr. Day and Ms. Keizer work from home which may imply that their schedules are more flexible than those who work in an office setting.

[105] If Mr. Day is unable to accommodate H's dance schedule or N participating in his choice of competitive sports' team, then it may not be possible for these parties to share the care of their children on an interim basis. I find the parties must both be able to support the children's participation in their previous activities if they intend to share the care of the children. Otherwise, the children should be placed primarily with Ms. Day – assuming there is no future recurrence of the above noted "parental misconduct" by Ms. Day.

12.8 Willingness to Facilitate Contact

[106] This issue has been addressed above. In *MacDonald* (supra) J. Forgeron noted:

> [45] Mr. MacDonald is more willing than Ms. MacNeil to facilitate maximum contact. Ms. MacNeil attempted to restrict the parenting time that Mr. MacDonald had with Jacob. Despite this finding, I find that Ms. MacNeil will follow the court order and will do what is required of her.

Mr. Day was initially more willing to facilitate the children's contact with Ms. Day and her partner.

12.9 Family Connections

[107] In *MacDonald* (supra) Forgeron found:

> [47] Both parents place priority on family involvement. Jacob is close to the extended family of his parents, although Ms. MacNeil has more family living in the Sydney area than does Mr. MacDonald. All grandparents were involved with Jacob. Although Mr. MacDonald's father has recently passed on, his mother remains an important part of Jacob's life. The parties will continue to facilitate family involvement.

I accept Mr. Day's evidence regarding Ms. Day's reluctance to actively support his and / or his extended families' contact with the children.

[108] I agree that the exchange for parenting time can continue to be midday on Sunday (to avoid the exchange at the school), and to allow ongoing weekly contact with both parties' extended family. However, I also agree with Ms. Day and I find it is not in the children's best interest to have unlimited virtual contact with each party's extended family. It should be up to both Ms. Day and Mr. Day to manage the children's day to day lives including directly monitoring the children's contact with their respective extended family members. Both parties should be the first point of contact for the children and the children should not be relying on extended family members to make day to day decisions on their behalf.

13 Parental Alienation

[109] Mr. Day proposes that Ms. Day has not behaved as a supportive parent. He suggests Ms. Day has instead relied on their children for emotional support during their relationships conflict / separation and in so doing she has "inserted the children in her conflict" with him. Mr. Day suggests she has made false

allegations against him and / or she has encouraged the children to make false reports about his parenting.

[110] In his submissions filed on September 18, 2024, Mr. Day relied on J. MacDonald's (as she then was) comments in *Dunn* v. *Dunn* 2010 NSSC 321 as support for his proposition that Ms. Day is placing the children in the middle and creating a "loyalty conflict." In particular, Mr. Day quoted a portion of paragraph 24 in *Dunn* (supra).

[111] I have quoted the entirety of paragraph 24 and paragraphs 25 and 26 below, wherein J. McDonald stated:

> [24] The Father's plan provides the least change for the children but is it in their best interest merely because of this? I do consider minimizing change to be very important for children of separated parents. This is the rationale for the "status quo" principle. However, this principle must be balanced with other factors. I am not satisfied the Father was the primary care parent as that term has been defined. He can preform the functions of a primary care parent but I am satisfied the majority of the required parenting tasks were performed by the Mother during the marriage. The Father has difficulty controlling his anger and I am not satisfied this is a problem only in his relationship with the Mother. **As I have explained earlier in this decision, the Father has exerted a negative influence over his oldest daughter and I find that he will continue to attempt to have her adopt his view of the Mother and her family. This will place her in a loyalty conflict and that is not in her best interest. Those who attend the Parenting Information Program (an attendance I will require of both these parents), are provided with a booklet called "Because Life Goes On". On page 41 of that booklet the following appears:**
>
> > **As with children of any age, the emotional costs of allowing pre-teens to become directly involved in adult conflicts can be considerable and long lasting. <u>Pre-teens experience conflicting loyalties. They may experience strong feelings of guilt, disloyalty and fear. When parents draw children into the conflict, it places children in the unbearable</u>**

