

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Barnhart v. Murphy*, 2026 NSSC 141

**Date:** 20260405

**Docket:** *HFD* No. SFH1201-072098

**Registry:** Halifax

**Between:**

Justine Catherine Barnhart

Petitioner

v.

Conor Patrick Murphy

Respondent

**Judge:** The Honourable Justice Lawrence I. O’Neil

**Heard:** March 12 and 26, 2026, in Halifax, Nova Scotia

**Counsel:** Justine Barnhart, Self Represented  
Conor Murphy, Self-Represented

**By the Court:**

**Introduction**

[1] A bottom line decision was delivered in this matter on March 30, 2026 with written reasons to follow. These are those reasons. This is a decision following an emergency hearing held on March 12 and 26, 2026.

**Background**

[2] The parties are the parents of a child born in August 2015. The parenting of their child is governed by a Corollary Relief Order issued after a Divorce hearing before Associate Chief Justice Jesudason. His written decision released February 7, 2023 is reported as *Barnhart v. Murphy*, 2023 NSSC 31.

[3] The parties had been following week about parenting of their child until early February 2026.

[4] On or about February 8, 2026, Mr. Murphy unilaterally withheld the child from Ms. Barnhart. He filed an emergency application on February 12, 2026 and asked the court to order that primary care of the child be entrusted to him and that Ms. Barnhart's contact with the child be supervised, i.e. in the presence of an approved third party.

[5] The emergency application was scheduled for the same time as a case management meeting already booked for February 23, 2026.

[6] Mr. Murphy said he had decided to not return the child to Ms. Barnhart's care on February 8 because of his concerns about Ms. Barnhart's housing circumstances and because of his belief that their child had been exposed to ongoing family violence in Ms. Barnhart's home over the preceding six months or more. Mr. Murphy said he had only recently learned of the extent of Ms. Barnhart's housing instability and the frequency of family violence in Ms. Barnhart's home.

[7] The conference memorandum following the February 23 and 24, 2026 conferences with the parties records the following procedural history:

3. Mr. Murphy filed a detailed submission in advance of the February 23, 2026 conference. In these submissions, Mr. Murphy detailed his reasons for withholding the child since early February 2026.
4. After a lengthy discussion with the parties, the court advised the parties that an expedited hearing would be sought to address the current concerns that have resulted in Mr. Murphy discontinuing the alternating week parenting schedule.
5. On February 23, 2026 the parties were directed to phone in again on Thursday, February 24, 2026 to confirm the next court appearance to address these recent developments.
6. On February 24, 2026 the court advised the parties of an emergency hearing to address the concerns of each party. It is scheduled for March 12, 2026 for one half day beginning at 2:00 pm until 4:30 pm, continuing to March 13, 2026 from 10:00 am to 12:30 pm.
- ...
9. Each party must present their evidence and the evidence of each witness in affidavit format. Each party will have the opportunity to cross-examine witnesses offered by the other side.
10. Each party will also have a total of two hours to present their evidence and to complete cross-examination.
11. Each party will have 20 minutes to provide a summation or closing argument of the affidavit evidence at the end of the hearing and telling the court what it should decide and why.
12. The principal issue to be decided following the hearing on March 12 and 13th, 2026 is what interim changes in the parenting plan should be made if any, Currently the parenting plan being followed is that put in place as directed by ACJ Jesudason in his decision dated February 7, 2023.
13. This matter remains scheduled for a Variation Application on May 11, 12, 13, 2026 and for a telephone conference on April 14, 2026, from 11:00 am to 12:00 pm. The April hearing has been changed to May because the presiding Justice became unavailable for the April hearing.

[8] On February 26, 2026 an emergency hearing was found to be warranted. The hearing proceeded on March 12, 2026 and continued on March 26, 2026.

[9] By way of further background, it should be noted that Mr. Murphy had an outstanding variation application concerning the parenting arrangement for the subject child. That matter is scheduled for a hearing on May 11, 12 and 13, 2026. The court ruled on October 7, 2025 that a change of circumstances existed and Mr. Murphy's variation application could proceed.

[10] Following day one of the emergency hearing before me I ordered that Ms. Barnhart would have four (4) blocks of daytime contact with the child until the court could decide upon the parenting schedule for both parents until the variation application could be heard. I did not order overnight time for the child and the mother.

[11] The anticipated case for variation of the existing order will mirror the case made at the emergency hearing, although each party will have more time to prepare and to present their case when they return for the variation hearing.

