

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Power v. Power*, 2026 NSSC 70

Date: 20260324

Docket HFX No. SFH1201-075269

Registry: Halifax

Between:

Mary Eleanor Power

Petitioner

v.

Jerry Kenneth Power

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Daniel W. Ingersoll

Heard: April 28, 29, 30, July 15 and 16 and November 25, 2025, in
Halifax, Nova Scotia

Written Decision: March 24, 2026

Subject: Parenting, Custody, Relocation, Mobility, Joint Custody,
Shared Parenting

Legislation: *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3

Issues: Relocation, Parenting

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Counsel: Brian Bailey for the Petitioner
The Respondent is self-represented

By the Court:

Introduction

[1] Jerry Power and Mary Power separated in January of 2022 after a 7-year marriage. Their son J is now eight years old.

[2] Ms. Power petitioned for divorce in 2023. I granted an interim order in December of 2023 giving Ms. Power exclusive possession of the matrimonial home and primary care of J. As time passed, a shared parenting arrangement evolved.

[3] Ms. Power now seeks an interim order allowing her to relocate with J from Timberlea to Colby Village. She also seeks primary care and final decision-making for J.

[4] Mr. Power opposes J's relocation and the proposed change to J's parenting arrangement.

Interim status

[5] Although Ms. Power filed a petition for Divorce on October 31, 2023, this matter remains at the interim stage.

[6] Neither party has requested that the Divorce trial be scheduled.

[7] Ms. Power initially took the position that changing J's residence from the former matrimonial home in Timberlea to 25 Hollyoake Lane in Colby Village was not a relocation. Mr. Power objected asserting that J's move from Timberlea to Colby Village was actually a relocation thereby requiring Ms. Power to comply with the *Divorce Act*, RSC 1985 c. 3 (2nd Supp) relocation notice requirements.

[8] Following a contested hearing, I found that J's move from Timberlea to Colby Village was not a change of residence but rather constituted a relocation and required Ms. Power to provide formal notice of the relocation pursuant to the *Divorce Act*.

[9] Ms. Power filed a Notice of Relocation on October 1, 2024, effective July 1, 2025. Ms. Power's notice did not propose any change to J's parenting arrangements.

[10] Mr. Power filed an Objection to Relocation on October 10, 2024.

[11] Ms. Power now says that not only should J's relocation be permitted she should also be granted primary care and final decision-making authority for J.

[12] A three-day relocation hearing was scheduled for April 28, 29 and 30th, 2025. In support of her relocation request, Ms. Power deposed two affidavits to which she attached transcripts of recordings of twelve interactions with Mr. Power.

[13] By motion filed March 31, 2025, Mr. Power sought to suppress the transcripts and the associated recordings.

[14] The three days of trial were converted to a *Voir Dire* to address the admissibility of the transcripts and related recordings. Following receipt of written submissions, I rendered an oral decision on June 12, 2025, in which I admitted eight of the recordings into evidence. My oral decision was published on August 26, 2025, as 2025 NSSC 236.

Issues

[15] In this decision I will resolve the following issues:

1. Is the interim stage of this divorce relevant to this relocation decision?
2. What legal framework governs this relocation request?
3. What parenting arrangement is in the child's best interests?
4. Is relocation in the child's best interests at this interim stage?
5. Who bears the burden of proof?
6. What parenting schedule is in the child's best interests?

Analysis

ISSUE # 1 Is the interim stage of this divorce relevant to this relocation decision?

[16] In the past courts have demonstrated a reluctance to make fundamental changes to children's lives on interim motions.

[17] An example of this reluctance is found in *Hunter v. Hunter*, 2013 NSSC 417 in which Justice Jollimore dismissed a motion to allow relocation at an interim

stage. In *Hunter, supra* Justice Jollimore noted that Justice Marshman in *Plumley v. Plumley*, [1999] O.J. No. 3234 identified three factors that “are or ought to be important” in deciding interim mobility requests:

1. A court will be more reluctant to upset the status quo on an interim basis and permit the move when there is a genuine issue for trial.
2. There can be compelling circumstances which might dictate that a justice ought to allow the move. For example, the move may result in a financial benefit to the family unit, which will be lost if the matter awaits a trial or the best interests of the children might dictate that they commence school at a new location.
3. Although there may be a genuine issue for trial, the move may be permitted on an interim basis if there is a strong probability that the custodial parent's position will prevail at trial.

[18] The reluctance to not approve a relocation simply because the request is made at the interim stage has recently been rejected because such an approach places greater significance on the stage of the proceeding than on the child’s best interests. The Ontario Divisional Court in *Diallo v. Bah*, 2025 ONSC 2106, 18 R.F.L. (9th) 206 recently held that in a relocation case it is the best interests of the child that is determinative not the stage at which the relocation request is considered. The court in *Diallo v. Bah, supra* confirmed that the *Plumley* factors have been overtaken by the amendments to the *Divorce Act*, and that *Barendregt v. Grebliunas*, 2022 SCC 22, has made it clear that the only question the court is to answer on a relocation motion is whether the relocation is in the best interests of the child.

[19] Justice MacDowell in *BM v. TG*, 2025 NSSC 417 citing *Diablo, supra* noted that although application of the *Plumley, supra* factors in interim mobility cases has come into question the criteria in *Plumley (supra)* are helpful and relevant circumstances when considering interim relocation.

[20] I find that although this matter remains at the interim stage I must resolve this relocation request by focusing on J’s best interest. I place little significance on the fact that this matter remains at the interim stage for the following four reasons:

1. The law requires that I focus on J's best interests which means ensuring that I do not permit the stage of the proceeding to overwhelm or take priority over J's best interests.
2. Secondly, although this relocation hearing was an interim motion the hearing and the proceeding lengthy *Voir Dire* were robust proceedings with several days of hearing, multiple affidavits, numerous exhibits and lengthy cross-examinations. This relocation hearing focused on the issues of parenting and relocation which would typically be the subject matter of the final hearing. I am satisfied that this relocation hearing was more akin to a final trial than an interim hearing in terms of length, complexity and comprehensiveness. I find that there is a strong evidentiary basis upon which this relocation and related parenting arrangement decision can be made. In this context and these circumstances, it is, as then Associate Chief Justice O'Neil in *Gibney v. Conohan*, 2011 NSSC 268 said "It is difficult to envisage a re-hearing of this matter but rules do permit a final hearing."
3. Thirdly the parties have been separated for nearly four years. J was four when the parties separated, he is now eight. This is not a case in which the parties are in an immediate post-separation state where neither has found their footing or demonstrated their capacity to parent in the new separated family dynamic. In this case, four years of post-separation parenting gives me a strong longitudinal basis upon which to understand J's best interests and to assess the parties comparative parenting capacity and how they have attended to their son's best interests during that time period. Associate Chief Justice O'Neil (as he then was) reached a similar conclusion in *Gibney, supra* wherein he determined that given "all of the evidence, the length of this proceeding, the anticipated delay before a final hearing and the time since the parties' separation, the description of the hearing as "interim" is less a consideration for the court."
4. Finally, because neither party has requested a final trial a final decision on parenting arrangements may be some distance into the future. Half of J's life has passed while his parents litigate his parenting arrangements. It is not in his best interests to defer a decision on relocation and the associated parenting arrangement because the matter remains at an interim stage.

Issue #2 What legal framework governs the determination of this relocation request?

[21] Justice Beaton, in *Weagle v. Kendall*, 2023 NSCA 47, identified the best interests of the child as the sole question that drives relocation cases.

[22] Justice Karakatsanis in *Barendregt v. Grebliunas*, *supra*, provided an overview of the legal principles which I must apply in this relocation case, and observed that the best interest inquiry is “highly contextual because of the multitude of factors that impinge on the child’s best interest” (paragraph 97). Justice Karakatsanis also observed that the inquiry into whether a relocation is in a child’s best interests is a highly fact-specific and discretionary inquiry (paragraph 152).

[23] In *Barendregt*, *supra*, Karakatsanis J restated the relocation framework, describing the crucial question as whether relocation is in the child's best interests, based on a fact-specific review of general best interests factors and those unique to the relocation inquiry:

[152] The crucial question is whether relocation is in the best interests of the child, having regard to the child's physical, emotional and psychological safety, security and well-being. This inquiry is highly fact-specific and discretionary.

[153] Our jurisprudence and statutes provide a rich foundation for such an inquiry: see, for example, s. 16 of the *Divorce Act*. A court shall consider all factors related to the circumstances of the child, which may include the child's views and preferences, the history of caregiving, any incidents of family violence, or a child's cultural, linguistic, religious and spiritual upbringing and heritage. A court shall also consider each parent's willingness to support the development and maintenance of the child's relationship with the other parent, and shall give effect to the principle that a child should have as much time with each parent, as is consistent with the best interests of the child. These examples are illustrative, not exhaustive. While some of these factors were specifically noted under *Gordon*, they have broad application to the best interests of the child.

[24] In considering Ms. Power’s relocation request I must remain focused on J’s best interests and not focus on the implications of the relocation on his mother (see *Weagle v. Kendall*, *supra* paragraph 56). I must take all relevant factors into account and compare and balance the advantages and disadvantages of each competing parenting plan to determine whether relocation is in J’s best interests: *D.A.M. v C.J.B.*, 2017 NSCA 91. In *D.A.M. v. C.J.B.*, *supra*, the Court of Appeal accepted that the balancing that should occur required that “the disruptive impact

the proposed relocation could have on the child had to be weighed against the benefits the child was likely to enjoy if relocation was permitted” (paragraph 33).

[25] I must also give effect to the principle that J should have as much contact with each parent as is consistent with his best interests (Section 16 (6) of the *Divorce Act* and *D.A.M. v C.J.B.*, *supra* at paragraph 75).

Issue # 3 What parenting arrangement is in the child’s best interests?

[26] In considering Ms. Power’s request to relocate I must not only consider whether relocation is in J’s best interests, but I must also, in discharge of my duty to consider those best interests, consider which parenting arrangement is in his best interests. Justice Farrar in the Nova Scotia Court of Appeal decision of *Slade-MacLellan v. Brophy*, 2012 NSCA 80 confirmed that in a relocation case a trial judge, upon finding a material change in circumstances, has the ability to alter custody arrangements because the trial judge has a fresh responsibility to determine the child’s best interests “by reference to that change.” Justice Farrar held that considering the matter afresh permits a trial judge to examine the child’s current needs and decide which parent is better suited to meet those needs even if the relocation request is rejected.

