SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Tanner v Arbuckle*, 2025 NSSC 420

Date: 20251230
Docket: Ken No. SFKPSA-133308
Registry: Kentville

Between:

Kaitlyn Dawn Tanner

Applicant

v.

Kevin Joel Arbuckle

Respondent

Judge:	The Honourable Justice Jean M. Dewolfe
Heard:	September 15, 2025, in Kentville, Nova Scotia
Oral Submissions:	October 21, 2025 in Kentville, Nova Scotia
Written Release:	December 30, 2025
Counsel:	Lynn Marie Connors, K.C. for the Applicant Christopher I. Robinson for the Respondent

By the Court:

BACKGROUND

[1] The parties are unmarried parents of a two year old daughter, C. Prior to their separation, the parties resided in Bedford, N.S. In February 2024, when C was five months old, the parties separated and Ms. Tanner took C to live with her parents (the "Tanners") in the Wolfville area, less than an hour away. At that time, Ms. Tanner was on maternity leave and was breastfeeding C.

[2] In September 2024, Ms. Tanner returned to work. She and C continue to reside with the Tanners and Ms. Tanner commutes daily to Dartmouth. C attends a day care in Dartmouth while Ms. Tanner works.

[3] Mr. Arbuckle has re-partnered and currently resides in Mount Uniacke.

[4] On April 2, 2024, Ms. Tanner filed a Notice of Application pursuant to the *Parenting and Support Act* ("*PSA*") seeking primary care, table child support payable from February 27, 2024, and special and extraordinary expenses.

[5] Mr. Arbuckle filed a Response to Application on May 22, 2024, seeking shared parenting, child support payable from March 2024, special and

extraordinary expenses, an order preventing the relocation of a child and parent, and an order addressing denial of time with a child.

[6] On May 29, 2024, Mr. Arbuckle filed a Notion of Motion seeking a change of venue from Kentville to Halifax (the "Venue Motion"). On July 15, 2024, the Court rendered an oral decision on the Venue Motion denying the request for a change of venue and ordering costs in the amount of $500.00 to Ms. Tanner.

[7] The matter has been before the court for several conferences. Six Interim Without Prejudice Orders have been granted with respect to decision-making, parenting time and child support:

- On June 5, 2024, the Court granted an Interim Without Prejudice Order ordering joint decision-making responsibility to both parents with primary care to Ms. Tanner and parenting time to Mr. Arbuckle no less than three times a week for three hours duration per visit.
- The parties agreed to a further Interim Without Prejudice Order (issued October 1, 2024) which provided for specified parenting times for Mr. Arbuckle for three hours on Mondays, three hours on Thursdays, and Saturdays from 11:30 a.m. to 5:30 p.m.

- On October 16, 2024, the Court granted an Interim Without Prejudice Child Support Order ordering Mr. Arbuckle to pay interim child support of $388 a month based on an income of $45,525, commencing November 1, 2024 and ordering Mr. Arbuckle to disclose specified financial information (Order issued January 6, 2025).
- In November 2024, the parties entered into a consent Christmas 2024 Parenting Order (Order issued November 25, 2024).
- On January 31, 2025, the parties participated in a settlement conference, which resulted in another Interim Without Prejudice Order, issued March 5, 2025. This Order provided that the parties would continue to have joint decision-making responsibility, C would continue to be in Ms. Tanner's primary care, and that child support would continue at the amount of $388 per month. The parties also agreed to a graduated increasing parenting schedule for Mr. Arbuckle and to arrangements for C's drop off and pickup at her daycare.
- On March 26, 2025, the Court made an Interim Without Prejudice Order pursuant to *Civil Procedure Rule* 59A that no persons, other

> than Mr. Arbuckle and Ms. Tanner, would be added to the Lillio App used by C's daycare provider unless the parties otherwise agreed (Order issued April 14, 2025).

[8] On March 31, 2025, Mr. Arbuckle filed an appeal of the March 26, 2025 decision; he was unsuccessful and was ordered to pay Ms. Tanner $20,000 costs: *Arbuckle v. Tanner,* 2025 NSCA 54. Mr. Arbuckle then sought leave to appeal the Court of Appeal decision to the Supreme Court of Canada and a stay of the Court of Appeal's decision. On August 7, 2025, the Court of Appeal dismissed Mr. Arbuckle's stay motion and ordered costs of $1,000.

[9] A hearing of this matter was held on September 15, 2025. Counsel for the parties made oral submissions on October 21, 2025, in addition to written submissions (September 23, 2025 and October 10, 2025).

EVIDENCE

[10] Ms. Tanner's Witnesses: herself, her father ("BT"), and her mother ("LT").

[11] Mr. Arbuckle's Witnesses: himself, his former partner ("HR"), his uncle ("SH"), and his mother ("DG").

