

SUPREME COURT OF NOVA SCOTIA

(Family Division)

Citation: Fedortchouk v. Boubnov, 2013 NSSC 277

Date: 20130808

Docket: 1201-065948

Registry: Halifax

Between:

Iana Fedortchouk

Applicant

and

Pavel Boubnov

Respondent

Judge: Associate Chief Justice Lawrence I. O’Neil

Date of Hearing: July 29, 30, 31 and August 1, 2, 6, 7 and 8, 2013

**Date of
Written Decision:** September 9, 2013

Counsel: Iana Fedortchouk, Self Represented
Pavel Boubnov, Self Represented

By the Court: (Orally)

Introduction

[1] The parties married in 1993 and separated on October 1, 2010. The subject separation agreement was registered April 28, 2011. An application to vary was filed June 6, 2011; a Petition for Divorce on February 20, 2012.

[2] The parties immigrated from Russia in 1999 with their oldest child. Three other children were born in Canada. They settled in Victoria where Mr. Boubnov obtained a law degree and Dr. Fedortchouk completed her studies in geology. They left Victoria in 2006 and lived in Whitehorse for one year (August 2006 - July 2007) and then moved to Halifax where Dr. Fedortchouk currently is a tenured professor at Dalhousie University and Mr. Boubnov practises law.

[3] They have four children: Arsenij, born September 8, 1995; Galina, born May 12, 2002; Iakov, born February 25, 2005 and Anton, born September 15, 2010.

[4] The middle children have been in a shared parenting arrangement since January 2010. The youngest has always been in Dr. Fedortchouk's primary care and the oldest has been in Mr. Boubnov's primary care since late September 2011. Prior to late September 2011, the oldest was also in Dr. Fedortchouk's primary care.

[5] The Court advised the parties that it would address their financial issues first and then consider anticipated applications to vary the parties' parenting arrangement as set out in their separation agreement registered on April 28, 2011.

[6] In January 2013 Dr. Fedortchouk advised the Court and Mr. Boubnov that she wished to further modify her application. She wanted to take the children to Zurich for six months beginning July 1, 2013, and to another location to be determined for the following six months. Dr. Fedortchouk has been approved for a year long sabbatical.

[7] She emphasized that she needed to have a Court ruling before the end of March 2013. That was not possible. Mr. Boubnov was not prepared to respond to this request in January 2013. The Court decided to proceed with the January 2013 hearing and to deal only with the parties' disagreement about financial issues. The Court decided it would only hear the 'mobility' application as part of its consideration of parenting issues at a later date.

[8] The hearing to address financial matters proceeded on January 28 and 30, 2013. Additional time was required and evidence was also heard on Monday, February 4, 2013. Dr. Fedortchouk completed her evidence that day.

[9] The Court resumed on February 6, 2013 on an emergency basis to address a disagreement between the parties that arose over whether the youngest child would be cared for by his father in March when Dr. Fedortchouk was to be away for two weeks. The alternative was a plan prepared by Dr. Fedortchouk to leave Anton with a child care provider known to the child. The Court ruled on this matter on February 6, 2013 after hearing from the parties.

History of Litigation

[10] For ease of reference the following chronology is given. It is telling evidence of the high conflict between the parties and puts the current hearing in context.

[11] As stated, the parties entered a separation agreement dated December 20, 2010. In April 2011, Dr. Fedortchouk sought to vary the terms of the agreement. However, the agreement had not yet been registered. She therefore registered the agreement on May 6, 2011 and re-filed her variation application on June 6, 2011. She was seeking *inter alia* primary care of the children pursuant to the terms of the *Maintenance and Custody Act*, R.S.N.S. c. 160, 1989. *Divorce Act* S.C. 1985, c. 3 (2nd Supp.).

[12] On December 12, 2011, June 4, 5 and 6, 2012 were set aside to hear the matter.