[27] The Court of Appeal has upheld trial court decisions in which the proposed relocation was rejected or not pursued but the court nonetheless altered the parenting arrangement (see *Mahoney v. Doiron*, 2000 NSCA 4 and *Muir v. Sabean*, 2003 NSCA 99).

[28] In this case I do not need to determine if a material change in circumstances has occurred because a final parenting order has not been issued. As a result, I find that it is appropriate for me to consider the relocation request and determine the parenting arrangement that is in J’s best interests. Although I do not need to determine if a material change of circumstances has occurred I find that the facts of this case constitute a material change in circumstances.

Parenting Arrangements should be assessed first

[29] Each child and family is unique, so each decision is fact-specific and dependent on judicial discretion. The *Divorce Act* lists thirteen individual and contextual factors relevant to childrens’ best interests in all parenting cases and an additional seven factors where there has been family violence. In relocation applications, a further seven factors are identified.

[30] The *Divorce Act* stipulates that in considering the best interest factors I must give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

[31] In this case I must consider the parenting arrangement that is in J's best interests and whether relocation is in his best interests. Because I must give primary consideration to J's physical, emotional and psychological safety, security and well-being my review of the evidence leads me to conclude that I should first consider the parenting arrangement which is in J's best interest. I will then consider whether relocation is in his best interests.

Inferences and Credibility Assessments

[32] The parties offer conflicting evidence on a number of key issues.

[33] In reviewing the evidence, I have drawn inferences in keeping with the law as discussed by Saunders, JA in *Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General)*, 2013 NSCA 4.

[34] In reviewing the evidence, I have also assessed each party's credibility in determining what evidence I have accepted and applied the law on credibility as set out in *Baker-Warren v. Denault*, 2009 NSSC 59 as approved in *Gill v. Hurst*, 2011 NSCA 100, *Paulin v. Pennell*, 2022 NSSC 297 and *Peters v. Reginato*, 2016 NSSC 345.

[35] I am not required to believe or accept any witness's evidence in its entirety. I may believe or rely upon none, part, or all of a witness's evidence. I may attach different weight on different parts of the evidence (*Burghardt v. Burghardt*, 2019 NSSC 106 and *MacKinnon v Davis*, 2024 NSSC 267).

Physical, emotional and psychological safety, security and well-being

[36] In this case my analysis of J's best interests must commence with a consideration of his physical, emotional and psychological safety, security and well-being in considering the best interest. Based on the evidence before me, I have concluded that J's emotional and psychological safety, security and well-being is not protected or promoted by his current parenting arrangement.

[37] I find that Mr. Power's engagement with Ms. Power and J has not promoted J's emotional or psychological safety, security or well-being.

[38] I find that Mr. Power has challenged, belittled, criticized, humiliated and undermined Ms. Power personally and in her capacity as J's mother. I admitted audio recordings of the breakfast video calls involving Mr. Power, Ms. Power, Mr. Power's partner and J into evidence. These recordings establish that over the course of several Our Family Wizard calls between December 20, 2024, and April 2, 2025, Mr. Power said to his son:

- a. Ms. Power is not honest with J,
- b. Ms. Power is saying things to J that are not true,
- c. Ms. Power is lying to J,
- d. Ms. Power is being dishonest with J,
- e. Ms. Power is trying to manipulate J,
- f. J should say something to Ms. Power in response to her lying to him,
- g. J can do what he wants to do when his is with Mr. Power,
- h. it stinks that J is not allowed to participate in a particular tournament,
- i. Ms. Power was rude, disrespectful, and unacceptable,
- j. Ms. Power can ignore J all she wants but what J says matters,
- k. Ms. Power will dismiss J no matter what J says or wants,
- l. Ms. Power makes ups excuses for her behaviour,
- m. Ms. Power does not care what the child wants,
- n. Ms. Power says "no" to every suggestion made by Mr. Power,
- o. it's important for J to do what he wants to do.
- p. Mr. Power thinks Ms. Power's behaviour was rude and not very respectful,
- q. Ms. Power can promise him whatever J wants but Ms. Power is 100% wrong,
- r. Ms. Power tries to isolate J,
- s. Ms. Power has done a lot of things to prevent J from playing hockey and that was wrong,
- t. Mr. Power is going to fight for what J wants and what is right and will do what he can to make sure J gets a chance to play hockey as much as

he likes and that in the meantime, “Mama’s gonna stop you from playing hockey.”

[39] I have concluded that the above noted allegations Mr. Power advanced against Ms. Power were unfounded and not fair. They were Mr. Power’s perspective which was not objective, not accurate and extremely harmful.

[40] On cross-examination Mr. Power admitted that the effects of telling J that Ms. Power dismisses him were to alienate her and undermine Ms. Power as a mother. Mr. Power admitted that was something he should not have done.

[41] Mr. Power admitted on cross-examination that telling Ms. Power in front of the child that she did not want to hear J and that she was trying to isolate him was inappropriate, and that could have a negative effect on J’s relationship with his mother.

[42] Mr. Power admitted on cross-examination that he had told the court at a conference in May of 2024 that he would not engage the child in adult issues and that he did so despite having told the court he would not do so.

[43] On cross-examination Mr. Power admitted that he feels a sense of urgency if J does not have the chance to participate in sports and, as a result, he had made choices he regrets which have put J in the middle of the situation and have caused J to advocate for himself. Mr. Power admitted that this behaviour was not a good thing for J and that he cannot continue to do it.

[44] I find the evidence establishes that Mr. Power not only disrespects Ms. Power but openly encourages the child to challenge his mother’s decisions and to not respect her decisions. Mr. Power presents his view to the child as the only credible perspective and dismisses Ms. Power’s perspective and voice and is dismissive of the child.

[45] I find that Mr. Power has responded negatively and inappropriately when Ms. Power has refused to agree to his suggestions for additional sporting activities. Mr. Power is so focused on securing these additional activities that he is prepared to harm his son and his son’s relationships with his maternal family to secure his desired outcome.

[46] I find that Ms. Power has been reasonable in her approach to this eight-year-old’s activities. She seeks a healthy mix of activities and leisure time. I am

concerned that Mr. Power is prepared to disregard the child's overall healthy development and focus only on his athletic interests. Mr. Power has not demonstrated to me that he has insight into what is truly in his son's best interest.

[47] Mr. Power submitted that he has refrained from further inappropriate comments during the breakfast calls after the *Voir Dire* in April of 2025. I am not surprised Mr. Power has refrained from further inappropriate conduct: he knows that Ms. Power records those calls and he has heard my comments regarding his conduct in my *Voir Dire* decision. I find that although Mr. Power may have refrained from further inappropriate comments of the nature set out above, he has not demonstrated to me that he has insight into the negative effect of his behaviour on his son. This lack of insight raises a very real concern that these sort of comments may still be occurring in the child's presence out of earshot of Ms. Power.

[48] Examples of the harmful effect which Mr. Power's inappropriate behaviour has had on the child include:

1. During one breakfast call the child asked his mother if she was lying. Mr. Power's behaviour normalized the suggestion that the mother lies. For a child of eight to feel emboldened by his father's conduct to accuse his mother of lying is strong evidence that the child is being incited to inappropriate behaviour by his father and that the child's bond with his mother has been seriously undermined by his father's behaviour.
2. In another breakfast call the child defended his mother and told his father that his mother was not lying. It is unfortunate that an eight-year-old child should be put in a position where they feel they have to defend their parent because the other parent is attacking that parent.
3. The child has demonstrated an unwillingness to listen to Ms. Power and comply with her reasonable suggestions after being with or near his father. The child's refusal to get into the mother's car after being with the father at a hockey event was documented in the March 4, 2025, audio recording. The evidence at trial documented other examples where the child refused to go with the mother. On one particular occasion when the child would not go with his mother Mr. Power videotaped the situation but did not intervene. The evidence establishes other circumstances prior to trial of the child being reluctant to go with this mother.

[49] Mr. Power testified that there was no correlation between J refusing to get into his mother's car and Mr. Power's behaviour (engaging the child in adult conversations, making negative comments about Ms. Power, and pitting the child against his mother). Mr. Power's assertion of there being no correlation between his behaviour toward Ms. Power and his son's behaviour toward Ms. Power demonstrates at best a concerning lack of insight into the connection between his suggestion that the child should challenge his mother and the child's subsequent refusal to listen to his mother. Further the fact that Mr. Power's instinct was to video the child's lack of compliance rather than assist Ms. Power in addressing the situation also demonstrates that he prioritizes the garnering of proof in support of his perspective that Ms. Power is an inadequate parent over the child's safety or the child's need to listen to and obey both parents.

[50] Mr. Power's lack of insight into his own behaviour is also made manifest in his assertion that it is Ms. Power who has placed J in the midst of conflict. I find that Mr. Power has created conflict with Ms. Power and exposed his son to that conflict. I find that not only has Mr. Power challenged Ms. Power in front of their son he has encouraged his eight-year-old son to challenge his mother and in doing so has engaged the child in conflict. I find that Mr. Power lacks insight into the harmful effects of his behaviour and seeks to blame the consequences of his behaviour on Ms. Power and her family.

[51] I find that Ms. Power's relocation request must be understood and considered through the lens of the child's exposure to the parties' significant and ongoing conflict regarding J's activities which I find has not promoted or secured the child's emotional or psychological safety, security and well-being.

[52] I will now consider the best interests factors to determine the appropriate parenting arrangement. I have considered all of the Section 16 (3) best interests factors but will only address those factors relevant to this particular family.

The Child's Needs

[53] J is a healthy active eight-year-old boy. He loves and is very good at sports. He is loving and affectionate. He enjoys reading.

[54] Neither parent identified any unique needs that require particular attention in this decision.

History of Caregiving and Parental Involvement

[55] The parties do not agree on their historic care-giving roles. They also have different views on the appropriate way to parent their son.

[56] Addressing first the history of care, Ms. Power says that she has been J's primary care giver. Mr. Power says that he has been J's primary care giver.

[57] The evidence establishes that after acquiring a business in Bridgewater, Mr. Power began spending several nights per week at residences other than the couples shared dwelling. Ms. Power testified Mr. Power stayed in Bridgewater twice a week. The evidence establishes that Mr. Power dropped the child off at school and picked him up but was not home every evening prior to separation.