AGREEMENTS

[12] The parties agree on the following:

1) Both parties will have direct access to third party information at source.
2) Daycare
    i. Current daycare enrollment
    ii. The persons who may pick up and/or drop off C at daycare
3) Parenting time on:
    i. C's birthday
    ii. March Break (2028 Onwards)
    iii. Easter
    iv. Mother's Day and Father's Day
    v. Thanksgiving
    vi. Halloween
    vii. Christmas
4) Summer Parenting Times commencing 2027
5) Child Care Costs

ISSUES

[13] The remaining issues for the Court to determine are:

A. Parenting

1) Relocation
    i. Ms. Tanner's Relocation to the Annapolis Valley
    ii. Future Relocations
2) "Step up" Parenting Times/Shared Parenting
3) Decision-Making Responsibility if the Parties do not agree
4) Talking Parents App

5) Lillio App
6) Limitation on Daycare Changes
7) Summer Parenting Time
    i. Summer 2026
    ii. Transition Day: Summer 2027 onwards
8) Driving to Mulgrave
9) Exchanges
10) Early Dismissal

B. Child Support

1) Table Amount
2) Section 7 Child Support: Extracurricular Expenses

A. Parenting

Issue 1: Relocation

i. Ms. Tanner's Relocation to the Annapolis Valley

[14] Mr. Arbuckle sought a prohibition on Ms. Tanner's relocation with C to the Annapolis Valley.

[15] The *PSA* includes provisions regarding notice, burdens of proof and requirements for parties who wish to relocate with a child:

> s. 18(E) (2) A person planning to relocate shall notify, at least sixty days before the expected date of the planned relocation, the parents and guardians of the child and any person who has an order for contact time with the child of the planned relocation
>
> …
>
> **Authorization or prohibition of relocation**

18G (2) On application by

(a) a parent or guardian of the child;

…

the court may make an order authorizing or prohibiting the relocation of a child and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just.

…

Relocation considerations

18H (1) When a proposed relocation of a child is before the court, the court shall give paramount consideration to the best interests of the child.

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

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

(b) where there is a court order or an agreement that provides that the child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;

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

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

> (e) for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child.
>
> …
>
> (4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including
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> (a) the circumstances listed in subsection 18(6);
>
> (b) the reasons for the relocation;
>
> (c) the effect on the child of changed parenting time and contact time due to the relocation;
>
> (d) the effect on the child of the child's removal from family, school and community due to the relocation;
>
> (e) the appropriateness of changing the parenting arrangements;
>
> (f) compliance with previous court orders and agreements by the parties to the application;
>
> (g) any restrictions placed on relocation in previous court orders and agreements;
>
> (h) any additional expenses that may be incurred by the parties due to the relocation;
>
> (i) the transportation options available to reach the new location; and
>
> (j) whether the person planning to relocate has given notice as required under this Act and has proposed new decision-making responsibility, parenting time and contact time schedules, as applicable, for the child following relocation.

[16] Ms. Tanner's evidence is that in early 2024, C was a breastfeeding newborn, Mr. Arbuckle was minimally involved in C's care, and when not working he was spending a lot of time away in his new relationship (with his current partner).

[17] Mr. Arbuckle's evidence was that C was cared for by both parents while they lived together.

[18] Mr. Arbuckle argued that Ms. Tanner could have lived with friends or rented an apartment. Ms. Tanner testified that she did initially live with a friend for a month, but that this was not a long term option. Her parents, who lived less than an hour away, had a large home and were able to support her.

[19] As a result of her young age, C had very limited connections to the Bedford area at the time of her relocation. Mr. Arbuckle's family reside primarily in the New Glasgow area, and his son from a prior relationship, CH, lives in Mulgrave, N.S.

[20] Ms. Tanner did not provide Mr. Arbuckle with formal notice of relocation, but he was aware of where she and C were residing.

[21] Following Ms. Tanner's relocation, Mr. Arbuckle sought Ms. Tanner's immediate return to the Halifax area ("HRM") and shared parenting.

[22] After Ms. Tanner's move, Mr. Arbuckle had parenting time with C during her awake hours (approximately three hours at a time) at the Tanners' home. However, Mr. Arbuckle strenuously complained and sought more time, without any recognition that C was a breastfed infant and had a schedule to which he needed to adapt.

[23] Initially, Ms. Tanner and her parents welcomed Mr. Arbuckle, DG, and CH into their home for Mr. Arbuckle's parenting time, until Mr. Arbuckle's behaviour made this impossible.

[24] Mr. Arbuckle's parenting time has since expanded and has been facilitated by Ms. Tanner.

Decision

[25] The Court accepts Ms. Tanner's evidence that C spent the "vast majority" of her time in the care of Ms. Tanner prior to relocation. The burden is therefore on Mr. Arbuckle to prove that relocation would not be in C's best interests: s. 18H(1A)(d).

[26] The Court finds that Mr. Arbuckle has not met this burden.

[27] The Court finds that Ms. Tanner did not move to the Annapolis Valley to frustrate Mr. Arbuckle's parenting time. She did not seek to control parenting time for her own reasons, but rather took reasonable positions working around C's development, schedule, and routine.