[13] Justice Legere Sers' conference memorandum reflecting the parties appearance before her on December 12, 2011 contains the following:

3. The Court encouraged the parties to seek other opportunities to resolve the outstanding issues, in particular, a mediator or a collaborative law lawyer.
4. The parties are currently operating under a Separation Agreement registered with the Supreme Court of Nova Scotia on May 6, 2011. Ms. Fedortchouk filed an application to vary, based on a change of circumstances, and seeks:
 - a. Primary care of the three younger children;
 - b. Amended parenting schedule;
 - c. Sole decision-making authority for any medical, extracurricular, education or other issues relating to the children;
 - d. Retroactive and prospective child support based on actual income retroactive to October 2011;

- e. Retroactive and prospective contribution to Section 7 expenses, proportionate to the income of the parties retroactive to October 2011, and wishes this amount to be fixed;
 - f. Set off of any entitlement to Mr. Boubnov from the equity of home, if a retroactive award is granted;
 - g. Impute income to Mr. Boubnov, i.e., mileage;
 - h. Authority to file an application for a passport;
 - i. Order for Production for the medical file of Mr. Boubnov; and
 - j. Consolidation of this proceeding with a future Petition for Divorce.
5. Ms. Fedortchouk is also seeking a parental assessment of Mr. Boubnov's parenting skills. She seeks disclosure of his medical file.
- a. Mr. Boubnov does not agree to the disclosure of the entire medical file. He shall consider obtaining a further letter from his doctor which speaks to the issue of his ability to focus or parent a child.
 - b. If he chooses not to produce such a letter or the letter is not acceptable to Ms. Fedortchouk and she chooses to subpoena the doctor, the Court is prepared to provide directions on the vetting and/or sealing of the materials.
6. Mr. Boubnov agrees that Ms. Fedortchouk can file an application for the passports for the children.
7. The parties agree to attend counselling sessions with Debra Garland to assist them in co-parenting the children.
8. Mr. Boubnov intends to file an application to vary, based on a change in circumstances and shall file a reply affidavit, identifying what he is seeking. He advised he is currently seeking:
- a. Joint custody with primary care of the middle two children, with generous access to the mother and primary care of the oldest son;
 - b. Child support, retroactive to October 1, 2011;
 - c. Proportionate sharing of Section 7 expenses, such as child care.

[14] However, Justice Williams was required to deal with the parties on an emergency basis in December 2011 and scheduled an emergency hearing before me in January 2012. Justice Williams also ordered a custody and access assessment.

[15] A Petition for Divorce was filed February 20, 2012 by Dr. Fedortchouk. An answer on March 9, 2012. By virtue of the *Divorce Act* S.C. 1985, c. 3 (2nd Supp.) the divorce proceeding subsumed the *Maintenance and Custody Act*, R.S.N.S. c. 160, 1989 proceeding. Hearing dates had already been scheduled for June 4, 5 and 6, 2012 to address the 'MCA' application. A one hour conference with the parties was therefore scheduled before me for late March, 2012 to confirm future hearing dates and issues to be addressed.

[16] Ms. Dianne Paquet appeared as counsel with Dr. Fedortchouk and Mr. Boubnov was self represented on March 30, 2012. On March 30, 2012 the Court learned that an assessment ordered in early January 2012 would not be ready for the June hearing. Mr. Boubnov suggested that the June hearing dates could, as an alternative, be used to hear his evidence and arguments in favour of setting aside the parties' separation agreement. The Court observed that it might be necessary to adjourn the hearing dealing with the custody and access issues, but kept the June 2012 hearing time to address the property issues should the adjournment of the other issues be necessary.

[17] Filing deadlines were set with the understanding that the parties may not be ready to use the June 2012 hearing dates to address custody and access issues but could possibly deal with Mr. Boubnov's application to set aside the parties' separation agreement and some financial issues.

[18] On May 23, 2012 the hearing dates were removed. The assessment had only recently been initiated and Mr. Boubnov was not in a position to proceed with his application to set aside the separation agreement. September 5, 2012 was confirmed as a return date for a status report.

[19] Shortly thereafter, on June 1, 2012 Mr. Boubnov filed a Notice of Motion seeking an order to vary the custody and access arrangement governing the parties' children.