[58] The evidence establishes Ms. Power was continually present with J at the former matrimonial home before separation and after the parties separated.

[59] On December 22, 2023, I granted Ms. Power primary care. Since that time, the parties have moved to a shared parenting model.

[60] With respect to care giving Ms. Power says that since J was three or four Mr. Power used extreme disciplinary measures on J.

[61] Ms. Power's assertion that Mr. Power's historic approach with J was not appropriate is confirmed in the evidence. The evidence establishes that Mr. Power's expectations of J in terms of sporting activities and commitments have in the past been unrealistic and not age appropriate. Mr. Power attached Ms. Power's December 17, 2023, affidavit to his April 3, 2025, affidavit. In that 2023 affidavit Ms. Power deposed that she had been present when Mr. Power called their son "a pussy-ass bitch" and told him to "shut the fuck up." She also deposed that Mr. Power called J a "wimp" and on numerous occasions said "Mama can't save you" before taking the child (who was six) for extra workouts. In that 2023 affidavit Ms. Power deposed that she has seen Mr. Power yell at J and has seen J cowering when Mr. Power yells at him and is aggressive. This evidence, presented by Mr. Power, was uncontradicted.

[62] Mr. Power says that he has learned that J needs a father not a coach and has revised his approach to reflect that mentality. Mr. Power submitted a letter from his therapist which noted that as of June 2024 Mr. Power can recognize when his wish to teach his son (who had just turned 7) a strong work ethic and to have his son be

“successful” was problematic at times and that Mr. Power has reframed when his strategies as a coach are not appropriate or aligned with his goals as a parent.

[63] Mr. Power deposed that he has learned that J needs a father and not a coach and has revised his approach accordingly.

[64] Mr. Power deposed he works with a therapist focusing in particular on being more flexible and has taken four parenting courses and continued to work weekly on strategies such as co-parenting and modeling behaviours. He deposed that he has strengthened his parenting approach and has worked tirelessly on rebounding from what were potentially harmful behaviours in the past.

[65] The evidence establishes that notwithstanding these courses and this modified approach Mr. Power struggles with positive and constructive co-parenting. Specifically, he does not control his anger and hostility when Ms. Power does not agree with him, and does not model appropriate parental behaviour for their son.

[66] Although the evidence establishes that Mr. Power’s approach with his son appears to be less aggressive, the evidence does establish that Mr. Power has firm expectations regarding his son’s commitment to sports training. For example, the evidence establishes that Mr. Power expects his eight-year-old son to practice hockey stick and puck handling drills before breakfast. The evidence established that one morning at 7:00 am Mr. Power asked the child if he had completed his hockey drills.

[67] With respect to parental involvement Mr. Power says he attends all of J’s practices and games, regardless of the sport. Mr. Power is critical of Ms. Power for not attending all games and practices and faults her for using her phone while in attendance at J’s games or practices. I do not fault Ms. Power for not attending all of J’s games or practices nor do I fault her for using her phone during a game or practice. I do not accept either fact as evidence of Ms. Power’s lack of interest or support of her son.

[68] On cross-examination Mr. Power questioned Ms. Power as to why she agreed to increase his parenting time if she felt that Mr. Power’s behaviour constituted family violence. Ms. Power testified that she knows that J loves Mr. Power and she hoped he would change and that she was concerned that if she did not agree that J would be brought into the middle of the dispute which is not fair to their son. She testified that she wished she could go back and change that decision.

[69] Ms. Power testified that she felt stuck in terms of agreeing to increasing Mr. Power's parenting time. She testified that if she made the decision to revert to the original primary care arrangement that Mr. Power would cause harm to J by involving him and placing the burden on the child.

[70] Ms. Power has established that between she and Mr. Power her care giving has been more child centered and sensitive to the child's needs.

Support of Other Parent's Relationship

[71] Mr. Power says that he encourages J to love his family, work hard and be kind.

[72] In speaking of his support of Ms. Power, Mr. Power asserts "I have repeatedly encouraged [J] to interact with Ms. Power respectfully and to listen to her." He says he "consistently reminds him to listen and to be kind to his mom."

[73] I find that Mr. Power does not support J's relationship with J's mother. Although Mr. Power deposed that he teaches J about being kind I find that Mr. Power has in fact taught his son to be unkind to his family. The evidence does not support a conclusion that Mr. Power consistently encourages J to interact respectfully with his mother or to be kind to his mother. I find that Mr. Power has been unkind to Ms. Power in J's presence, has encouraged J to challenge his mother, and has not consistently corrected J when he has been unkind or responded inappropriately to his mother. I find that Mr. Power by his words uttered in front of J and in direct written communication to Ms. Power has not been supportive of Ms. Power's parenting.

[74] I find that Mr. Power has not been supportive of Ms. Power's relationship with her son in other harmful ways. For example, during one particular audio recording which I admitted Mr. Power asked the child if the child wanted his mother putting her hands on the child's hair and "making him feel uncomfortable." These comments communicate to an eight-year-old child who was sitting beside his mother that his mother's physical attention should make him feel uncomfortable. Such comments undermine the child's relationship with his mother.

[75] Mr. Power's lack of support of Ms. Power's relationship with J arises in other subtle ways such as Mr. Power asking J on breakfast calls when J is with his mother how many sleeps until J gets "to come home." Such questions undermine Ms. Power's role as a parent and her home as J's home.

[76] Another example of Ms. Power's role being diminished is Mr. Power saying to the child, on more than one occasion, that if the child is late for practice that "Mama will be putting on your gear." Such comments reinforce Mr. Power's role and diminish Ms. Power's role in the life of a boy who was just seven when these comments were made.

[77] In his affidavit evidence and his submissions Mr. Power says that he does not dismiss his son, listens to him, and advocates for his reasonable needs. The inference from these submissions is that Ms. Power dismisses the child and does not listen to him. Indeed, the evidence establishes that Mr. Power asserts that Ms. Power dismisses J, and does not listen to him. I reject those assertions as untrue. The evidence establishes that Ms. Power does not dismiss her son and does listen to him. I find that Ms. Power takes a wholistic view of what is healthy for J and in his best interests. Ms. Power does not always agree with Mr. Power or with her son in terms of activities. That does not mean that she is dismissive or not listening. It means that she is doing her job of parenting her son. Mr. Power's narrative throughout the evidence that Ms. Power is dismissive and does not listen to the child is harmful and incorrect.

[78] Mr. Power has accused Ms. Power of dismissing J in front of J. It is therefore not surprising that J has started accusing Ms. Power of dismissing him when she does not give in to him or his father. Mr. Power deposed that Ms. Power dismissed J so much that J (who was seven at the time) is beginning to say that "Mama you are dismissing me." Mr. Power fails to appreciate his son may have started to disrespect his mother by accusing her of dismissing him because J saw his father make these remarks. Similarly, Mr. Power deposed that on April 12, 2025, J told his mother "I don't have to listen to you". It appears Mr. Power advances this evidence to demonstrate what he sees as Ms. Power's inadequate parenting skills or her inability or unwillingness to identify, understand and respond to J's needs. In advancing this evidence Mr. Power fails to appreciate the root cause of his child's inappropriate behaviour. Mr. Power fails to appreciate that his son's behaviour may be linked to the fact that on at least two occasions that month Mr. Power told J that his mother was trying to manipulate him, dismiss him and that that was not OK. He told the child his mother was trying to isolate him and manipulate him. Mr. Power does not appreciate the link between his own inappropriate treatment of Ms. Power and his son's reaction to Ms. Power. J behaves as he sees his father behave.

[79] In considering Mr. Power's support of Ms. Power's relationship with J, I note that in his affidavit he deposed that J is respectful, vulnerable and loving with Mr. Power's partner. Mr. Power's submission only acknowledges that J is "very fond of Ms. Power." The fact that Mr. Power is not prepared to admit in his affidavit that his son might love his mother demonstrates Mr. P's inability to acknowledge the significance of Ms. Power's role in J's life.

[80] Mr. Power says that "[J]'s interactions with Ms. Power have declined over time due to conflicts arising from her reducing and eliminating call times, as well as diminishing her engagement during calls that verify my limited call times with [J]." Mr. Power is speaking of a child who was then only seven years old. Mr. Power says that Ms. Power has diminished her engagement in the sometimes hour long daily breakfast calls. He does not acknowledge that repeatedly accusing her of lying and dismissing the child and encouraging the child to challenge her might be a reason why she seeks to shorten the calls or not engage in the calls. Again, Mr. Power seeks to externalize responsibility for his actions.

[81] Mr. Power has by email accused Ms. Power of constantly dismissing and attempting to isolate the child which actions have he said "resulted in situations like last night where he doesn't trust you. [J] would not listen to you."

[82] In considering the parties' support for each other's relationship with J, I have also considered the extent to which they are each involved in J's athletic activities. I find that Mr. Power directly and indirectly excludes Ms. Power from this aspect of J's life. Mr. Power keeps J's hockey equipment between games. This action not only fosters a false narrative that only Mr. Power is capable of handling an eight-year-old boy's hockey equipment, but it actually precludes Ms. Power from engaging equally in this activity. The evidence also established that Mr. Power has threatened the child that if he was late for a game that his mother would be putting on his gear. I accept that Mr. Power threatens that J's mother will go into the dressing room as a consequence if he does not behave in a certain manner. Such a "threat" supports a narrative of Ms. Power's inability to assist an eight-year-old to put on hockey equipment and that it is a role that dad alone should undertake. I am not surprised to hear Mr. Power say that J does not want his mother in the dressing room where his mother's presence is framed as a punishment. A telling statement of Mr. Power's unwillingness to include Ms. Power in J's athletic life is found in his affidavit evidence in which he deposed that "Ms. Power has attempted to inject herself into these activities." (emphasis added) Again, such a comment demonstrates Mr. Power's belief that Ms. Power has no place in her son's athletic

endeavors and that any attempt for her to become involved is neither helpful nor appropriate. Mr. Power criticizes Ms. Power for not attending each of J's athletic events and yet is critical when she tries to inject herself in such events. Given Mr. Power's controlling approach to J's activities, Ms. Power's participation is admirable.