> **position of choosing one parent over the other. Children of this age are not ready to handle this power or cope with the stress it creates.**
>
> [25] Excerpts appearing on pages 56 an 59 from Norris Weisman's article entitled, *On Access After Parental Separation*, 36 R.F.L. (3d) 35 explains, to some extent, the phenomena of post separation conflict:
>
> > ...the **adversarial nature of litigious proceedings can shift the focus of the hearing away from the children and their needs towards an emphasis on the martial sins of the parents**; revive and escalate the conflict between the parents; harden their positions; and tempt them to exert pressure upon the child to choose one parent over the other.....
> >
> > ...the litigation itself is often motivated by a need for public vindication, to ward off depression, or salvage shattered self - esteem. These parents enter into litigation to prove that the other spouse has behaved badly or is wrong, and, by contrast, that they themselves are good and right.
>
> [26] **I do not consider it in the best interest of these children to be in the primary care of their Father. I am not satisfied he will promote and support their relationship with their Mother.** The Mother will be more attentive to their psychological and emotional needs. She understands they will require counselling. If the children were in their Father's daily care this would increase his opportunity to forge an unhealthy alignment with the oldest child. While this will be a concern even during the parenting time he will have, it is expected he will use his time with his children to develop his relationship with them without influencing them negatively about other relationships in their lives. There will be consequences should he fail to do so. During his time with the children they can continue their relationship with their friends and his extended family. If he accesses counselling he may eventually gain more parenting time than I am presently prepared to order at this time. (my emphasis)

Absent the father's position about H's and N's extracurricular activities and my determination that Ms. Day's negative actions were related to her concerns about this, I may have been persuaded to place the children with their father primarily but on an interim basis.

[112] This decision is an interim decision only. If there is additional credible and reliable evidence of a recurrence of Ms. Day's previous "parental misconduct,"

assuming Mr. Day makes the adjustments I have deemed necessary, then the outcome at any final trial may look different than this interim decision.

[113] In *Dunn* (supra), J. McDonald found the children would be required to attend a new school, develop new friendships, and experience significant changes in their lives if they were ordered to reside primarily with the mother in her new community but not so if they were placed with the father in the matrimonial home. J. McDonald did award the mother interim sole custody of the children due to her finding that the father had exerted a negative influence on the eldest daughter and he lacked insight into the harm this could cause. In this case, Ms. Day must be able to demonstrate to the court that she has developed insight.

[114] J. MacDonald refused to grant a shared care arrangement, in part because she found it was "not in the best interests of these children at this time due to "the nature of the parents' relationship and the lack of geographic proximity." She expressed that she was not confident that the parties in that case could jointly parent the children but she did accept that the parents might be able to make joint decisions in situations where they were responding to the recommendations of some professionals.

[115] In *Dunn* (supra), J. McDonald quoted *Marshall* v. *Marshall* (1998) Carswell, N.S. 183, a decision of the Nova Scotia Court of Appeal:

> [25] The issues before the court at the commencement of the application and those for which the parties prepared were interim custody and interim child support. The test to apply on an interim custody application is as set out by Justice Kelly in the following passage from Pye v. Pye (1992), 1992 CanLII 14925 (NS SC), 112 N.S.R. (2d) 109 at paragraph 5:
>
> I concur with Grant, J. in Stubson v. Stubson (1991), 1991 CanLII 4386 (NS SC), 105 N.S.R. (2d)155; 284 A.P.R. 155 (T.D.) that the test in such an application was properly set out in Webber v. Webber (1989), 1989 CanLII 9591 (NS FC), 90 N.S.R. (2d) 55; 230 A.P.R.. 55 (F.C.), by Daley, J.F.C. at p. 57:
>
> Given the focus on the welfare of the child at this point, the test to be applied on an application for an interim custody order is: **what temporary living arrangements are the least disruptive, most supportive and most protective for the child.** In short, **the status quo of the child, the living arrangements with which the child is most familiar, should be maintained as closely as possible**. With this in mind, the following questions require consideration.
>
> 1. Where and with whom is the child residing at this time?
>
> 2. Where and with whom has the child been residing in the immediate past? If the residence of the child is different than in #1, why and what were the considerations for the change in residence.
>
> 3. The **short-term needs** of the child including:
>
> (a) age, educational and/or preschool needs;
>
> (b) basic needs and **any special needs**;
>
> (c) the relationship of the child with the competing parties;
>
> (d) the **daily routine of the child**.
>
> 4. Is the current residence of the child a suitable temporary residence for the child taking into consideration the short-term needs of the child and:
>
> (a) the person(s) with whom the child would be residing;
>
> (b) the **physical surrounding including the type of living and sleeping arrangements**, closeness to the immediate community and health;
>
> (c) proximity to the preschool or school facility at which the child usually attends;