[20] Days later, on June 6, 2012 Mr. Boubnov filed a Notice of Motion for Interim Relief. The enforcement officers of the Maintenance Enforcement office had taken steps to enforce arrears. These steps resulted in Mr. Boubnov being unable to run his law practice. A telephone conference was held with me on June 19, 2012. In response to a Motion by Correspondence from Mr. Boubnov, the Court issued an order on a 'without prejudice' basis providing relief to Mr. Boubnov. I ordered Mr. Boubnov to pay \$400 per month as child support and \$250 per month towards the arrears until the matter returned on September 5, 2012. The Court also addressed the parties travel with the children over the summer of 2012.

[21] On September 5, 2012; the January 2013 hearing dates were confirmed. In January 2013 the involvement of the children in extra curricular activities was to be addressed as well as financial issues. Two days were set aside for this purpose. The financial issues to be addressed were child support, special expenses for the children and arrears. The June 20, 2012 order was continued. Dr. Fedortchouk was given authority to arrange for child care for the three younger children in the interim.

[22] The custody and access report was received by the parties in late November 2012.

[23] The Court learned from Dr. Fedortchouk in January 2013 that her plan now included removing the three younger children from Canada for extended period(s) while she was on sabbatical between July 2013 and June 2014. In light of this change, the Court agreed with Mr. Boubnov that the custody and access hearing could not proceed in January 2013. However, the Court directed the parties to prepare to address financial issues. They were reminded that they had two days to do so.

[24] Dr. Fedortchouk's evidence commenced January 28, continued on January 30, 2013 and was scheduled to finish on February 4, 2013. On February 4, 2013 additional time was set aside on February 6, 2013 for Dr. Fedortchouk to complete her case.

[25] However, the time reserved on February 6 was required to address a new conflict that arose between the parties.

[26] Dr. Fedortchouk proposed to be away from February 6 to March 4, 2013 and did not want to leave their youngest child Anton in Mr. Boubnov's care, other than on week ends. The Court assisted the parties in resolving the matter and issued a ruling that recognized each party's point of view.

[27] Over the coming days the scheduling office communicated with the parties with a view to identifying days when they would be available to conclude the financial aspect of the hearing.

[28] Superimposed on this scheduling challenge was the need to schedule a hearing to determine if Dr. Fedortchouk could leave Canada with the children for all or part of her sabbatical. It was clear that a significant block of time was required for the mobility request alone. Dr. Fedortchouk was persistent in pressing for dates before the end of March 2013 to meet various deadlines she had.

[29] On March 8, 2013 Dr. Fedortchouk filed a Notice of Motion for interim relief and sought an order for interim custody and child maintenance.

[30] On April 22, 2013 the Court convened a telephone conference with the parties to address another conflict over the timing of their daughter's surgery on her tonsils.

[31] The parties again participated in a telephone conference with me on April 29, 2013. Mr. Boubnov expressed concern that Dr. Fedortchouk was alienating the children. Dr. Fedortchouk expressed urgency about the need to obtain Visas for the children and the desire to have the children leave with her on August 9, 2013.

[32] The Court confirmed that it would attempt to move the trial scheduled for July 29 - August 8, 2013 to an earlier date. On May 1, 2013 the parties were advised that this was not possible.

[33] I received numerous letters from Dr. Fedortchouk over the spring of 2012, each asserting an urgent situation existed that required the Court's attention.

[34] No continuation of the January 2013 hearing could be scheduled because of the need to address new issues and because the parties were not available on earlier dates.

[35] On April 22, 2013 the Court set aside eight (8) days commencing July 29, 2013 for completion of a hearing to address financial issues and to also address Dr. Fedortchouk's application to take the children with her for one academic year; for six months to Zurich and then for six months to Hawaii where she proposed to complete her sabbatical studies. At the commencement of this hearing on July 29,

2013, the Court was told that Hawaii was no longer an option. Germany or Australia are now the options.

[36] On July 29, 2013 the parties agreed to deal with the mobility issue in priority to all other issues. As the hearing progressed, it became obvious that this was all that could be addressed.

Issues

[37] The issue for the Court's consideration is whether relocation of the children for the period August 2013 - June 2014 should be permitted.