[83] My review of the evidence leads me to conclude that Mr. Power is more focused on gathering evidence of Ms. Power's alleged failure as a parent than collaboratively nurturing J. I find Mr. Power has been aware of J ignoring his mother's requests to get into the car and attempting to run away from her and rather than help Ms. Power, he has simply chosen to watch and, in at least one case, videotape the situation. Another example was offered by a witness called by Ms. Power, this witness, Ms. Crabtree, offered details of a situation arising at an "away" hockey tournament in which Ms. Power was trying to get J to go to bed while Mr. Power, who was also present, watched Ms. Power try to get the child to go to bed without actually helping. Ms. Crabtree deposed that she experienced Mr. Power's engagement in that instance as intimidating.

[84] I conclude that J is confused by the ongoing conflict between his parents. On cross-examination, Mr. Power admitted that he has heard J say words like Mr. Power's partner is J's real mother and that Ms. Power is his fake mother.

[85] On November 22, 2025, J was supposed to transition from Mr. Power to Ms. Power but J refused to go with his mother. The child got in front of Mr. Power's vehicle and would not move. Mr. Power testified that the child would not listen to Ms. Power, and despite Mr. Power bringing the child to his mother's care several times J would not get into her vehicle. The next day J refused to go with his mother (it was her parenting time) unless his mother agreed to let him attend his two and a half year old half-sister's soccer practice. Mr. Power admitted telling Ms. Power that if she agreed to J's terms that J will go with her. Mr. Power said that he was unable to make his eight-year-old son go with his mother.

[86] The evidence also contained another example of J refusing to go with his mother. On that occasion, the parties had agreed that Mr. Power would drop J off at the Tantallon Public library at 11am to transition to his mother's care. Mr. Power, his partner, daughter, sister and brother in law all attended at the drop off. They all entered the library and then left and proceeded to the Subway restaurant near the library. J refused to go with his mother but instead followed his father out

of the library to Subway. Mr. Power permitted J to follow him to Subway despite knowing that it was Ms. Power's parenting time.

[87] Ms. Power testified about another recent event when J refused to get into her car and tried to run away from her. Mr. Power videotaped that situation. Rather than attempt to help he chose to document the situation. Immediately after videotaping the event Mr. Power told Ms. Power, in the child's presence, that he was calling the police because Ms. Power had grabbed the child's arm in an attempt to keep him from running away. The child started to cry in response, saying he did not want to go to jail and did not want Ms. Power to go to jail.

[88] Justice Kraft in *Liwanag v Figari*, 2025 ONSC 5781 held that it is extremely important that both parents support their child's relationship with the other parent. The father has demonstrated an inability and unwillingness to do this in respect of a ten-year-old child. Justice Kraft noted that as set out in the AFCC parenting guide:

Parents need to be particularly mindful of their own behaviour as it may unintentionally impact the quality of the relationship between the child and their other parent. It is not unusual for children of high conflict parents in this age range to align with one parent and start to resist or refuse contact with the other parent. It is important that the parent whom the child favours ensure the child continues to follow the agreed upon schedule unless there is an agreement or order for variation. In extreme cases, one parent may engage in implicit and/or explicit attitudes and behaviours that undermine the parent-child relationship. This can include denigrating the other parent, interfering with the child's relationship with the other parent and/or restricting the time the child spends with the other parent. In such cases intervention by competent mental health professionals and the courts may be needed.

[89] I find that Ms. Power has established that Mr. Power does not support her relationship with J. Ms. Power has been supportive of Mr. Power's relationship with the child notwithstanding the abuse she has received from Mr. Power.

Nature and Strength of Parent Child Relationship

[90] I find that the child has a close relationship with both of his parents.

[91] I find that the child's recent unwillingness to transition to his mother's care is heavily influenced by his father's inappropriate conduct and is not a natural or organic choice or preference of the child.

Nature and Strength of Child's Relationship with Others

[92] J lives in two homes.

[93] When with his father he is also with his father's partner and his half-sister.

[94] When he is with his mother he is with her and Mr. Power's mother (Mr. Power's mother moved into the matrimonial home prior to separation and remained there with Ms. Power and J post-separation). I granted Ms. Power exclusive use of that home but did not order that Mr. Power's mother vacate the premises.

[95] Ms. Power says that J has a close and loving relationship with her parents, and with his aunt, uncle, and cousins, who live near 25 Hollyoake Lane. She says J has friends who live down the street from 25 Hollyoake Lane.

[96] Ms. Power says that Mr. Power does not support J's relationship with her parents.

[97] Mr. Power says that Ms. Power's family and his are crucial to J's emotional well-being, offering different forms of support. I find that Mr. Power's actions are inconsistent with this statement. The evidence supports a conclusion that Mr. Power is disrespectful of Ms. Power's parents.

[98] The evidence establishes that Mr. Power refers to Ms. Power's parents as "security" in front of the child. The child himself has used that term in referring to his grandparents when speaking with Mr. Power. Mr. Power's reference to Ms. Power's parents as security is disrespectful and communicates to the child that his maternal grandparents are somehow acting improperly.

[99] While Mr. Power says that Ms. Power's family is crucial to J's emotional well-being he also says that J's "interest in sports has strained his relationship with Ms. Power's family, who are reluctant to let him participate in sports or socialize after school."

[100] I find that this statement is not supported by the evidence. J is eight years old. In the 2024/2025 school year J participated in the following sport activities:

1. the Bauer Hockey Program,
2. his home hockey program through TASA with associated weekly winter hockey skills development sessions,

3. Silverbacks hockey,
4. floor hockey, and
5. roller blade hockey.

[101] I conclude that it is not an accurate statement for Mr. Power to say that Ms. Power's family is reluctant to let J participate in sports. That narrative is not only wrong but is also harmful and if shared with the child as I believe it has been can have a negative and marginalizing effect on Ms. Power and her family's relationships with the child.

[102] The harmful effect of this narrative is confirmed in Mr. Power's statement that the child's relationship with Ms. Power's family is strained. The child is eight, both of his parents should be encouraging his relationships with extended family not observing that the relationship is strained and blaming that result on the other family.

[103] I granted both parents decision-making over additional sports activities. If parents cannot agree on an activity the lack of agreement should not be raised in front of the child. It is not appropriate for a parent to permit or encourage a child to think less of the other parent or that parent's family because the parent would not agree to an additional activity. It is the parents' job, in part, to help a child, especially a child as young as eight, to manage their emotions, manage expectations, and to maintain important relationships and to not treat the child's wishes as an imperative which must be met failing which the child will be rightfully displeased with the party who failed to meet his eight-year-old expectations.

[104] Mr. Power says that Ms. Power's family's reluctance to let J participate in sports or socialize after school has caused J emotional stress and anxiety. I have found that the evidence does not support a conclusion that Ms. Power's family is reluctant to let the child participate in hockey or socialize after school. The evidence does support a conclusion that J does experience stress and anxiety. Mr. Power does not acknowledge that him accusing the child's mother of lying in front of the child could cause stress or anxiety.

[105] Mr. Power deposed that J seeks out his side of the family for hugs and kisses and "I love you" following every practice and game whether J is with him or not. In contrast to that loving and warm approach Mr. Power's evidence establishes that J often is reluctant to speak to his mother and his maternal grandparents at

practices or games. J's maternal grandmother testified that on one occasion she recalls J leaving a hockey event at the Greenfoot Energy Center and only speaking to her when Mr. Power said it was OK to say goodbye.

[106] J's maternal grandmother testified that J will not speak to her or make eye contact with her when he is with his father. Her uncontradicted evidence was that J will not engage with her in any way. In contrast to that experience J's maternal grandmother testified that when not with his father J will run to her, give her a hug, kiss her, ask to play cards, and initiate conversation.

[107] This disparity in the child's reaction to his maternal grandmother when with his father and not with his father is understandable. Mr. Power refers to J's maternal grandparents as "security," says that he needs to work the Walker (his mother's maiden name) out of him, and asks the child if he wants his maternal grandparents to pick him up and asserts that J's maternal grandparents do not support his athletic activities. These comments concern me on two levels. My first concern is that it is inaccurate to say that J's maternal grandparents do not support his athletic activities. Ms. Power's mother testified that she and her husband attend most of J's activities. They have attended J's athletic events in Nova Scotia, Prince Edward Island, New Brunswick and Boston, Massachusetts. The evidence also establishes that in the spring of 2025 Ms. Power's parents picked J up from school on Mondays and after getting him a snack at Tim Hortons drove him to an after school program at East Coast Varsity in Dartmouth.

[108] My second concern is that in addition to the inaccuracy of the suggestion that Ms. Power's parents do not support J's athletic activities the fact that Mr. Power feels that way and calls J's grandparents security explains the dysfunctional dynamic at practices and games where J embraces one side of his family and is reluctant to engage at all with the other side of his family. That result is not a coincidence and is not a result which a warm loving seven or eight-year-old child would choose without some prompting directly or indirectly from a parent.

[109] Mr. Power deposed that "[J] sees my side of the family as being more in line with what he enjoys like high energy activities like mini sticks and basketball." Mr. Power deposes that J expresses frustration because his mother and maternal grandparents' "lack of interests in what [J] loves." I reject as incorrect and unfair the narrative that Ms. Power and her parents do not love what J loves and that Mr. Power's family is more aligned with J's interests.

[110] Mr. Power's sister and brother-in-law deposed affidavits confirming their love and affection for J. Mr. Power's sister deposed that Ms. Power and her parents are "over bearing" and that Ms. Power's parents greet J in a "strange and socially unusual manner." She deposed that they huddle around him limiting his personal space. While this affiant is critical of Ms. Power's parents for huddling around J, Mr. Power deposed that J receives hugs, kisses and "I love you" from his side of the family after each game or practice.

[111] The evidence establishes that J has a strong and loving relationship with his extended family. Mr. Power is not supportive of J's relationship with Ms. Power or her family.

Ability and willingness to meet child's needs

[112] The parties disagree on which of them is best able to understand and meet J's needs.

[113] Ms. Power testified that she wants J to be successful in school and have proper rest noting that he needs lots of sleep and extra attention with reading and writing. She says that school needs to be J's priority. She says she is guided by feedback from teachers and observing J's behaviour and makes her decision based on J's best interest. Ms. Power testified that she is in agreement with J participating in one elite hockey league and one club hockey league and noted that these activities involve multiple practices and games throughout the week. She has also agreed to one additional activity during the week.

[114] Ms. Power says that Mr. Power's behaviour has harmed J.

[115] Ms. Power feels that Mr. Power over commits J which has resulted in J feeling overwhelmed.