### **Parties' Positions**

#### **- Ms. Barnhart**

[12] Ms. Barnhart wants the week about parenting schedule followed.

[13] Ms. Barnhart stated in the course of the emergency hearing that she was the victim of ongoing domestic violence at the hands of one James Fraser Jr.

[14] James Fraser Jr. is Ms. Barnhart's now estranged partner and the father of her younger child. That child continues to reside with her.

[15] It appears that on the eve of this hearing, Ms. Barnhart was interviewed by the police and, as a consequence, the court is told Mr. Fraser Jr. has been charged with numerous criminal code offences. The alleged circumstances forming the basis of these charges occurred in 2025 and perhaps in 2026.

[16] Mr. Fraser Jr. is the registered owner of the condo in which Ms. Barnhart lives. Mr. Murphy reports that the residence is being foreclosed upon and at a minimum, Ms. Barnhart will need to leave it.

[17] Mr. Murphy says he does not blindly accept Ms. Barnhart's claims of being assaulted or threatened by Mr. Fraser Jr. Mr. Murphy says while he lived with Ms. Barnhart, he was abused repeatedly by her and blatantly false claims were made against him. He says he is a school teacher and the accusations caused him to be concerned for his professional status.

[18] He says that if true, the allegations against Mr. Fraser Jr. confirm his ongoing concerns about his son's exposure to violence in the home of Ms. Barnhart.

[19] In part, Ms. Barnhart explains her unstable living circumstances on the basis of her being a victim of ongoing family violence and her ongoing financial insecurity.

[20] Mr. Murphy is not opposed to the parties returning to 50:50 parenting. This is not a case where one parent wants permanent primary care of the child. Mr. Murphy's position is consistent with what he advocated before Associate Chief Justice Jesudason. That position is summarized in the decision of Associate Chief Justice Jesudason at paragraph 49:

[49] However, when asked by me when giving his oral evidence during the trial, he acknowledged that, despite putting forward a position to have primary care of A, he didn't believe this to be in A's best interests. He testified that it would concern him to significantly take away A's existing time with Ms. Barnhart and his brother, S, and that it was "third parties" who suggested the plan for primary care. He then advised that he therefore believed that a shared parenting plan would be in A's best interests.

[21] Mr. Murphy is passionate in expressing his current concern about the well being of his son when in the care of Ms. Barnhart.

[22] There is no question that Mr. Murphy's overriding interest is in his son's well being. He has consistently acknowledged the importance of his son's relationship to his mother, Ms. Barnhart and the importance of his son's relationship with his son's younger brother who lives with Ms. Barnhart.

[23] Mr. Murphy's parenting position reflects a principled child centered approach.

[24] In contrast, Ms. Barnhart refuses to work with Mr. Murphy to stabilize her son's circumstances. She finds herself in unstable living circumstances scrambling

to find housing, to secure income and to establish stability and safety from a former (or current) partner, Mr. Fraser.

[25] Her resistance to working on a transition plan with Mr. Murphy would be more understandable if Mr. Murphy was seeking primary care of their child. In such a circumstance, Mr. Murphy's motives might be suspect. As much as he might want primary care of his son for selfish reasons, he seeks to have his son's shared parenting regime made workable, safe and enriching.

[26] I am not satisfied that Ms. Barnhart has a stable plan for housing or to keep her son safe. She claims that she has effectively concealed a violent life in her home. To accomplish that goal, some deception would be required.

[27] I do not accept that the child was not exposed to family violence if it occurred with the frequency she claims and was as serious as claimed.

[28] She has not acted as a protective parent to her son.

[29] The negative consequences of family violence on Ms. Barnhart in such circumstances are also very concerning. A partner who has experienced family violence must seek support to heal from the same. Ms. Barnhart says she is doing so.

[30] The Divorce Act requires me to consider the presence of family violence in a child's home when determining the best interests of a child when making a parenting or contact order. On the basis of that consideration alone, I am required to change the existing parenting order on an interim basis, that is until the variation hearing scheduled for May 11 – 13, 2026.

[31] For ease of reference, I reproduce selected language from s.16 of the *Divorce Act*:

Best interests of child

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

Primary consideration

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

Factors to be considered

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
  - ...
  - (d) the history of care of the child;
  - ...
  - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
  - (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
  - (j) any family violence and its impact on, among other things,
    - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
    - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
  - (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Factors relating to family violence

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
- (a) the nature, seriousness and frequency of the family violence and when it occurred;
  - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
  - (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
  - (d) the physical, emotional and psychological harm or risk of harm to the child;
  - (e) any compromise to the safety of the child or other family member;
  - (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
- (h) any other relevant factor.