[28] Ms. Tanner's relocation with C to the Annapolis Valley was reasonable in the circumstances, and in C's best interests. It has provided C with stable housing,

contact with extended family, and support for Ms. Tanner. It does not currently detract from Mr. Arbuckle's parenting time given that C attends daycare daily in Dartmouth. The Court therefore permits C's relocation to the Annapolis Valley.

ii. Future Relocations

[29] Ms. Tanner's evidence is that she plans to continue living with the Tanners for the foreseeable future, and if she does move, it would be closer to Halifax.

[30] Should either party wish to relocate in the future, they will be governed by the provisions of the *PSA*. Therefore, a specific clause in the order is not required.

Issue 2: "Step Up" Parenting Times/Shared Parenting

[31] Mr. Arbuckle currently has C in his care every Monday from 4:00 p.m. until Tuesday at 8:00 a.m., and every other weekend from Friday at 4:00 p.m. until Sunday at 10:00 a.m., *i.e.* four overnights in a two week period (Step 3 of the March 2025 Order).

[32] Ms. Tanner proposes two increased parenting "steps" :

1) September 28, 2025 to January 4, 2026:
    - Week 1: Tuesday to Wednesday and Friday to Monday
    - Week 2: Tuesday to Wednesday

(i.e. five overnights, three in a row)

2) January 5, 2026 onwards:
   - Week 1: Thursday to Monday
   - Week 2: Wednesday to Thursday

   (i.e. five overnights)

[33] Mr. Arbuckle proposes four increased parenting "steps":

1) September 29, 2025 to December 28, 2025:
   - Week 1: Tuesday to Wednesday; Friday to Monday
   - Week 2: Wednesday to Thursday

   (i.e. five overnights)
2) December 29, 2025 to March 1, 2026
   - Week 1: Wednesday to Friday
   - Week 2: Thursday to Monday

   (i.e. six overnights)
3) March 2, 2026 to August 29, 2027: Monday to Wednesday; Friday to Wednesday (overlapping week 2); (seven overnights)
4) August 30, 2027 onwards (when C starts Pre-Primary): Monday to Monday alternating weeks (seven overnights)

[34] Mr. Arbuckle's proposal would have C in a shared parenting situation (*i.e.* more than 40% of the time) commencing December 29, 2025, moving to 50% of the time in March 2026.

[35] Mr. Arbuckle has consistently sought a shared parenting arrangement. His position is that shared parenting will give him an equal opportunity to influence C,

expose her to his family and prevent Ms. Tanner from exerting control over his parenting of C.

[36] Ms. Tanner believes equal parenting time is excessive for C at age 2. She testified that C needs time to adjust when she comes back from Mr. Arbuckle's care, and that C benefits from a home base with routines. Ms. Tanner also has significant concerns as to Mr. Arbuckle's ability to communicate effectively and co-operate with her.

Law

[37] In all parenting decisions, the Court is governed by the provisions of the *PSA*, which direct that a Court must only consider the best interests of a child: S. 18(5). The Court is required to balance various factors in making this assessment: SS. 18(6) and (8). In this case, the most relevant of these factors are as follows:

> (6) In determining the best interests of the child, the court shall consider all relevant circumstances, including
>
> (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
>
> …
>
> (c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;
>
> …
>
> (i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;

…

> (8) In making an order concerning decision-making responsibility, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

Communication

[38] The ability of parents to communicate is central to the question of whether shared parenting is in a child's best interest. While communication does not have to be perfect, it must be respectful and effective, so that it is realistic to expect that parents "can put the child (ren)'s needs first and foremost in their communication and decision-making": *A.N. v J.Z.,* 2018 NSSC 146 (CanLII).

Mr. Arbuckle's Communication Style

[39] Mr. Arbuckle's communication style is evidenced in his Talking Parents messages ("TP messages") to Ms. Tanner between June 2024 and June 2025 (Ex. 1, Vol. 3).

[40] The Court finds that the tone and contents of Mr. Arbuckle's TP messages to Ms. Tanner to be very concerning. He was generally dismissive, argumentative, and critical of Ms. Tanner, and would often engage in persistent and continuous messaging when she disagreed with him. This included persistent requests for increased parenting time.

[41] Since separation, Mr. Arbuckle has been laser-focused on achieving 50/50 parenting with C.

[42] In June 2024, Mr. Arbuckle sought to divide C's time "as evenly as is reasonably possible" (Ex. 2, Vol. 1, p. 51, para 120).

[43] In October 2024, he forwarded an article to Ms. Tanner by Richard A. Warshak which supports shared parenting.

[44] On December 12, 2024, he wrote:

> "My position has never changed; … We will both equally share 50/50 physical custody of (C) …" (Ex. 1, Vol. 3, p. 777).

[45] His persistent demands for more parenting time, and his reaction when he did not get what he wanted, has negatively impacted the parties' ability to communicate effectively.

[46] For example, in September 2024, Mr. Arbuckle sought overnight parenting with C. Ms. Tanner was opposed as she did not feel C was ready for an overnight. Mr. Arbuckle's response was to impugn her motives and allege she was "self-serving", "hypocritical", and "childish". He refused her requests to negotiate through their lawyers (Ex. 1, Vol. 3, pp. 959-964).