[116] Mr. Power says that Ms. Power does not prioritize J, is not open to doing what is best for J, ignores what interests J and does not support his needs. He says that in his view what is best for J is a "healthy mix of love, support for his mental health, and his passions." He says that he lets J guide him and pays attention to him while encouraging him to love his family, work hard, and be kind. He says that Ms. Power is not the most suitable candidate to support J. He says that Ms. Power does not "actively" engage with J in sports and has been late or absent for his sporting events. He says that Ms. Power has imposed barriers on J spending time with his friends.

[117] Mr. Power has not reserved his criticism of Ms. Power's parenting skills to this litigation. Mr. Power has voiced many of these criticisms about Ms. Power in front of their son.

[118] The evidence establishes that Mr. Power seeks to commit J to a wide range of activities and that Ms. Power is often reluctant for various reasons to commit to those activities. I find that Ms. Power's concerns about over committing J and needing to maintain a healthy balance, for a child of eight, is child-centered and reasonable.

[119] Mr. Power cited a number of examples where Ms. Power withdrew her consent for J to participate in activities in which J wished to participate. Mr. Power says these are examples of J stating that he wants to participate and Ms. Power dismissing him and ignoring him. These examples include Ms. Power's decision to withdraw J from a hockey skill program, from a non-club hockey team and from a December school break hockey tournament in Prince Edward Island. I have considered Ms. Power's rationale for withdrawing the child from these events. I cannot criticize Ms. Power's concerns with respect to these events or her reasons for withdrawing the child.

[120] These examples are representative of the source, nature and trajectory of the conflict between the parties. The evidence establishes that the range of sports in which J will participate and the corresponding practice, training, game and competition commitment is a frequent source of conflict.

[121] Mr. Power's response when Ms. Power does not agree with him, for example regarding J's athletic activities, demonstrates that he is not willing to accept or respect Ms. Power's view but more importantly demonstrates that he is more focused on getting his own way than on what truly is in the child's best interests. Mr. Power has not demonstrated an ability to consider that anything less than full engagement in sporting events is in his child's best interests.

[122] Mr. Power says that in advocating for more activities for J he is responding to what J wants. However, I find that Mr. Power's abusive behaviour regarding the scheduling of events is motivated not just by what J wants but just as much - if not more - by what Mr. Power wants or needs his son to be doing. Mr. Power has not demonstrated insight into the harm his abuse of Ms. Power, because of her refusal to acquiesce to his demands, is causing to his son. He does not see that the harm far outweighs any benefit the child might gain from the activity.

[123] Mr. Power also says that Ms. Power's reluctance to let J participate in sports or socialize after school causes J stress and anxiety. I accept that J has experienced stress and anxiety, but I find that Mr. Power's inappropriate behaviour in front of his child has caused the child stress and anxiety. Mr. Power demonstrates little insight into the effects of his inappropriate behaviour and rather than correct his own behaviour he seeks to blame others for the consequence of his actions.

[124] Further, Mr. Power says that Ms. Power does not meet J's needs because she discourages J when he seeks to practice and put in hard work and she demonstrates a lack of engagement in J's activities. Mr. Power says that Ms. Power's actions have contributed to distrust, strained family relationships and fostered a more adversarial environment. Mr. Power also asserts that Ms. Power has involved J in "interactions that have placed him directly in the middle of our dynamic." Mr. Power also deposed that Ms. Power successfully dismissed and ignored "our" attempt at asking J to participate in outside events and activities 100 times. These statements demonstrate Mr. Power's lack of insight into his conduct and a lack of appreciation or respect for Ms. Power's view, perspective and engagement as J's mother. I find that Mr. Power not Ms. Power has contributed to any distrust, strained family relationships and an adversarial environment and has placed the child in the middle of the dynamic which exists between the parties. Mr. Power has threatened court action if Ms. Power does not give into his demands for J's activities, has accused Ms. Power of lying, being dishonest, being pathetic, and creating confusion for J, and he dismisses her parents as being "security."

[125] Mr. Power describes Ms. Power's refusal to agree to activities for J and her decision to withdraw him from scheduled activities as inappropriate or blameworthy. I do not accept this characterization. I find that Ms. Power is acting as a concerned parent in making decisions about J's schedule. One factor Ms. Power includes in her decision-making is J's schooling needs. Mr. Power acknowledges that J struggles in some areas in school and deposes that he reads with J every single day that J is with him. Mr. Power deposes that he advises J to listen to his teacher, work hard and take chances. Mr. Power dismisses Ms. Power's approach with J as passive. I find that Ms. Power's approach is, in fact, sensitive to the needs of a child who was only seven and then eight. I find that Ms. Power is guided by what is in the child's best interest and not necessarily by what the child wants. In doing so I find that Ms. Power is properly acting like a parent.

[126] Mr. Power's expectation that J be engaged in a wide range of athletic activities through the week and work hard academically puts a tremendous burden

on his son. The fact that the child might want to be involved in sports is not the only determining factor and is, in fact, just one factor. I find that Mr. Power's position is dismissive of Ms. Power's perspective and not attentive to his son's true needs which, at eight years old, include the need to be loved and supported by his parents who engage reasonably with each other in a respectful and child focused manner.

[127] Much of the conflict between the parents and the harm done to the child has arisen in respect of their disagreement regarding sports. However, the evidence establishes that Mr. Power does struggle to focus on the child's best interest when it conflicts with his own views of what should happen. An example of this tension is found in the parents' response to the child's difficulties following the child having a dental appliance placed in his mouth to assist him in ceasing to suck his thumb. The evidence established that during the breakfast Our Family Wizard call the morning following this dental procedure the child was crying as a result of pain caused by the dental appliance. Ms. Power suggested that the child should return to the dentist. Mr. Power told the child and Ms. Power that the "The thing is staying in his mouth, and I don't care how much you think he's upset or hurt." Mr. Power deposed that Ms. Power was undermining the dentist's instructions and that he had to take swift action. This incident is an example of Ms. Power being attuned to the child's needs and trying to address a situation while Mr. Power was insensitive to the child's needs and not open to a course of action which was responsive to the child's needs. In this situation Mr. Power was unwilling to compromise in the child's best interests and disregarded his child's emotional and physical needs.

[128] I find that Ms. Power has demonstrated that she is able and willing to identify and meet J's needs. Ms. Power has demonstrated that Mr. Power is not able to consistently understand, and meet the child's needs in a manner that protects and promotes the child's emotional and psychological safety, security and well-being.

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

[129] Mr. Power says that Ms. Power has not participated in collaborative efforts. He says that she refuses to have a cooperative conversation unless it benefits her agenda.

[130] I find that Mr. Power is the principle source of conflict between the parties and that he has demonstrated an inability or unwillingness to communicate respectfully and cooperate with Ms. Power.

Views and Preferences

[131] J is eight years old. Both parents say that J has indicated that he does not wish to move to Colby Village. I am not prepared to give any weight to these comments given J's age and the conflict and inappropriate adult conversations to which J has been exposed.

Family Violence

[132] Ms. Power says that Mr. Power has exhibited a pattern of coercive and controlling behavior towards her and J. Ms. Power says that Mr. Power has engaged in verbal abuse, made numerous unsubstantiated allegations against her, unilaterally changed court-ordered parenting time terms without justification and has regularly engaged in behaviour that has the effect of undermining her authority or influence and alienating the child from her.

[133] Mr. Power denies he has been abusive to Ms. Power. Mr. Power says that Ms. Power's assertions that he has engaged in a pattern of coercive and controlling behavior lack evidence and are manipulative. Mr. Power deposed that he has made many attempts to try and limit stress and the burden on J.

[134] Mr. Power admits that in some instances his behaviour was wrong and had a negative impact on her but says that he has made significant change through self improvement. Mr. Power notes that Ms. Power has agreed to increase his parenting time to six days out of fourteen which is inconsistent with her being concerned with his behaviour. On cross-examination Mr. Power suggested to Ms. Power that she is using the excuse of family violence as a reason to move.

[135] The *Divorce Act* was amended in 2019 (S.C. 2019, c. 16) to include family violence as a factor relevant to parenting. Section 16 (3) (j) of the *Divorce Act* mandates that in determining the child's best interests I must consider whether family violence has occurred and if it has I must consider 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 co-operate on issues affecting the child.

[136] Section 16 (4) of the *Divorce Act* sets out a number of factors that I must take into account when I consider the impact of family violence.

[137] Section 2 (1) of the *Divorce Act* defines family violence as:

family violence means **any conduct**, whether or not the conduct constitutes a criminal offence, **by a family member towards another family member, that is violent or threatening or** that constitutes a pattern of coercive and controlling behaviour **or** that causes that other family member to fear for their own safety or for that of another person and in the case of a child, the direct or indirect exposure to such conduct and includes

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property; (*violence familiale*)

[138] Ms. Power says that Mr. Power has engaged in coercive and controlling behaviour which is a form of family violence.

[139] There is no consensus among Canadian academics whether coercive control (clause 16 (4)(b)) can only exist if there is physical violence. My review of the *Divorce Act* and the jurisprudence which has considered family violence generally and coercive control specifically lead me to conclude that coercive control can exist in the absence of physical violence.

[140] The *Divorce Act* family violence definition identifies the following four discrete types of conduct which constitute family violence:

Family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is *violent or threatening* **or** that constitutes a pattern of *coercive and controlling behaviour* **or** that causes that other family member to *fear for their own safety* or for that of another person..(emphasis added)

[141] The fact that the *Divorce Act* distinguishes between these four types of conduct supports a conclusion that conduct that establishes a pattern of coercive control need not be violent or threatening. The conduct could also be violent, threatening and cause the person to fear for their safety or the safety of others but such elements are not necessarily required to make a finding of coercive and controlling behaviour.

[142] In *Anmar v. Perdelwitz*, 2021 ONSC 3204 Justice Kraft found that a pattern of behaviour constituted family violence in the absence of physical violence.