> (d) availability of access to the child by the noncustodial parent and/or family members.
>
> 5. Is the child in danger of physical, emotional or psychological harm if the child were left temporarily in the care of the present custodian and in the present home. (emphasis added).
>
> [26] The focus is on the status quo and the short-term living arrangements for the child. Although in this case the parties had been separated for a few years, and had consented to the first order, the test that should have been applied was the same: **if there is no reason to change the existing situation, that situation should continue until the trial.** There is authority for variation of interim orders: see **Foley v. Foley** (1994), 1993 CanLII 3400 (NS SC), 124 N.S.R.(2d) 198 (S.C.).
>
> [27] If the appellant's application for interim custody had been dismissed, **the test on the final custody trial would be the best interests of the child without emphasis on the status quo**. The respondent would not have any advantage by reason of having had interim custody of the child, as stated by Goodfellow, J. in **Stefanyk v. Clancy** (1996), 1996 CanLII 5329 (NS SC), 156 N.S.R. (2d) 161 at paragraph 39:
>
> > ... The determination on an interim order is of no weight in the "final" determination that is made after a full trial.
>
> On trial, the duty of the Court is to **make a determination solely and exclusively on the evidence presented during the trial, and absolutely no weight is to be attached to any interim determination which in turn was made solely and exclusively on whatever evidence, documentation, etc. was presented to the Justice at that time**. (my emphasis)

[116] Mr. Day sought sole decision making authority in relation to the children and primary care of the children on an interim basis. Mr. Day referred this court to *L.M.A.N* v. *C.P.M*. 2011 MBQB 46 (Man. Q.B), at paragraph 98 and *Williams* v. *Power* 2022 NSSC 156, in support of his request that this court determine Ms. Day was unable to place the children's best interests ahead of her own anger towards him and in support of a finding that Ms. Day had alienated the children from him and therefore the "status quo" needed to be changed.

[117] In particular, Mr. Day referenced paragraph 72 in *Williams* (supra), wherein J. Chiasson adopted the definition of parental alienation as outlined in *L.M.A.N* (supra):

> [72] The following definition of parental alienation was set out in *L.M.A.N. v C.P.M*, 2011 MBQB 46 (Man. Q.B.), at paragraph 98:
>
> "Early in his testimony before the court Dr. Stambrook was asked to offer his definition of "parental alienation", and he provided the following response:
>
> It is a descriptive term that refers to a process. It is not a diagnostic label. It doesn't appear in any nomenclature about mental health disorders. It is a **descriptive term that refers to a process where there is a systematic devaluation, minimization, discreditation of the role of, typically the other parent in a parental dyad.** One parent systematically, through a variety of physical, emotional, verbal, contextual, relational set of maneuvers systematically reduces the value, love, commitment, relationship, involvement of the other parent by minimizing, criticizing, devaluing that parent's role. It can involve children having their sense of history being "re-written" by a parent's redefinition of history, reframing things, repetitively talking about things. **It can involve sometimes very subtle and sometimes not so subtle suasion, coercion, direction, misrepresentation and so on.**
>
> It is an abusive practice. It is child abuse when it occurs. It's emotionally abusive. It cripples and stunts children's development because the reality they knew at one point is undermined by this process. It is dangerous for the development because in [an] ideal situation, children should feel free to love and interact with the adults who are important in their lives, unencumbered by twisted turns of relational loyalties that are, unfortunately misplaced in this situation.
>
> So parental alienation is a process, an interactional process where systematically one parent's role in, for the children is eroded over the course of time. (bolding added)."
>
> [73] This definition has been accepted in *Radley v McClean* 2020 ONSC 4396 (Ont. S.C.), and *Bors v Beleuta*, 2019 ONSC 2128 (Ont. S.C.), *M.S. v K.A.*, 2021 ONSC 7853 (Ont. S.C.).
>
> [74] **A finding of parental alienation is a finding of fact which does not require expert evidence** (*A.M. v. C.H.*, 2019 ONCA 764, 32 RFL (8th) 1 (Ont. C.A.)). **Such findings are exceptional and based on the unique facts of each case**.

[75] Parental alienation is not applicable in all situations where children are resisting contact with a parent. As noted at paragraph 171 of the *H.D.H. v J.B.M.* decision, 2018 SKQB 335 (Sask Q.B.), paragraph 171:

"Parental alienation" is a term that is commonly used to describe the problematic situation where a child is resisting contact with a parent due to the direct or indirect behaviour, attitudes and expectations of the aligned parent. **This is distinguished from those situations where a child has a natural affinity towards one parent or even a temporal alignment formed in the immediate aftermath of a separation.** It must also be distinguished from cases where there is **"realistic estrangement" caused by the breakdown of the relationship between the estranged parent and the children arising out of that parent's conduct**: *I.D. v P.R.A.D.*, 2012 SKQB 281, 401 Sask R 114."

[76] Labelling the parent/child relationship can do more harm than good. Examining a checklist of factors to determine whether there is or is not alienation should be approached with the utmost of caution. Each parent/ child relationship is unique.