[47] In December 2024, Ms. Tanner proposed changing Mr. Arbuckle's pick up location to C's daycare in Dartmouth. Mr. Arbuckle initially refused to answer, and again repeated his demands for overnight parenting. When Ms. Tanner refused, Mr. Arbuckle sent repeated insulting and demanding messages to her, calling her 'childish", "controlling", "petty"; saying that she was acting like "a bitter petulant child", a "complete and utter monster", and "the most immature co-parent" (Ex. 1, Vol. 3, pp. 739-42).

[48] Mr. Arbuckle's communication style is also evidenced by TP messages between the parties about swimming lessons for C. In December 2024/January 2025, Mr. Arbuckle insisted in enrolling C (age 1 at the time), in swimming lessons in HRM and having Ms. Tanner pay half. Ms. Tanner disagreed. She stated:

> "Not right now. She is one, I think that the socialization and stimulation at daycare will be enough for a while until she is older. You are welcome to take her to public swims at community pools without my permission." (Ex. 1, Vol. 3, p. 756).

[49] Mr. Arbuckle sent insulting and demanding messages, accusing Ms. Tanner of not following "research" into this issue, and of engaging in financial abuse and manipulation (Ex.1, Vol.3, p. 757). When Ms. Tanner stated that she was not changing her mind at that time. Mr. Arbuckle responded:

> You have not provided a very valid reason, or really any reason, to prevent her from doing very normal things for her age. This is exactly why I will never accept anything less than 50/50 custody and shared decision making responsibility. …(Ex. 1, Vol.3, p. 757).

[50] Three weeks later Mr. Arbuckle raised the issue of extracurricular activities. Ms. Tanner requested that he refrain from signing C up for activities until after the (upcoming) settlement conference. Mr. Arbuckle responded with the following message on January 3, 2025 (Ex.1, Vol.3, p. 758):

> You will not and will never tell me how to parent my child, especially considering your restrictive and isolating behaviour and treatment of (C). Gaslighting, lying, and manipulating is not a "parenting style."

[51] Mr. Arbuckle's pattern was to continuously message Ms. Tanner when she did not respond immediately to his satisfaction. He refused to acknowledge this as a valid concern (Ex. 1, Vol. 3, p. 935-36; and Ex. 2, Vol.1, p. 57).

[52] Mr. Arbuckle has repeatedly over complicated issues (*e.g.* Ex. 1, Vol. 3, pp 969-972). A simple arrangement for providing a breast pump to Ms. Tanner, became overcomplicated by Mr. Arbuckle insisting that Ms. Tanner sign a seven page agreement regarding usage and damages, which he had drafted (Ex. 5).

[53] Mr. Arbuckle has impugned Ms. Tanner's motives and overreacted to simple mistakes/miscommunications (*e.g.* Ex. 1, Vol. 3, pp. 1068-1070).

Lack of Communication/Sharing Information

[54] On occasion, Mr. Arbuckle has withheld relevant information from Ms. Tanner. For example, Mr. Arbuckle did not advise Ms. Tanner that he would be away on vacation on two occasions when C was to be in his care. Instead, he arranged for his mother to care for C. On cross-examination, he justified this lack of communication by re-stating his unwavering view that his plan to have C cared for by his mother while he was on vacation was in C's best interests. Furthermore, he said that he expected Ms. Tanner would not have agreed to his mother caring for C while he was away, so he had not told her.

[55] Mr. Arbuckle expressed no insight as to why this behaviour eroded Ms. Tanner's trust (Ex. 1, Vol. 3, p. 1005).

Impact of Mr. Arbuckle's Litigation

[56] Mr. Arbuckle has shown unrelenting determination to take all possible legal steps against Ms. Tanner.

[57] In addition to the Venue Motion and two appeals taken in this matter, Mr. Arbuckle laid a complaint with the RCMP alleging that Ms. Tanner had accessed his work computer in 2021 (while they resided together). No charges were laid.

[58] Mr. Arbuckle also commenced a Small Claims Court action against Ms. Tanner with respect to rent responsibility (withdrawn).

[59] In December 2024, Mr. Arbuckle commenced a peace bond application against Ms. Tanner's father (BT), arising from an incident when BT was present for a parenting time transition. Mr. Arbuckle's evidence is that he was almost run over by BT at an access transition. BT and Ms. Tanner deny that this occurred. Mr. Arbuckle's application was dismissed.

[60] Mr. Arbuckle has shown no insight into how the stress caused to Ms. Tanner by this continual litigation has damaged their relationship.

Mr. Arbuckle's Failure to Accept Responsibility/Lack of Insight

[61] Mr. Arbuckle admitted that the language and approach he took in many messages was "regrettable" at times. However, he does not accept responsibility for his poor communication.

[62] Mr. Arbuckle argues that that if Ms. Tanner had not unilaterally moved C to the Annapolis Valley and limited his access to C, his behaviour and communication would have been more reasonable and controlled. His theory is that by moving and not accepting his parenting time requests, Ms. Tanner intended

to upset him and cause him to respond inappropriately so that she could use this against him in court.