Having heard the evidence as a whole, I am not able to reach a conclusion as to either or both of the parties used physical force during the incident that took place on December 29, 2020. However, Vivian gave evidence about psychological and verbal abuse she endured during the relationship and particularly, over the last 4 years while the parties were living separate and apart in the condominium. As detailed above in paragraphs [42]-[47], Michael regularly insulted Vivian, he was critical of her parenting, her mood, the way in which she spoke to him and her decisions relating to the children. Section 18(2) of the *Children's Law Reform Act* provides an expanded definition of "family violence" which conduct need not constitute a criminal offence, and includes, among other things, (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect oneself or another person; (d) harassment, including stalking; and (f) psychological abuse. Michael does not deny that he was critical of Vivian's parenting, her mood, the way in which she interacted with him, or her parenting after September 6, 2016. Further, Michael's testimony confirmed that he expected to Vivian to tell her of her whereabouts whenever she left 60H, even after she clearly communicated her decision to separate from him. I accept Vivian's testimony that she was psychologically and verbally abused by Michael, particularly since September 6, 2016. Given Michael's conduct since September 6, 2016, I find that his ability to care for and meet the needs of Clair and Nicholas are impacted by his anger and hostility toward Vivian, such that he cannot stop himself from involving the children in the dispute between him and Vivian. Michael's refusal to accept Vivian's decision to separate and his inability to deal with child-related issues in a civil and co-operative fashion with Vivian makes the prospect of these parents co-operating on important child-related matters/decisions in the future highly unlikely and concerns me.

[143] In *M.A.B. v. M.G.C.*, 2022 ONSC 7207 Justice Chappel considered the term coercive and controlling behaviour as that term is used in the Ontario *Children's Law Reform Act*, (the CLRA) saying:

183 ... A general review of this caselaw indicates that "coercive" behaviour includes conduct that is threatening, intimidating or exerts inappropriate pressure on the other person. Behaviour is broadly being considered as "controlling" if its intent or effect is to inappropriately manage, direct, restrict, interfere with, undermine or manipulate any important aspect of the other person's life, including their important relationships and their physical, emotional, intellectual, spiritual, social and financial autonomy or well-being.

[144] In *M.A.B.*, *supra* Justice Chappel identified the following types of behavior that can constitute coercive and controlling behaviour:

184 For the purposes of this case, it is important to highlight that the concept of a pattern of coercive and controlling behaviour encompasses the following types of behaviour:

1. Engaging in verbal abuse, yelling, name calling and insults (*W.A.C. v. C.V.F.*; *McBennett*; *K.M. v. J.R.*; *S.S. v. R.S.*, 2021 ONSC 2137 (S.C.J.); *Freitas v. Christopher*, 2021 ONSC 2340 (S.C.J.); *M.N.B. v. J.M.B.*, 2022 ONSC 38 (S.C.J.));
2. Making numerous unsubstantiated allegations against the other party (*Armstrong v. Coupland*, 2021 ONSC 8186 (S.C.J.); *I.S. v. J.W.*, 2021 ONSC 1194 (S.C.J.); *K.M. v. J.R.*; *Ammar v. Smith*, 2021 ONSC 3204 (S.C.J.));
3. Unilaterally changing court-ordered parenting time terms without justification (*Armstrong*); and
4. Regularly engaging in behaviour that has the effect of undermining the other parent's authority or influence and alienating the child from that parent (*E.V. v. V.-E.*, 2021 ONSC 7694 (S.C.J.); *Ammar*; *I.S. v. J.W.*; *S.S.G. v. S.K.G.*, 2022 ABQB 130 (Q.B.), per Devlin J.).

[145] In *JMM v CRM*, 2025 ONSC 3067 Justice Chappel again considered the phrase coercive and controlling behaviour in a *Divorce Act* proceeding and applied her analysis and definition of that term in *M.A.B.*, *supra*. In *JMM*, *supra*, Justice Chappel made the following observation regarding the *Divorce Act* definition of family violence:

282... The definition goes far beyond acts of physical aggression towards individuals or objects and extends to actions that undermine a person's physical, emotional and financial autonomy or their general psychological or emotional

well-being. The broad definition recognizes the many insidious forms that domestic violence can take and accords each equal weight in the best interests assessment.

...

285 Having regard for the damaging impacts of family violence, the courts must construe family violence provisions in a broad and purposive manner so as to maximize the protective scope of the provisions for children and their family members who are facing family violence in its many forms. As I have emphasized in many of my previous decisions, this approach is mandated by the general principles of statutory interpretation that legislative provisions must be construed in their entire context and grammatical and ordinary sense, and in a fair, large and liberal manner that best ensures the attainment of their objects (*Michel v. Graydon*, 2020 SCC 24 (S.C.C.), at paras. 21, 40, 54 and 69; *M.A.B. v. M.G.C.*, at para. 176)

[146] In *JMM, supra*, Justice Chappel offered examples of coercive and controlling behaviour post-separation:

289 Following separation or divorce, a party may use different means of asserting control over their former partner, either directly or through the children. Examples of post-separation coercive and controlling behaviour as accepted in the caselaw are:

1. Refusing to comply with court orders;
2. Regularly threatening a former partner with the loss of parenting time with a child;
3. Constantly making unilateral decisions about children without legal authority to do so;
4. Encouraging the children to disrespect the other parent, or otherwise undermining the other party's parenting;
5. Picking up or dropping off children late;
6. Refusing to make support payments on time or at all;
7. Sharing inappropriate information with children, or regularly involving them in adult issues;
8. Excessively e-mailing, phoning or texting the former partner;
9. Stalking, harassing, or threatening to hurt someone;
10. Filing false reports with the police or a child protection agency;
11. Inappropriately undermining the person's relationship with their children,; and/or

12.Engaging in frivolous or abusive tactics in relation to the legal process

[147] In *JMM, supra*, Justice Chappel also observed that:

In the Family Law context, it has been found that a parent's behaviour of exposing a child to conflict and constantly undermining the other parent or family member in the eyes of the child may also constitute family violence if it causes them to fear for the psychological and emotional safety of the children (*Tone v. Tone*, 2021 ONSC 3747 (S.C.J.), per Fowler-Byrne J.).

[148] Justice Chappel noted the profound destructive effects of family violence in *JMM, supra*:

284 The comprehensive and far-reaching nature of the family violence provisions in the *Divorce Act* represents a statutory recognition of the profound direct and indirect destructive effects that family violence in its many forms can have on children. The Supreme Court of Canada recently commented on these consequences in *Barendregt*, stating as follows (at para. 143):

The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 *I.J.C.Y.F.S.* 493, at p. 497.

[149] In *Liwanag v. Figari*, 2025 ONSC 5781 Justice Kraft confirmed that behaviour which constitutes family violence can occur in the absence of physical violence for example denigrating a spouse in front of children constitutes family violence:

31 Denigrating your spouse in front of a child fits within the definition of family violence. See: *Ammar v. Smith*, 2021 ONSC 3204; *McIntosh v Baker*, 2022 ONSC 4235.

32 Violence need not be physical. Emotional and psychological abuse can have a devastating impact on a child. See: *Dayboll v. Binag*, 2022 ONSC 6510; *El Khatib v. Noun*, 2023 ONSC 1667.

33 Recording the other spouse, insults, unwarranted criticism about parenting and demanding to know whereabouts can constitute psychological abuse. See: *K.M. v. J.R.* 2024 ONSC 1338.

[150] In *E.S. v M.S.*, 2025 NSSC 263 Justice Cromwell, adopting the definition of coercive and controlling behaviour in *JMM, supra*, found that the father had engaged in a pattern of coercive and controlling behaviour based on his insulting, derogatory, hateful, abusive, degrading, accusatory, misogynistic, threatening and dehumanizing communications with the mother which caused the mother to be concerned for her safety and the safety of her children. Justice Cromwell found that the father's refusal to accept the mother's position on parenting often triggered a negative response from the father. Justice Cromwell observed:

105 The concern with the father's communications is not about parental rights or advocacy against educational policies but is about his inability to control his behaviour. When dissatisfied with the response he receives, he engages in repeated abusive, derogatory, threatening and demanding communications.

[151] Justice Cromwell found that the father's inability to control his behaviour meant that the children were not free from harm in his care:

I reject any suggestion that in these circumstances, the father can compartmentalize his feelings and protect the children from harm while in his care.

[152] Justice Devlin in *HRE v HS*, 2024 ABKB 196 cited with approval the following statement by Harvison-Young J (as she then was), as quoted in *T. v. D.*, 2019 ONSC 644 at para 14:

Denigrating the other parent and/or involving the children in the litigation exposes them to conflict and is well recognized as potentially damaging to children. At the very least, it is conduct that is not in their best interests. It can result in reassessment of custody determinations on the basis that our law recognizes that children generally benefit from strong relationships with both parents and that the conduct by one parent undermining the relationship of the children and the other parent may reflect an inability to put the children's interests before their own.

[153] The Supreme Court of Canada in *Barendregt, supra* noted that since *Gordon v. Goertz* [1996] 2 S.C.R. 27, courts have recognized that family violence may affect a child's welfare and should be considered in relocation decisions. The court observed that courts have been significantly more likely to allow relocation applications where there has been a finding of abuse. Further, the Supreme Court

went on to observe that research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives.

[154] There is no evidence that Mr. Power has been physically aggressive with either Ms. Power or J or has threatened to do so. Notwithstanding the lack of physical aggression or the fear thereof I am satisfied that Mr. Power has, by his words and conduct, engaged in family violence as that term is used in *Divorce Act*.

[155] On cross-examination Mr. Power questioned Ms. Power regarding video calls since the *Voir Dire*. Ms. Power did not identify any specific concerns other than Mr. Power whispering to J and telling him to be careful because his mother was recording the call. Ms. Power testified that she could not recall any conflict over hockey or activities on the Our Family Wizard calls since April of 2025. I would expect Mr. Power's conduct in front of Ms. Power to be much improved between the time when I rendered my oral decision admitting the recordings into evidence and the continuation of the trial.

[156] Mr. Power testified that he has changed his behaviour since April of 2025. Mr. Power says that he has stopped conducting himself improperly but that he cannot stop J from asking questions about why he is not involved in certain athletic events. Mr. Power says that J asks him about why he is not involved in certain events and Mr. Power testified that there is no answer other than Ms. Power will not allow him to participate. This statement is telling. Mr. Power does not respect Ms. Power's perspective, will not support her if her perspective does not align with his perspective or the child's wishes and sets up resentment against Ms. Power even when she tries to make a decision that she feels is best for her child. As Mr. Power has not demonstrated insight into this conduct, I have no confidence that he does not continue to share his view of Ms. Power and her parenting approach with J.

[157] I find that Mr. Power has engaged in Family Violence because his conduct has been controlling in that it has inappropriately sought to and in fact has undermined Ms. Power personally and undermined her relationship with J by undermining her parental authority and influence.