[77] I have received evidence from over twenty (20) witnesses and reviewed all admissible evidence. I have looked at the possibility that the children are expressing their "untainted" views in not wanting to see their mother.

[78] Based on the totality of the evidence, I find that Mr. Williams has alienated the children from Ms. Power.

[79] As noted in the decision of *I.D. v. P.R.A.D.*, *supra*, the conduct by the alienating parent may not be overtly abusive or aggressive but rather far more subtle. As noted at paragraph 179:

"While it may not be difficult to identify deliberately abusive or aggressive behaviour by a parent who is set on destroying the relationship between a child and the other parent, Dr. Childress also described more subtle, but equally destructive, conduct which can have a devastating impact upon the parent/child relationship. In particular, he described a "role-reversal" dynamic where the aligned parent induces the child's rejection of the other parent, and then hides behind and exploits the child's induced rejection. For example, a child may say something fairly neutral but the parent will twist it into a concern about the child. To the child, it is perceived as though the aligned parent is being supportive. As soon as a child begins to define himself as a victim, the other parent begins to be defined as abusive. Once that occurs, the child has been moved into the middle of the conflict taking the lead role in rejecting the other parent, with the aligned parent taking what appears to be a passive, and supporting, role."

The case of *M.M.B. (V.) v C.M.V.* 2017 ONSC 3991 (S.C.) involved allegations of parental alienation. At paragraph 1079 of the decision, Bennett J. referred to the work of Richard Warshak and Douglas Darnall. He states in part:

> "…In his 2001 article "Current Controversies Regrading Parental Alienation Syndrome," Warshak provides a helpful survey of the increasingly sophisticated debate on alienation, including Kelly and Johnston's reformulation of the concept, and proposes **three key traits by which alienation could be identified:**
>
> **a persistent rejection or denigration of the rejected parent amounting to a "relentless campaign";**
>
> **the child's rejection is unreasonable and unjustified; and**
>
> **the child's rejection is at least partly as a result of the alienating parent's behaviour."**
>
> [80] I find as a fact that Mr. Williams engaged in the following behaviours indicative of parental alienation:
>
> 1. Permitting the children to make decisions about contact with Ms. Power.
>
> 2. Isolating the children from extended family.
>
> 3. Portraying Ms. Power as dangerous.
>
> 4. Promoting himself as the children's protector in relation to the "harm" caused by Ms. Power.
>
> [81] There are a number of incidents that confirm Mr. Williams' alienating behaviour in addition to those already cited.

[118] As Ms. Day has argued, the children have not been permitted to make decisions about their contact with Mr. Day. They have been attending Mr. Day's weekly parenting time.

[119] I have reviewed the law, the evidence, and the legal submissions. I have based this court's parenting decision on what I find is in H's and N's best interests. I have examined the plan of each party. I have determined that an interim shared parenting arrangement will ensure that the best interests of both H and N are met, but only if Mr. Day agrees to facilitate the children's attendance at their previous activities.

[120] The following is ordered an in interim basis:

a) **Joint custody -** The parties will share joint legal custody of their children H and N. Both parties have a right to any and all information either party is entitled to access for H and N.

b) **Regular Schedule -** If Mr. Day is able to ensure both H and N fully facilitate in their chosen activity during his parenting time, on an interim basis, the shared parenting arrangement will continue.

c) **Special Occasions and Holidays -** The regular schedule may be suspended for special occasions and holidays by written agreement of the parties, however, the children will still be permitted and supported to attend any of their scheduled activities during any holiday period as necessary: Christmas / Spring Break / Easter / and Summer Vacation.

d) **Ad Hoc Special Family Events** - The parties will use their best efforts to accommodate any special family reunion, wedding, or other event, that is scheduled at a time when H and / or N is in the care of the other party. Their commitments to any dance team and / or sport team with be considered and respected within reason. Written notice will be provided, well in advance of the scheduled event, to determine if the regular schedule can be altered to permit H and / or N's attendance at the special function. The parties will be as flexible as possible in such circumstances, however, no change in the schedule (parenting or the children's activity schedule) will occur without the expressed and written authorization of both parties. If accommodation cannot be made, the party refusing must provide the other party with written reasons for their refusal. Make up time will be provided to the party who agrees to rearrange the schedule as the other parties' request.

e) **Travel** - Each party will notify the other of travel plans involving H and / or N. Notice will include dates of travel, location, address, and telephone numbers where H and / or N can be reached, and any applicable flight details. Both parties will accommodate any requirements for passport documentation to allow H and / or N to travel for their respective activities and / or for vacation with the other parent outside Canada, and will also sign any necessary letter to permit travel outside of Canada.