[63] Mr. Arbuckle argues that if he has shared parenting, Ms. Tanner will not be able to "control" him, and he will therefore be able to communicate effectively with her.

[64] In addition, Mr. Arbuckle testified that he has made efforts "to improve" communication with Ms. Tanner (Ex. 2, Vol. 1, p. 252, para 5). He cites as an example messages in June 2025. However, these messages show the opposite. In response to a proposal by Ms. Tanner, Mr. Arbuckle blamed her, said her statements were untrue, and continued to demand that she engage with him when she had already provided a response (Ex.2, Vol. 1, pp. 260-261).

Summary and Findings: Communication

[65] The Court finds that the parties cannot communicate effectively regardless of the parenting arrangement for C. The Court bases this finding on Mr. Arbuckle's style of communication as evidenced by:

1) His rigidity, dismissiveness, and abusive language as shown in the TP messages before the Court.

2) His refusal to advise Ms. Tanner as to his inability to personally care for C while he took vacations.

3) His unwavering view that what he wants is in C's best interests (*e.g.* having his mother care for C while he is away; shared parenting).

4) His inability to see Ms. Tanner's point of view and his continual blaming of her for all conflict.

5) His lack of insight into his own communication issues,

6) His unrelenting determination to take all possible legal steps, without any insight into how the stress caused to Ms. Tanner by this continuous litigation has damaged their relationship and negatively impacted C's best interests.

[66] The Court does not accept that Mr. Arbuckle's poor communication and decisions were caused by Ms. Tanner's actions.

[67] Despite ample provocation, Ms. Tanner's communication with Mr. Arbuckle is generally respectful, direct and appropriate (*e.g.* Ex. 2, Vol. 1, pp. 53-57).

[68] Mr. Arbuckle's rigid concept of C's best interests as aligning with his own has dominated this proceeding from the outset. He has failed to acknowledge how

his actions and words have contributed to a total breakdown in communication between him and Ms. Tanner.

[69] In *Murphy v. Hancock*, 2011 NSSC 197 (CanLII) at paras 49-50, Associate Chief Justice O'Neil (as he then was), considered the balance of power between parents as a factor supporting shared parenting:

> 11. The extent to which primary care by a parent and more limited access time by the other parent will give rise to conflict in the parenting arrangement. The "elephant in the room" in many custody disputes has three aspects (a) the child support consequences that flow from a shared parenting arrangement or the alternative and (b) the manner in which a primary care parent can use his/her position to have power and control of parenting and (c)whether a parent will abuse the parenting opportunity by doing so. Shared parenting is often not ordered because the parties are too conflictual, notwithstanding that the conflict may result from a power imbalance in the parents' relationship flowing from the parenting arrangement in place. Courts must be cognizant of this dynamic; (*Emphasis added)*
>
> The Court finds that in the instant case, considering Mr. Arbuckle's attitudes and approach, shared parenting could actually create a power imbalance in Mr. Arbuckle's favour. The Court does not have the same concerns with respect to Ms. Tanner. There is no evidence that Ms. Tanner has abused her role as primary care parent and unduly restricted or controlled Mr. Arbuckle's parenting time.

Other Factors: Shared Parenting Arrangements

Proximity

[70] The parties now live approximately 40 minutes apart. While C currently attends daycare in Dartmouth and this facilitates parenting time for Mr. Arbuckle,. Mr. Arbuckle wants the Court to make an order now as to C's school enrollment in

2027. The Court declines to make such an order given the uncertainty as to the parties' and C's circumstances at that time.

Availability and Family Support

[71] Mr. Arbuckle testified that his job is "flexible" but the Court has no evidence the has actually used this flexibility. Mr. Arbuckle has not adjusted his vacation schedule to accommodate his parenting time with C.

[72] Mr. Arbuckle has the support of his partner and his mother. Ms. Tanner also has the support of her parents.

Transitions

[73] Transitions will not be reduced significantly under Mr. Arbuckle's plan. C currently travels to HRM with Ms. Tanner each weekday and transitions between her parents three times in a two week period. Mr. Arbuckle proposes longer periods of time with two transitions in a two week period.

Professional Assistance

[74] The Court doubts that the parties will benefit from professional involvement if shared parenting is ordered. Mr. Arbuckle unilaterally sought professional

parenting assistance from a therapist and demanded that Ms. Tanner attend. She refused.

[75] Ms. Tanner's position is that it would be fruitless to try to work with Mr. Arbuckle as he will not compromise. The Court accepts this view of Mr. Arbuckle.

Child's needs and history of care

[76] C has just turned two. Ms. Tanner has consistently considered and met C's needs since her birth. She has organized C's daycare and medical care. Ms. Tanner has shown insight into C's need for stability and routine.

[77] Mr. Arbuckle's parenting time has gradually increased to four overnights in a two-week period. He has the ability and resources to provide adequate care to C.