[158] The evidence of the child's reluctance to go with his mother is evidence of the fact that Mr. Power's inappropriate behaviour has undermined and as a result harmed the child's relationship with his mother and undermined her parental authority and influence.

[159] The evidence also establishes that Mr. Power has delayed transfers of the child to Ms. Power following sporting events during Ms. Power's parenting time. Because Ms. Power is excluded from assisting with getting the child ready for hockey she must wait for Mr. Power and the child to emerge from the dressing room and transition the child to her care. The evidence establishes that these transfers are unnecessarily delayed and made more complicated by Mr. Power. Mr. Power also encroaches on Ms. Power's parenting time by insisting that the daily morning Our Family Wizard call frequently last for more than an hour. Mr. Power also suggests activities to J on these calls which encroach on Ms. Power's parenting time. Another example of Mr. Power not respecting Ms. Power's parenting time and attempting to control that time was offered with respect to a public skate which occurred on Ms. Power's parenting time. The evidence establishes that on that occasion Mr. Power attended and proceeded to put on the child's skates without being asked to do so by Ms. Power and occupied the child's attention during the public skate. I find that these engagements with the child by Mr. Power are a form of control exerted over Ms. Power and J.

[160] Mr. Power has been verbally abusive to Ms. Power by insulting her and making unwarranted allegations against her or about her parenting. Mr. Power has engaged the child in this conflict and involved the child in adult issues. Ms. Power testified that her greatest concern is the emotional harm that Mr. Power causes the child. Mr. Power's behaviour constitutes psychological abuse. I am satisfied from my review of the evidence that Mr. Power has emotionally harmed Ms. Power and J.

[161] In summary, I have concluded that certain of Mr. Power's engagements with Ms. Power and J constitute family violence. I have considered the impact of that family violence and conclude that it is in J's best interests to be in his mother's primary care. This shift to Ms. Power's primary care will provide time for J to be supported and cared for by his mother whom I have decided is better able to identify and address J's needs and will also minimize the time in which J may be exposed to unhealthy pressure or psychological harm by his father.

[162] I conclude that it is not appropriate to require Ms. Power to have to attempt to cooperate with Mr. Power on matters involving J's sporting activities given Mr. Power's demonstrated unwillingness or inability to engage with Ms. Power in a respectful manner.

Conclusion regarding parenting arrangements

[163] Ms. Power has established that it is J's best interest to be in her primary care. This conclusion reverses the agreement which increased Mr. Power's parenting time to shared parenting status. I find that it is in J's best interest for me to make this change in his parenting arrangement. I find that at this time no other parenting arrangement is in J's best interests. I anticipate that this change in the parenting arrangement will cause stress to J. I am confident that Ms. Power is well equipped to support J through this transition. I am also satisfied that the stress caused by this change is less detrimental to J than the present and future harm caused by his disrupted relationship resulting from his father's conduct.

[164] Ms. Power has also established that it is in the child's best interests for her to have final decision-making regarding J's sporting and athletic activities. Ms. Power is ordered to discuss sport options with Mr. Power but she will have final decision-making authority on sporting activities broadly defined including but not limited to the range and type of sports, sport or team tryouts, sport or training sessions or lessons, teams, competitions, training sessions or schedules, tournaments, and sport camps. J shall not be enrolled in or participate in any sporting event or activity without Ms. Power's prior written agreement. I also make the following orders with respect to J's athletic activities:

- a. J's athletic equipment will stay with him and will travel with him to sporting events.
- b. For as long as J requires assistance in the hockey or other sport dressing room with equipment and the attendance of an opposite sex parent in the dressing room is permitted the parents must rotate attendance in the dressing room with J.

[165] Ms. Power is authorized to arrange for the child to attend counseling with a counsellor of her choosing.

[166] On all other matters in respect of which decision-making is required the parties are to meaningfully consult with each other and are directed to defer to third party professionals involved in the subject matter under consideration.

[167] Ms. Power has requested that I order that the daily morning Our Family Wizard calls be terminated. I find that it is in the child's best interest for these daily lengthy Our Family Wizard calls to be discontinued. The parenting order I have

imposed will ensure, once the initial transition period has passed, that Mr. Power sees J every second Friday, Saturday, Sunday and Monday (morning) and every Wednesday (evening). I order that Ms. Power facilitate a ten minute call between J and Mr. Power on the Friday, Sunday and Monday when J is not with his father. The ten-minute calls on Friday, Monday and Sunday call shall occur between 5pm and 6pm or at any other time of the day agreed between the parties with the specific times within these time frames being agreed upon by the parties. Absent agreement for the calls to occur at a different time of day, the calls will occur between 5pm and 6pm. If the parties are unable to agree on the time of the call they may make written submissions to me.

Issue # 4 Is Relocation in J's best interests?

[168] I will now consider if relocation is in J's best interests. I have considered all of the Section 16.92 (1) relocation factors but will only review those factors which are relevant to this family.

Double Bind Considerations

[169] Section 16.92 (2) of the *Divorce Act* prohibits me considering whether Ms. Power would relocate without the child or not relocate if permission to relocate is denied.

Issue # 5 Who bears the burden of proof?

[170] Ms. Power bears the burden of proof under s.16.93 of the *Divorce Act* because J spends substantially equal time in the care of each party: *Westlake v Morton*, 2024 NSSC 144 relying on *KDH v BTH*, 2021 ABQB 548, paras 33 and 34. Ms. Power must therefore prove that relocation is in J's best interests.

Reasons for Relocation

[171] Ms. Power occupies the former matrimonial home. Mr. Power intends to purchase Ms. Power's interest in the former matrimonial home and occupy it with his new partner, their child, his mother and J. Because of this arrangement it is not an option for Ms. Power to remain in the matrimonial home, she must relocate.

[172] Ms. Power seeks permission to relocate J to the home in which she grew up in Colby Village. Ms. Power's parents purchased this home in 1976 but have vacated the home and have offered their home to Ms. Power as a residence for her

and J. Ms. Power's mother testified that Ms. Power's use of their home (which is mortgage free) in Colby Village would require that she cover the operating costs of the home. The home is furnished.

[173] Ms. Power says that relocating to Colby Village would have the following benefits:

1. More stable and nurturing environment because of
 - a. proximity of close family and friends,
 - b. proximity of school and sports facilities
 - c. financial benefits of reduced living expenses
2. Ms. Power is isolated in Timberlea and has no support.

[174] The evidence establishes that Ms. Power's parents live in an apartment five to ten minutes away from 25 Hollyoake. Ms. Power's sister lives in Colby Village in close proximity to Hollyoake.

[175] Ms. Power says that relocating to Colby Village and J being in her primary care is necessary for him as he needs balance restored. She testified that J is best able to be himself without the pressure of Mr. Power's presence as frequent as it is. She testified that she feels that she can provide J with space to grow without emotional pressure. She says that J will be surrounded by love, care and support in Colby Village while having time with Mr. Power and his family. She says that J's well-being is best protected with her.

The childcare plans of each parent

[176] Ms. Power says that if relocation is permitted J will:

1. Live in a familiar house
2. Attend French Immersion at the Astral Drive Elementary school which is 2.5 Kilometers from 25 Hollyoake Lane
3. Have access to swimming and skating at Cole Harbour Place (which also has a library)
4. Have access to the Cole Harbour Minor Hockey program
5. Have access to an elite hockey program
6. Have access to outdoor public swimming

7. Have proximity to “East Coast Varsity,” a training facility in Dartmouth which J has frequently attended in the past
8. Live within a three-minute walk to his Aunt and Uncle’s home
9. Have a fenced yard with a jungle gym

[177] Mr. Power says that I should refuse the relocation request in which case J would continue to reside in the former matrimonial home with Mr. Power, Mr. Power’s partner, Mr. Power’s mother and J’s half-sister. Mr. Power says that if relocation is denied J will benefit by maintaining his connection to his family, his friends and his “comforting creatures.”

[178] Mr. Power says Ms. Power has not presented a parenting plan for J. He says there are no identified advantages for J in moving to Cole Harbour and that Ms. Power’s preferences do not constitute proof. Mr. Power urges me to not accept Ms. Power’s statement that J “will manage” as being a reason to permit relocation. Mr. Power says that J’s emotional well-being may be affected by being forced to leave his father, half-sister, Nana and other close family members who have played a significant role in his life.

[179] Mr. Power notes that Ms. Power’s intended residence is modest. He notes that Cole Harbour does not provide a daily after-school skating program free of charge.

[180] Mr. Power does not accept that Ms. Power will benefit financially as much as may be expected by relocating to her parents’ home in Colby Village as she will no longer benefit from his mother’s rental income (Mr. Power’s mother lives with Ms. Power), she will have to furnish the home, and she will have increased travel costs. Mr. Power suggests there is no financial reason for Ms. Power to move to her parents home, he says she can afford to live elsewhere. Mr. Power also established via cross-examination that Ms. Power’s parents would assist her financially to the extent they are able wherever she chooses to live.

[181] With respect to Ms. Power’s reasons for relocating and her plan for J’s care I find that the intended residence and area are well known to J and Ms. Power. Ms. Power’s plan for J’s care is considered and addresses his educational, social, recreational and athletic needs and interests. Ms. Power’s relocation to a residence in which she will only have to cover utilities and which is in greater proximity to her family support network will benefit Ms. Power and I find will also benefit J.

[182] Mr. Power's plan for J's care will continue J in his current home, school, athletic teams, friend group and with his paternal grandmother who lives with Ms. Power.

Impact of Relocation on Child

[183] Ms. Power says that the parties relocated to Timberlea from Bedford in 2021. The parties had only been in Timberlea for one year before they separated in 2022.

[184] Ms. Power seeks to relocate to her family home. Ms. Power says that J is familiar with the home at 25 Hollyoake Lane, the area, and with some of the children that live nearby. Ms. Power says that J loved being at this property prior to the parties' separation.

[185] Ms. Power's evidence establishes that J knows children at his proposed new school Astral Drive.

[186] Ms. Power relocated to 25 Hollyoake Lane following the parties' separation and before she was granted exclusive possession of the matrimonial home. J spent Christmas eve and Christmas morning with Ms. Power and her parents at that residence in 2023.

[187] The evidence establishes that J is familiar with not only the Hollyoake residence but also with the Colby Village area. This is not a relocation to an area unknown to the child.

[188] Ms. Power suggests that the area around the former matrimonial property lacks the amenities near 25 Hollyoake Lane. She says that 27 Merlot Crescent does not have a backyard.