History of Parenting

[38] The parties' separation agreement dated December 20, 2010 contains the following clause:

16. The timesharing schedule with respect to the children shall be as follows:
 - (a) The parents shall have shared custody of Arsenji on a flexible basis with the residential arrangements to be determined in accordance with the child's wishes.
 - (b) With respect to Galina and Iakov the parents shall have shared custody on a flexible basis. For specificity each parent shall have the children with them for at least forty percent of the time for purposes of Section 9 of the Child Support Guidelines.
 - (c) Anton shall remain in the primary care of the Wife.
 - (d) Access to all of the children shall be arranged on a flexible and liberal basis with the intent that the children shall spend as much time as possible with both of the parents.

Relocation of the Children

[39] Dr. Fedortchouk is now asking for the Court's permission to take three of the four children to Zurich for the first four months of her sabbatical and then to Europe or Australia for the second part of the sabbatical. She does not propose to have the parties 17-year old son relocate. She proposes that he remain with Mr. Boubnov.

[40] Mr. Boubnov is opposed to the middle children going away for part or all of the sabbatical year.

[41] As stated, both parties asked the Court to first use the court time to confirm the parenting arrangement over the next year and asked to lead evidence on this point in priority to completing the Court's consideration of the financial issues. I agreed. Dr. Fedortchouk is the Applicant for purposes of the mobility application and was directed to present her evidence. She raised a number of preliminary issues.

[42] She wanted the Court to accept a Custody and Access Assessment pertaining to her and Mr. Boubnov. The report is dated November 7, 2012. Its author, Heather Power, M.Sc., was not available for cross-examination. I did not accept the report as requested.

[43] Mr. Boubnov objected to having the report entered into evidence on the basis that Ms. Power was not available for cross-examination; he was surprised by the request and unable to respond in any case and would have considered other evidence had he been aware of Dr. Fedortchouk's pending request.

[44] The Court agreed with Mr. Boubnov.

[45] In addition, Dr. Fedortchouk asked the Court to accept as evidence, affidavits filed by Maya Kopylova of Vancouver and Tamara Astaklova of San Diego, California. Their affidavits were marked as Exhibits 27 & 28 for identification purposes.

[46] The Court ultimately refused to admit these affidavits. Neither was available to testify and given the lateness of the request to arrange video cross-examination, the Court declined to do so. Dr. Fedortchouk could not confirm Ms. Astaklova's availability. Mr. Boubnov opposed admission of the affidavits and the appearance of either of these persons by video. He stated that he too had witnesses from the West he declined to call because of the cost of arranging for them to appear.

[47] The Court found the evidence of these witnesses as dated, in one case containing significant hearsay and found the request late, having arisen after the trial began.

[48] Dr. Fedortchouk and Mr. Boubnov agreed to hear evidence out of order to reflect the circumstances of the witnesses. Consequently the first witnesses who testified, did so at the request of Mr. Boubnov.

[49] Yuliya Nigay is a friend of Mr. Boubnov. She is a parole officer at the Federal Correctional Centre in Springhill, N.S. She and Mr. Boubnov became acquainted because Mr. Boubnov would visit that institution to interview clients. Over the past two or three years she has observed Mr. Boubnov interact with his children several times and observed him making childcare arrangements for the children. There is no suggestion of a romantic relationship between Mr. Boubnov and Ms. Nigay.

[50] Ms. Nigay was in Mr. Boubnov's apartment on two or three occasions and described it as modest but acceptable. When challenged she observed the apartment was meant to be transitory living accommodation.

[51] Ms. Nigay's first language is Russian. She immigrated to Canada at the age of 22.

[52] I am satisfied that Ms. Nigay testified truthfully and forthrightly. She is intelligent and expressed herself fairly.

[53] Her evidence was a positive description of Mr. Boubnov's relationship with his children, the priority he places on their needs and the care he shows them. I am satisfied that her conclusions correctly flow from what she observed. Her opportunity to observe the relationships has been limited.

[54] Mr. Boubnov next called his former assistant when Mr. Boubnov was associated with a local firm. He is now a sole practitioner. Sarah Power was Mr. Boubnov's assistant for two years and worked with the former firm for two-and-one-half years when Mr. Boubnov was there. She is now employed with Nova Scotia Power.

[55] Ms. Power described Mr. Boubnov's two middle children who frequently visited the office. She said they were well mannered, appeared well cared for and Mr. Boubnov was attentive to them. Ms. Power described how Mr. Boubnov's court schedule frequently required him to attend court out of town. She also said he often worked from home, estimating it might have been 50% of the time.