f) **Telephone Contact** - Each party will have reasonable telephone contact with H and / or N while H and / or N is in the care of the other party.

g) **Decision Making Authority** - Each party will have physical day to day decision making authority and control when H and / or N is in his/her physical care, with the expectation that barring a medical excuse or consent of the other parent, the children will be supported in arriving on

time at each practice / game / or event. Each party will notify the other by email of the following routine decisions made while H and / or N are in her/his care: particulars of minor illnesses and any medication that has been administered; particulars of homework assignments, projects and tests; particulars involving activities, practices, games and tournaments; and particulars relating to significant social welfare matters. All such notifications must be timely, and also must provide sufficient particulars so that both parties can attend any special functions on behalf of H and / or N, if they are able to do so. All such communication will be respectful and child focused.

h) **Emergency Decisions** - In the event of a medical emergency, the party having physical care of H and / or N will be entitled to make decisions which are necessary to alleviate the emergency, and will notify the other parent as soon as possible as to the nature of the emergency and as to the nature of the emergency treatment. Both parties are entitled to attend the emergency treatment on behalf of H and / or N.

i) **Education Matters** - Both parties will determine major educational decisions affecting H and / or N, including any special programs that he requires. Both parties are obligated to ensure N is able to fully participate in his extra learning program.

j) **Meetings, Concerts, and Activities** - Both parties are entitled to attend parent teacher meetings, and any major school events, including concerts, programs and activities. In the event tickets are limited to such performances, each parent will have priority for tickets. The use of any additional tickets will be determined by the parent who has physical care of H and / or N on the day the special event occurs.

k) **Educational Assistance** - Each party is responsible for assisting H and / or N with homework while H and / or N is in his/her physical care. Each parent will cooperate with all professionals to learn any necessary strategies to assist H and / or N with any reading difficulties or other special educational requirements that may develop.

l) **Medical, Dental, Health Cards, and Insurance Forms** - Both parents will have the health card number for H and / or N, and both parents will share particulars and forms of any health plan which covers H and / or N.

m) **Family Physician, Dentist, and other Health Professionals** - Both parties may attend all appointments (if permitted by the treating professional) which are scheduled on behalf of H and / or N, if at all possible, and the party who has scheduled the appointment will provide timely notification and particulars to the other parent.

n) **Extracurricular Activities** – H and / or N have a history of participation in certain extracurricular activities. Should H and / or N

wish to pursue those activities, each party shall cooperate to ensure the status quo which existed prior to January 2024 continues with respect for H and / or N's enrollment in extra curricular activities. Each party will support both H and / or N to fully participate in their chosen extracurricular activities which occur during each parties' regularly scheduled parenting time. The party who has physical care of either H and / or N will be responsible for her and / or his transportation to and from the activity. If either party is unable to facilitate either H's and / or N's participation in their chosen activity during their parenting time, with the consent of the other party either child or both shall be transferred to the care of the other parent to facilitate the activity for that evening / if the other parent is unavailable, the parties may seek assistance from other family members. Each party will keep the other party apprised of any extracurricular activities in which H and / or N are enrolled.

o) **Access to Professional Records and Information** - Each party has the right to communicate with all professionals involved with H and / or N's care, and each has the right to obtain information and documentation respecting H and / or N from all medical professionals as permitted, educators, health professionals as permitted, and social welfare professionals without further consent from the other party.

p) **Therapeutic Interventions** - The parties will continue to attend counselling to learn better communication skills for separated parents. The purpose of such counselling is to allow each party to learn techniques to ensure that neither H and / or N is placed in the middle of parental conflict, and to enhance parental communication about matters concerning both H and / or N.

[121] As requested by Mr. Day, I am also granting the following:

1. communication between the parties be conducted in writing in a respectful, child centric manner;

2. neither party speak to the children about the proceedings;

3. neither party speak negatively about the other party or their "romantic partners" to the children or in the children's presence and / or arguably allow others to do so; and

4. neither party message the children using disappearing messages.

[122] As requested by Ms. Day, I am granting the following:

1. a court order for family counseling for Mr. Day with the children; and

2. an order allowing H to continue her dance program.

[123] Mr. Day shall also make inquiries about the safety of H's bedroom arrangement at Ms. Keizer's home and he shall report back to Ms. Day. If this matter proceeds to a final hearing, he shall also file evidence with this court about the safety of H's sleeping arrangements.

14 Conclusion

[124] An interim joint custody order is in the best interests of H and / or N at this time. A shared parenting regime, that is subject to the schedule, terms, and conditions as outlined, is also granted in H's and N's best interests. Ms. Eagleson shall prepare the order.

Cindy G. Cormier, J.