[189] Mr. Power deposed that J has friends who live across the street from the former matrimonial home and other children nearby. Mr. Power deposed that J has significant ties to the TASA hockey association. These ties extend to coaches, development staff, parents and players. Mr. Power also deposed that J's school has been a source of comfort, security and fun. In addition, Mr. Power deposes that J has a membership at and enjoys the Canada Games Centre and as well enjoys attending the St. Margarets Bay Centre. J also plays baseball which has been a positive experience. Mr. Power also deposed that J enjoys going to the library, playing tennis, skating, and sledding near the former matrimonial home.

[190] The evidence establishes that J attends frequently at East Coast Varsity in Dartmouth which is close to Colby Village.

[191] I have concluded J's proposed relocation to Colby Village is a relocation not just a change of residence because the relocation, if permitted, would have a significant impact on J's relationship with Mr. Power.

[192] At a distance of 24.9 Kilometers, the driving time between the former matrimonial home to Ms. Power's proposed residence in Colby Village ranges between twenty-four and fifty minutes, depending on traffic. The average driving time between the former matrimonial home and J's proposed school is between twenty-six and fifty minutes. Average driving time between the parties' current residences is between ten and twelve minutes. The proposed relocation would increase the round-trip commute to and from the former matrimonial home to J's new address in Colby Village and to his school. However, the distance is not so far that it precludes regular physical contact between J and his father nor does that distance preclude Mr. Power's engagement with J's proposed school.

[193] Mr. Power says that he plans to pick J up from school when he has parenting time so he can spend sufficient time with his son. It appears that Mr. Power has significant flexibility in his schedule. This flexibility mitigates against the downside of the additional driving time required for, if I permit, J's relocation to Colby Village.

[194] Mr. Power says that relocation will have a negative effect on J because it will mean less time with his half-sister, Mr. Power, Mr. Power's partner and Mr. Power's mother. I accept that the driving time between the former matrimonial home and Colby Village is such that spontaneous visits may be negatively affected and regular engagement in J's school or extracurricular activities more time consuming and difficult to manage or arrange. However, I am satisfied that if I permit J to relocate to Colby Village that he can, notwithstanding the distance, continue to have rich and meaningful relationships with his half-sister, his father, his grandmother, his father's partner, and his father's sister and her family. If the relocation is permitted I am confident that J will continue to have regular quality time with his father and his paternal family.

[195] For the reasons set out in this decision I find that transitioning the parties' current shared parenting arrangement to J being in his mother's primary care is in his best interests. I find that permitting relocation with the corresponding

consequence of J transitioning to his mother's primary care will have a positive impact on J as it is in his best interests.

Amount of time spent with each parent

[196] As noted, I granted Ms. Power primary care in December of 2023. Since then, by agreement, Mr. Power's parenting time has increased to a shared parenting arrangement.

Relocation Notice Requirements

[197] Ms. Power initially took the position that her move to Colby Village constituted a change of residence and not a relocation. Mr. Power objected and successfully argued that this move constituted a relocation. Following my decision that this proposed move constituted a relocation; Ms. Power filed the required notice of relocation. Mr. Power filed his objection. Ms. Power has not attempted to unilaterally relocate the child.

Reasonableness of the Relocating Parent's Proposal to vary parenting time and decision-making responsibility

[198] In considering Ms. Power's relocation proposal, I have considered the fact that due to the matrimonial property arrangement in place between the parties, Ms. Power will eventually have to vacate the former matrimonial property. The child's transition to a new home while in his mother's care is a reality of the parties' matrimonial property agreement. Ms. Power's decision to relocate to a new residence is thus not unreasonable but rather it is necessary.

[199] Ms. Power's decision to relocate to her childhood home (on an operating expenses basis only) and to an area in which her family is nearby is reasonable. I find that Ms. Power's plan for J's education and athletic involvement in her proposed community is also reasonable.

[200] In considering the reasonableness of Ms. Power's request to relocate J to Colby Village I have considered the fact that in the spring of 2025 J was attending at East Coast Varsity two times a week. Mr. Power described this location as being near Ms. Power's sister's house in Colby Village. The fact that the child traveled from Timberlea to East Coast Varsity twice a week supports a conclusion that the relocation plan proposes relocation to an area to which the child regularly traveled.

[201] Ms. Power is prepared to split the drive from Timberlea to Colby Village so that neither party has to drive all the way. This is a reasonable request and ensures that neither party bears the burden of the drive between their prospective residences or those residences and J's school.

[202] Ms. Power has satisfied the burden upon her to establish that it is reasonable and in the child's best interest for him to be in her primary care and for her to have decision-making with respect to his extracurricular activities. I find that the current parenting arrangement has not benefited the child and that change to the parenting arrangement is necessary to restore the child's relationship with his mother and to overcome the negative effects of Mr. Power's engagement with the child and Ms. Power.

[203] Ms. Power proposes that Mr. Power have parenting time with J every second weekend. Section 16.92 (1) (f) requires that I consider the reasonableness of Ms. Power's proposal to vary parenting time and decision-making taking into account among other things the location of the new place of residence and travel expenses. The location of the new place of residence and travel expenses are not the only factors which I may consider in assessing the reasonableness of Ms. Power's parenting time and decision-making proposal. In assessing the reasonableness of Ms. Power's parenting time and decision-making proposal I have considered all of the evidence and the other relocation and best interests factors and conclude that Ms. Power's plan is child focused and in the child's best interests. She does not seek to deny Mr. Power parenting time.

Compliance with Court Orders

[204] In my first Interim Order I ordered that J could continue in his existing activities, but I ordered that the parties must agree on additional sporting activities. Neither party was empowered to unilaterally enroll J in additional sporting activities.

[205] Mr. Power says that Ms. Power has weaponized the Interim Order on multiple occasions because she is not willing to keep J in activities or sign him up for activities that he is interested in. Mr. Power deposed that Ms. Power only agreed to permit J to participate in certain athletic activities when he took legal action.

[206] Ms. Power's evidence establishes that Mr. Power has refused to accept her refusals as legitimate and has on five occasions threatened to take court action if she did not agree with his proposal.

[207] I granted the parties interim joint decision-making authority. Mr. Power's recourse to legal action is a clear indication that he is not prepared to accept Ms. Power's perspective if it does not align with his perspective. It is also an indication that Mr. Power is not prepared to accept my order granting he and Ms. Power joint decision-making.

[208] The evidence establishes that Mr. Power has not complied with my order regarding decision-making around additional sporting events for J. Since my interim order was issued, Mr. Power has unilaterally signed J up for sporting activities without first consulting with Ms. Power.

[209] Mr. Power's behaviour in threatening court action demonstrates an unwillingness to be guided by my order and an unwillingness to accept that Ms. Power has a legitimate although different perspective from his on what is in his child's best interests.

[210] The evidence establishes that Mr. Power unilaterally reduced his child support payments in the spring of 2025. Mr. Power says that he reduced his child support payment to account for unpaid Section 7 expenses. I find that Mr. Power failed to pay child support as required. The order does not permit Mr. Power to unilaterally reduce his child support payment to take section 7 expenses into account.

Disposition

[211] Having considered the evidence, submissions, case law and the applicable *Divorce Act* provisions I conclude that Ms. Power has satisfied the burden on her of establishing that relocating to Colby Village is in J's best interests. When I consider all of the child's best interest factors together with each parents' plan for the child, I am satisfied that the benefits of relocating to Colby Village and being in his mother's primary care outweigh the disadvantages to the child of leaving Timberlea.

[212] This relocation authority is effective immediately.

Issue # 6 What parenting schedule is in the child's best interests?

[213] Because Ms. Power has established that it is J's best interest to be in her primary care I must determine Mr. Power's parenting time.

[214] I find that J's relationship with his mother has been harmed by Mr. Power. I find that it is necessary to provide J a period of time primarily in his mother's care to permit him time to become comfortable in his new home and to restore his connection with his mother and her family without his father's influence. I have found that J's behaviour toward his mother has been affected by his father's behaviour and this period of time will provide significant uninterrupted stretches of time for them to connect and for the child's attitude toward his mother to soften before it is irreversibly affected.

[215] Justice Coady in *J.W. v. D.W.*, 2005 NSSF 8 converted a shared parenting arrangement to a primary care arrangement with the father and ordered that the children not have any contact with their mother for a period of four weeks. The purpose of the no contact period was to permit the children time to become comfortable in their new home. The mother's request for a stay and her appeal were dismissed by the Court of Appeal (2005 NSCA 10 and 2005 NSCA 101) Justice Lynch also ordered a four week period of no contact in *C.L.J. v. J.M.J.*, 2006 NSSC 82.

[216] I find that a period of reduced contact is necessary. I will permit weekly contact between J and his father but wish to create a four week period in which the child is primarily with his mother.

[217] I find that a brief period of reduced contact is necessary in this case and is responsive to Justice L'Heureux-Dubé's admonition to trial judges in *Young v. Young*, [1993] S.C.J. No. 112 that "courts must do whatever is within their power to alleviate rather than disregard, minimize or normalize difficulties, and should beware of adopting a needlessly cavalier attitude where solutions can be seen to exist. The fact that many children experience stress and disruption upon the breakdown of the marriage, in my view, only increases the obligation of courts to focus their attention on the best interests of the child. The primary goal of the legal system on divorce must be to minimize the adverse effects on children."

[218] Mr. Power will have parenting time as follows:

1. For the first four weeks following this decision parenting time each week on Wednesday evening from after school to 8pm. This period of time is required to permit Ms. Power to have parenting time with J to facilitate the strengthening and rebuilding of their relationship, to provide the child with a period of time when he is free of commitments to ensure that his transition to his new home is as positive as possible.
2. After the initial four week post transition period, Mr. Power will have parenting time every second weekend from after school on Friday to Monday morning prior to school and every second Wednesday evening from after school to 8pm.
3. Transitions will occur at school or at a location equally distant between Timberlea and Colby Village. The parties may make written submissions to me if they are unable to agree on a transition location.

[219] A further conference will be convened to address the issue of child support. Both parties must exchange and file their updated Statements of Income by May 1, 2026. These statements should include 2025 income tax returns and notices of assessments if completed and proof of 2026 year to date income from all sources.

[220] If costs are sought written cost submissions must be filed by April 24, 2026. Replies to costs submissions, are not required but may be filed by May 1, 2026.

Ingersoll, J.