[56] She agreed on cross-examination that Mr. Boubnov was not a highly organized person but not disorganized. She explained that her job had been to assist in that regard but the task was complicated by the need for Mr. Boubnov to travel to various courts in the region.

[57] I am satisfied Ms. Power was truthful and fair in answering all questions put to her. Her evidence painted a positive picture of Mr. Boubnov as a busy father balancing his parenting duties with professional duties.

[58] Mr. Tony Moulton was called by Mr. Boubnov to give his observations of the family when intact in 2007 and 2008. At this time, Mr. Moulton was contracted to renovate the couple's home. More recently in 2012 and 2013 he hired the couple's eldest child to do labour work, when he is not in school.

[59] During the renovations, Mr. Moulton was in the family home for many consecutive days and for entire days on numerous occasions. He described a busy home that functioned with normalcy. Dr. Fedortchouk was employed and Mr. Boubnov was at home with the children.

[60] Mr. Moulton was complimentary to both parents. He attributed an active role to Mr. Boubnov in caring for the needs of the family. In his mind there was no basis to suggest Mr. Boubnov was not performing his role responsibly.

[61] Mr. Moulton was questioned by both parties about his impression of the oldest child, soon to be 18.

[62] He described Arsenij as a good boy, a typical teenager trying to find his way and a career. He explained that he will hire him for casual labour once again this summer after he completes summer school. He hopes to have additional work for him over the fall but cannot guarantee him work.

[63] Ms. Irene Kasianov is a former family friend. She holds a Masters degree in teaching and taught math for 13 years in the Ukraine before coming to Canada. In Canada she taught at the Russian evening school.

[64] Ms. Kasianov and her husband visited the parties and their children when the family was intact. She testified that she admired how the family functioned. Dr. Fedortchouk was working outside the home and Mr. Boubnov was caring for the household and the children. She spoke in very positive terms about Mr. Boubnov as a parent. She described him as an active parent; all the children were comfortable with him.

[65] Ms. Kasianov was also complimentary of Dr. Fedortchouk's parenting although it is clear their relationship has become strained. When asked by Dr. Fedortchouk whether the child, Galina, is alienated from her father she said she did not observe that. She did go on, however, to describe the child's situation as follows: "between two fires, as we say in Russian".

[66] She described Galina as under stress and noticed from observing Galina at the Russian school that Galina was not the same.

[67] She was clear in her opinion that "Pavel was very responsible for what he was doing, he was a loving father and they loved him".

[68] Ms. Kasianov has been identified by Mr. Boubnov as back up should he need help in meeting his parenting responsibilities should the Court award him primary care of the children while Dr. Fedortchouk is out of the country on sabbatical. Ms. Kasianov confirmed she will be available until 2:00 p.m. during the week and all day on the weekends. She confirmed that she has helped Mr. Boubnov in the past and knows the children.

[69] She confirmed that in the summer of 2008 Mr. Boubnov moved to Vancouver for work and returned in early 2009. In his absence she observed Dr. Fedortchouk care for the children. However, after Mr. Boubnov's return she observed the parties' relationship as strained and at the time of the birth of the parties' fourth child on September 15, 2010, the couple were occupying separate bedrooms.

[70] Ms. Kasianov last saw the parties' two middle children one year ago with the exception of having seen Iakov four months ago at the Russian school.

[71] The effect of Ms. Kasianov's evidence was to paint a positive picture of Mr. Boubnov as a parent and Dr. Fedortchouk as a good parent as well, although very busy with work.

[72] Galina's grade 5 math teacher in the French Immersion Program over the recently completed academic year also testified. Ms. Knublely-Mallory described Galina as a very bright child performing above her grade level in French and English literacy. She expressed concern about the absences Galina had from school due to ill health in 2013, particularly over the second half of the year.

[73] Ms. Knublely-Mallory testified that on five days Galina arrived at school without a lunch. She said these were days she was with her mother. When children arrive at school without lunches the school gets concerned and the principal is notified. Ms. Knublely-Mallory testified that she knows these were days Galina was with her mother because Galina told her.