[78] However, Mr. Arbuckle has not been able to consistently examine his proposed parenting plans from C's perspective. He has shown little insight into the impact his plans/desires would have had on C, and her developmental needs at the time. For example, he continuously demanded for increased parenting time when C was a breastfeeding infant and during her transition to daycare.

Relationship with Sibling

[79] Mr. Arbuckle testified that he "shares" parenting of CH, and argues that extra time with C will enhance the sibling bond. However, HR's evidence is that Mr. Arbuckle currently has care of CH on alternate weekends during the school year (as well as on holidays and week on/week off in the summer). Shared parenting of C during the school year will not enhance the sibling relationship.

Social Science Evidence

[80] Mr. Arbuckle provided an article "Social Science and Parenting Plans for Young Children: A Consensus Report" from Richard A. Warshak (Psychology, Public Policy and Law, (2014) Vol. 20, No. 1, p. 46-67) in support of his view that shared parenting is in a child's best interest. The Court is not prepared to accept this opinion based on one peer reviewed article.

[81] "Social fact evidence" can be judicially noticed to construct context (*e.g.* in Charter cases such as the *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General*), [2004] 1 S.C.R. 76, 2004 SCC 4).

[82] However, judges cannot rely on publications as a substitute for expert opinion.

[83] In *R. v. Spence*, [2005] 3 S.C.R. 458, 2005 SCC 71, the Supreme Court of Canada discussed the scope of judicial notice as paras 67-69:

67 Here, the respondent and the African Canadian Legal Clinic are asking the Court to make some fundamental shifts in the law's understanding of how juries function and how the selection of their members should be approached. Their submissions carry us well beyond the specific context in which *Williams* and *Parks* were decided. The facts of which they ask us to take judicial notice would be dispositive of the appeal; yet they are neither notorious nor easily verified by reference to works of "indisputable accuracy". We are urged to pile inference onto inference. To take judicial notice of such matters *for this purpose* would, in my opinion, be to take even a generous view of judicial notice a leap too far. We do not know whether a *favourable* predisposition based on race — to the extent it exists — is any more prevalent than it is for people who share the same religion, or language, or national origin, or old school. On the present state of our knowledge, I think we should decline, at least for now, to proceed by way of judicial notice down the road the African Canadian Legal Clinic has laid out for us.

68 I would add this comment: in *R. v. Malmo-Levine*, [2003] 3 S.C.R. 571, 2003 SCC 74, a majority of our Court expressed a preference for social science evidence to be presented through an expert witness who could be cross-examined as to the value and weight to be given to such studies and reports. This is the approach that had been taken by the litigants in *Sharpe, Little Sisters, Malmo-Levine* itself and subsequently in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General),* [2004] 1 S.C.R. 76, 2004 SCC 4. We said in *Malmo-Levine* that

> courts should nevertheless proceed cautiously to take judicial notice even as "legislative facts" of matters . . . are reasonably open to dispute, particularly where they relate to an issue that could be dispositive . . . . [para. 28]

The suggestion that even legislative and social "facts" should be established by expert testimony rather than reliance on judicial notice was also made in cases as different from one another as *Find, Moysa, Danson*, at p. 1101, S*ymes* v. Canada, 1993 CanLII 55 (SCC), [1993] 4 S.C.R. 695, *Waldick v. Malcolm*, 1991 CanLII 71 (SCC), [1991] 2 S.C.R. 456, at pp. 472-73*, Stoffman v. Vancouver General Hospital*, 1990 CanLII 62 (SCC), [1990] 3 S.C.R. 483, at pp. 549-50, *R. v. Penno*, 1990 CanLII 88 (SCC), [1990] 2 S.C.R. 865, at pp. 881-82, and *MacKay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357. Litigants who disregard the suggestion proceed at some risk.

69 I accept that, as Finlayson J.A. pointed out in *Koh*, sometimes expert testimony is hard to come by and may in any event be beyond the resources of the particular litigants. As will be seen, I think such considerations in the context of challenges for cause are better addressed as part of the court's concern for trial fairness and the necessary perception of fairness, rather than being allowed to dilute the principled exercise of judicial notice.

[84] The Court is not prepared to take judicial notice of the opinions set out in one peer reviewed article, on the very issue before the Court.

Decision

[85] Shared or equal parenting time is not a default parenting plan.

[86] Considering the factors set out in S. 18(6) of the *PSA* and the relevant case law, the Court finds that this is not an appropriate case for shared parenting, and that C's best interests are best served by being in the primary care of Ms. Tanner. In particular, the Court finds that Mr. Arbuckle's inability to communicate effectively with Ms. Tanner and his lack of insight into his challenges, clearly outweighs any benefit of maximizing time for C with Mr. Arbuckle.

[87] In addition, the Court accepts Ms. Tanner's evidence that at this age C responds well to her routine, and needs time to settle after returning from Mr. Arbuckle's care.

[88] The Court therefore accepts Ms. Tanner's proposed parenting plan.

Issue 3: Decision-Making Responsibility if the Parties do not agree

[89] Ms. Tanner's Proposed method of decision-making:

- The parties will discuss the issue and make "best efforts" to reach an agreement within 72 hours.