Past conduct

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

Parenting time consistent with best interests of child

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

Parenting order and contact order

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

Parenting order

- 16.1 A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by
  - (a) either or both spouses; or
  - (b) a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent.

Interim order

- (2) The court may, on application by a person described in subsection (1), make an interim parenting order in respect of the child, pending the determination of an application made under that subsection.

[32] I have considered the child's needs and in particular, the child's need for stability (16(3)(a)). The child has not experienced a stable home life over the past year and there are concerns that this will not change if he remains in his current circumstances.

[33] I have considered the child's relationship with both parents and his sibling who resides with Ms. Barnhart. The child will have meaningful time with his mother and sibling over the period leading up to the variation hearing (s.16(3)(b)).

[34] I have considered the willingness of each parent to support the relationship of the child with the other parent and I am aware of the history of care of the child (s.16(c) & (d)). These factors support the maintenance of contact between the child and both parents.

[35] Mr. Murphy's plan for the child's care is more secure than that offered by Ms. Barnhart. Given she is in a period of transition in her personal life, this is not surprising. The court appreciates that her circumstances may be more stable and secure for the child when this matter returns to court in late May of 2026.

[36] I have referenced the extent to which the family violence has been part of this child's life. I do not accept that the child has been shielded from the family violence Ms. Barnhart describes.

[37] *The Children and Family Services Act*, S.N.S. 1990 c.5 provides as follows:

a. the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

. . . . .

(f) the child has suffered emotional abuse, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

. . . . .

(i) the child has been exposed to, or has been made aware of, violence by or towards

(i) a parent or guardian, or

(ii) another person residing with the child,

and the parent or guardian fails or refuses to obtain services or treatment, or to take other measures, to remedy or alleviate the violence;

And further at s.23(1):

23 (1) Every person who has information, whether or not it is confidential or privileged, indicating that a child is in need of protective services shall forthwith report that information to an agency.

[38] I am satisfied the child has been exposed to family violence in Ms. Barnhart's home and the risk of harm continues. Assurances by Ms. Barnhart in this respect are insufficient to satisfy the court given her admitted history of concealing the family violence.

[39] The court is satisfied that each party will have an opportunity over the next month to better prepare evidence to address the court's concern at the variation hearing scheduled for mid May of 2026.

[40] The court acknowledges that this emergency hearing is not the optimum forum for a fulsome examination of the parenting plans and current circumstances of the parents.

[41] However, given concerns of family violence raised and supported by the evidence, safeguards must now be put in place for the child. Those safeguards principally consist of modifications to the plan for contact between the subject child and Ms. Barnhart. The structure of the contact pending conclusion of the variation application are outlined below.

[42] The evidence establishes that Ms. Barnhart has not acted as a protective parent. She must establish that she can be in the future. The variation hearing scheduled for May 11-13, 2026 is a more fulsome opportunity for her to do so than an emergency hearing.

[43] The variation hearing is also an opportunity for her to confirm that she has stable housing and to address other concerns raised by the evidence.

[44] Ms. Barnhart's contact time with the parties' child shall be for blocks of time each week on days the parties agree upon.

[45] However, in the event the parties can not agree, the regular contact time and Easter weekend contact time shall be:

1. Easter weekend contact time shall be:
  - a. Thursday for three (3) hours
  - b. Saturday for six (6) hours
  - c. Sunday for four (4) hours

The start time for each of these visits will be determined by Mr. Murphy after seeking input from Ms. Barnhart.

2. Saturday beginning April 4 from 10:00 a.m. – 4:00 p.m.
3. Every second Sunday beginning April 12 from 10:00 a.m. – 4:00 p.m.
4. Every Wednesday from 3:00 p.m. – 6:30 p.m.
5. Every Monday from 3:00 p.m. – 6:30 p.m.

6. Other contact will be as agreed to between the parties and the parties may alter the schedule noted above as they deem necessary and desirable from time to time.

[46] The foregoing schedule shall continue until further order of the court which is anticipated to be as a consequence of the pending hearing of Mr. Murphy's variation application.

[47] Mr. James Fraser Jr. is not to be present with Ms. Barnhart when the parties' child is in her company.

[48] The subject child is not to be left unattended by Ms. Barnhart in her residence and must remain in the presence of Ms. Barnhart.

[49] The subject child is not to be removed from the municipality of Halifax by Ms. Barnhart.

O'Neil L., J.