[74] Ms. Knublely-Mallory added that Galina was very protective of her mother on these occasions and reluctant to draw attention to the fact she did not have a lunch. However, this deficiency was the subject of negative attention from the other children and in her mind Galina was impacted by the teasing.

[75] Overall, Ms. Knublely-Mallory described Galina's current class as an exceptional group of children, many of them from privileged backgrounds. She described how Galina had grown in confidence in this peer group. She said that, in principle, she supports children going away for a couple of months with family members during the school year because of the benefits that will provide to the child. However, in the case of Galina she would not because of her need for continuity and stability. In addition to losing the positive environment in which she currently thrives, Ms. Knublely-Mallory testified that an adjustment to a new school, or schools, in an unknown language would not benefit Galina.

[76] Ms. Knublely-Mallory was complimentary of Mr. Boubnov and his interest in Galina and support of her. She was strongly opposed to Galina being removed

from her current class for periods of months outside Canada, in another school, with a view to studying in another language.

[77] Ms. Shatokhina was called by Dr. Fedortchouk. She required the services of a translator, English to Russian and Russian to English. Mr. Stanislav Orlov performed this function.

[78] Ms. Shatokhina is a retired teacher and worked for 35 years as a math teacher in Russia.

[79] Ms. Shatokhina has been involved with this family as a caregiver of the parties' three younger children for two separate periods. She first served in this capacity from August to December 2012. She travelled from Vancouver to be employed in this role. More recently, in June 2013, she was hired by Dr. Fedortchouk to perform the same duties.

[80] Ms. Shatokhina immigrated to Canada in 2003 and joined her daughter in British Columbia. Through her daughter she met Mr. Boubnov and Dr. Fedortchouk and their children. There was subsequent social contact between the families until 2007 when Mr. Boubnov and Dr. Fedortchouk left British Columbia.

[81] For seven months beginning in late 2008 Mr. Boubnov returned to Vancouver to work and for part of this period he sublet Ms. Shatokhina's apartment. Ms. Shatokhina was away in San Diego visiting her daughter at this time.

[82] Ms. Shatokhina was very uncomplimentary to Mr. Boubnov. Many of her views are contained in her affidavit, Exhibit #29.

[83] She recounted the circumstances of Mr. Boubnov and complained that he left her apartment in a mess and would not vacate when asked to do so. On cross-examination, she agreed that she returned early from San Diego, notwithstanding her agreement to sublet for six months. Mr. Boubnov asked her if his taking a week to find alternate accommodation in response to her request to repossess the apartment was unreasonable. She stated emphatically that it was.

[84] She also strongly disapproved of Mr. Boubnov working as a pizza delivery person after daytime work as a lawyer. She saw that as demeaning and evidence of his greediness.

[85] She maintained that opinion after it was suggested to her that as a government lawyer Mr. Boubnov was earning \$42,000 per year; he was making regular monthly trips to Halifax to see his family and was sending money home. In addition, it was suggested to her that Mr. Boubnov was required to make unanticipated trips to Halifax to address a family emergency. She was unprepared to give any credit to Mr. Boubnov for accepting a job in Vancouver after a year of unemployment in Halifax. She described him as abandoning his oldest child in Nova Scotia at a time when his son needed him.

[86] Ms. Shatokhina views the parties' oldest child, soon to be eighteen, as a disappointment. She says an unsuccessful child is the fault of the parents and in the case of this child it appears Mr. Boubnov's fault. She did not attribute any responsibility for Arsenij's shortcomings to Dr. Fedortchouk.

[87] She referred to comments made by Mr. Boubnov to his son as evidence of his unsuitability as a parent. For example, she felt it inappropriate for Mr. Boubnov to tell his son that unless he studied he would be sweeping streets. In her view, he should have sat down and explained the situation better. She agreed that she did not know what other guidance Mr. Boubnov gave his son.

[88] She described the son as a person of low energy. She was unaware of his work as a labourer in his spare time and his daily exercise routine of several hours duration.

[89] Ms. Shatokhina said the middle children were not settled when returning from Mr. Boubnov's after his parenting week. She said they were tired and not well kept. She said that after a couple of days back with Dr. Fedortchouk they would be better.