- If no agreement is reached, Ms. Tanner will rely on any recommendations of C's child care provider, daycare provider, mental health provider or teachers/educational staff, as the case may be.

- If professional advice is not appropriate or available, Ms. Tanner will have sole final decision-making authority.

[90] Mr. Arbuckle's proposal on decision making:

- If agreement cannot be reached, the parties would rely on the recommendations of the persons noted above.

- If this is not appropriate, they would submit to third party mediation.

Decision

[91] Given Mr. Arbuckle's communication style and approach, the Court is not convinced that mediation could be successful in the event of a dispute.

[92] Mr. Arbuckle is unable to see any value in Ms. Tanner's concerns and views. For instance, on at least on one occasion Mr. Arbuckle has caused conflict during a medical appointment. When she raised this, Mr. Arbuckle dismissed Ms.

Tanner's concerns and reiterated that he believed his questions had been "pertinent" (Ex. 2, Vol. 1, p. 3, para 14). Similarly, Mr. Arbuckle seeks to control C's extracurricular activities, even now when she is only two years old. He has been dismissive of Ms. Tanner's views in this regard.

[93] Therefore, the Court accepts Ms. Tanner's position that she should ultimately make final decisions for C if necessary and accepts her decision-making proposal.

Issue 4: Talking Parents App

[94] Mr. Arbuckle and Ms. Tanner communicated via the TP App from approximately June 2024 to October 2025. Mr. Arbuckle now refuses to continue to use the TP App.

[95] Mr. Arbuckle gave no reason for this refusal. He merely notes that Ms. Tanner texts other people to communicate with them, so she should be able to do the same for him.

[96] The TP App provided for clearer and more structured communication than texting alone. Despite this, Mr. Arbuckle's communication while using the TP App was often ineffective and abusive.

Decision

[97] The Court agrees with Ms. Tanner that in all likelihood Mr. Arbuckle's communication would worsen if he did not use the TP App.

[98] Therefore, the Court orders that all communication except for that of a time-sensitive/emergency nature will take place using the TP App or another communication application as agreed. I am advised that the base level of TP App is free. The Court will not order the parties to pay for a higher level at this time (which apparently provides for a shared calendar) given C's age.

Issue 5: Lillio App

[99] The Lillio App posts recordings and photos of C taken at her daycare.

[100] Ms. Tanner proposes that seven users have access to this App.

[101] Mr. Arbuckle agrees but wishes to add six additional family members.

[102] Ms. Tanner does not specifically object to the additional family members having access to the App. She testified that she uses group chats and other methods to send photos of C to her family, and Mr. Arbuckle can do the same.

[103] The Court will allow Mr. Arbuckle's list of users, provided that any further additions will be by mutual agreement.

Issue 6: Limitation on Daycare Changes

[104] The parties agree that C will continue to attend her current daycare. However, Mr. Arbuckle seeks to place a restriction on changing C's daycare until 2027 when she begins pre-primary.

Decision

[105] The Court cannot predict if the parties' or C's circumstances will change before September 2027. The Court has provided a decision-making process for significant decisions which will be followed if either party wishes to change C's daycare enrollment. The limitation sought by Mr. Arbuckle is therefore not appropriate and will not be ordered.

Issue 7: Summer Parenting Time:

i. Summer 2026

[106] Mr. Arbuckle seeks to follow his proposed shared parenting plan in the summer of 2026. Ms. Tanner seeks to follow her proposed parenting plan, with the

exception of optional one-week vacation periods for each parent in July 2026 and August 2026.

Decision

[107] The Court has determined that Ms. Tanner's proposed parenting plan is in C's best interests. The Court accepts that it is reasonable that one or both parents may wish to have five weekday vacation days adjoining one of their parenting weekends in both July and August (for a total of seven days each in both months).

[108] The parties will choose their respective vacation days as follows: Ms. Tanner by May 1, 2026 and Mr. Arbuckle by June 1, 2026.

i. Transition Day: Summer 2027 onwards

[109] The parties have agreed to week on/week off parenting for the summer months commencing in 2027. However, they disagree on the exchange day: Mr. Arbuckle proposed Mondays and Ms. Tanner proposes Sunday.

Decision

[110] The Court accepts that a Sunday exchange is appropriate. This will accommodate each parent's vacation week plans. An exchange time of 4:00 p.m.

on Sunday in Windsor also has the advantage of consistency. Therefore, Ms. Tanner's proposal is accepted.

Issue 8: Driving to Mulgrave

[111] When Mr. Arbuckle has C in his care on weekends, he also has care of CH, who resides primarily in Mulgrave (approximately 2.5 hour drive each way), and who must be returned to Mulgrave on Sunday afternoons. Mr. Arbuckle has C in his care until Monday morning. Mr. Arbuckle wishes to take C with him on Sundays should he personally return CH to Mulgrave. This would entail five hours of driving for C on alternate Sundays. Mr. Arbuckle testified that C will benefit from this in that he will be able to talk to her and entertain her.

[112] Ms. Tanner's position is that it is unnecessary for C to be in a car for five hours on alternate Sundays at this age. However, she does not object to the driving if it is to facilitate Christmas, March Break, Easter, Thanksgiving, or Summer vacation parenting time.

[113] Ms. Tanner noted that DG, who lives about half-way between the two locations, has regularly assisted with the CH's travel. HR also testified that DG helps with CH's transportation.

Decision

[114] The Court agrees with Ms. Tanner that on weekend parenting time, C should not be subjected to five hours in a car. Mr. Arbuckle's position is convenient for him, but appears to be unrealistic for a two year old. Therefore, the Court accepts Ms. Tanner's proposal, i.e. Mr. Arbuckle will not drive C to Mulgrave during his weekend parenting times unless it is to facilitate Christmas, March Break, Easter, Thanksgiving, or Summer vacation parenting time.

[115] Should Mr. Arbuckle transport CH to Mulgrave on Sundays while C is in his care, and if he is unable to find care for C, he shall advise Ms. Tanner no later than 12:00 noon on Saturday, and she may then chose to pick up C at Mr. Arbuckle's home at 12:00 noon on Sunday (instead of Mr. Arbuckle returning C to daycare on Monday).

Issue 9: Exchanges

[116] The usual parenting exchange location is C's daycare.

[117] Ms. Tanner has proposed detailed clauses with respect to exchanges if daycare is closed, if C is sick, or if travel is affected by weather.

[118] Mr. Arbuckle also seeks slightly different but no less detailed exchange provisions for C.

Decision

[119] The Court finds that it is in C's best interest to have a simplified, regular schedule for exchanges, which minimizes conflict and confusion for her parents. Therefore, the following exchange provisions are ordered:

1) *No Day Care*

- If there is no daycare on an exchange day, the exchange will occur at 4:00 p.m. at the Windsor Exhibition Park, unless otherwise agreed.

2) *Sickness or Weather*

- If C is in Mr. Arbuckle's care and becomes ill, or if there is a winter storm on the day he is to return C to Ms. Tanner's care, he shall notify Ms. Tanner, and the exchange will occur at a time and location determined by Ms. Tanner, taking into account C's health needs and safety.

- If C is in Ms. Tanner's care and becomes ill, or if there is a winter storm on a day C is to return to Mr. Arbuckle's care, C may

stay in Ms. Tanner's care and the exchange to Mr. Arbuckle will occur at a time and location determined by Ms. Tanner, taking into account C's health needs and safety.

Issue 10: Early Dismissal

[120] If there is an early dismissal from daycare, Ms. Tanner seeks to pick up C at daycare, regardless of the parenting schedule, and proposes that Mr. Arbuckle contact her to make arrangements to pick up C from Ms. Tanner's care if it is his parenting day.

[121] Mr. Arbuckle's position is that the parent otherwise responsible for picking C up at daycare on that day, will pick her up on an early dismissal day, or otherwise make arrangements for an authorized party to pick her up.

Decision

[122] Ms. Tanner's work is closer to C's daycare than Mr. Arbuckle's home or work. Therefore the Court accepts Ms. Tanner's proposal.

B. Child Support

Issue 1: Table Amount

[123] The parties agree that Mr. Arbuckle's gross annual income has been $74,946.40 since February 2025. The table amount of child support of $643 per month (rounded up) will be paid from February 2025 to September 2025 inclusive (2017 Tables). Commencing October 1, 2025, the table amount of $635 per month (rounded up) will be paid (2025 Tables). As of February 1, 2025, these amounts replace the payment of $388 ordered to commence on November 1, 2024.

Issue 2: Section 7 Child Support: Extracurricular Expenses

[124] Mr. Arbuckle seeks an equal contribution to extracurricular expenses, such as swimming lessons. There is no evidence that such activity expenses incurred by either party are extraordinary as defined by the *Child Support Guidelines*. Therefore, the Court will not order Ms. Tanner to contribute to same.

[125] Counsel for Ms. Tanner is to prepare the Order. Ms. Connors provided a draft *PSA* Order and Third Party Information Order on October 21, 2025. The Court accepts these orders with adjustments as indicated in this decision and as follows:

- Clause 4 (Talking Parents): Change to "Talking Parents" and change "his" to "her" in the second line.

- Clause 8 (Step 2 Parenting): Change the 1st and 2nd January dates to 2026 (not 2025)
- Clauses 9-14 (Weather and Sick Days): Replace with the provisions ordered by the Court.
- Clause 18 (Summer Vacation): Reword to accord with the Court's decision (and include notice provisions).
- Clause 31 (Lillio App): Add the extra persons to accord with the Court's decision.
- Clause 33 (Child Support): Reword to accord with the Court's decision.
- Clause 34 (Child Support Arrears): Delete. Arrears will be adjusted and collected by Maintenance Enforcement.
- Add a clause regarding Mulgrave travel to accord with the Court's decision.

Costs

[126] Ms. Tanner has been almost completely successful. She is entitled to her costs. The Court will accept submissions on or before February 6, 2026 if the parties are unable to agree.

Dewolfe, J.