[90] She said the children did well in June 2013 when she cared for them. Dr. Fedortchouk had not yet left for Europe. She said this changed in July when all the care of the children was assumed by Mr. Boubnov after Dr. Fedortchouk began

her sabbatical in Zurich. She described July as a disaster. The children's regime was not followed as she felt it should be.

[91] She said the children slept in and stayed up late at Mr. Boubnov's and were often late being dropped off for daytime care by her in July 2013.

[92] Ms. Shatokhina did identify a tension in her parenting approach and that of Mr. Boubnov.

[93] She described herself as advocating a classical parenting approach and said Dr. Fedortchouk follows that approach as well. That approach involves a strategy that puts demands on children, that fights laziness and faking and is transparent. A lay man would describe her approach as "strict".

[94] She said Mr. Boubnov loves his children, that his love is manifested externally, through hugs, caresses and spoiling the children.

[95] In her view Mr. Boubnov is responsible for the oldest boy's shortcomings because he is not demanding enough. She says Mr. Boubnov is also creating conditions for Galina to be lazy.

[96] She complained that the children often did not return from Mr. Boubnov's home with all their homework, clothing and musical instruments. She offered this as evidence of Mr. Boubnov's disorganization.

[97] She expressed the view that the oldest boy was talking about the desirability of avoiding taxes and she attributed this attitude to Mr. Boubnov. On cross-examination it became clear that the son was describing tax savings one may achieve if one has a small business operating out of one's home.

[98] Yuliya Skazhenyuk also testified with the help of the translator. She worked as a teacher at the Russian evening school and her son and the parties' middle children often played together.

[99] The Russian school is an educational program organized by a community group comprised of "Russian" immigrants who want to educate their children to be functional in Russian. They also want their children to learn about Russian

culture. The supporters are linked by language. Not all are Russians; some are from the Ukraine and other former Republics of the Soviet Union.

[100] She described Mr. Boubnov as the parent taking the lead in arranging for the children to visit her home. She testified that the children were always well behaved, appropriately dressed and clean. In her view they were attached to Mr. Boubnov and each showed affection to him and received the same from him.

[101] Ms. Skazhenyuk taught at the Russian school and recalled the children as prepared when Mr. Boubnov was responsible for dropping them off but not when Dr. Fedortchouk was. She said Dr. Fedortchouk was unsupportive of the school.

[102] She was aware of activities Mr. Boubnov arranged for the children because her son was often invited to participate. She recalled a movie outing; a trip to the zoo and a trip to pick apples. She credited Mr. Boubnov with taking the lead in organizing these activities.

[103] On cross-examination she said she was unaware of Dr. Fedortchouk's role in the Russian school prior to her own son enrolling in the program in 2012.

[104] Ms. Pauline Bar is formerly from Russia but immigrated to Canada three years ago from Israel. She has three children and she and her family regularly socialized with Mr. Boubnov and his children. She described regular visits by Mr. Boubnov and one or more of his children after Mr. Boubnov had visited the Canada Games Centre with the children where they attended swimming activities.

[105] The families first met in early 2012. Initially the contact involved Mr. Boubnov and his middle two children but later it involved the youngest child, Anton. She described the contact as often, weekly or every other week over the winter.

[106] Ms. Bar also visited Mr. Boubnov's home. Ms. Bar said the children were properly dressed, groomed, had good hygiene and were well behaved. She was asked specifically about Mr. Boubnov's care of the youngest child Anton. She confirmed that it was a positive relationship.

[107] Ms. Bar also testified that she was available to be a back up person to provide childcare in an emergency if Mr. Boubnov required that support. She currently works part time as an aquatics instructor, typically finishing her employment at mid day.

[108] On cross examination she said she first met Mr. Boubnov when she required his services to notarize a document. She confirmed that she had an impression that the youngest child was not permitted by his mother to be with Mr. Boubnov but was unaware of the situation. She did know care of the middle children was shared.

[109] Ms. Bar said the youngest child Anton did appear to have a speech problem.

[110] Dr. Rebecca Jamieson, is Chair of the Physical Science Department at Dalhousie University where Dr. Fedortchouk teaches and does research. She confirmed the professional value and importance of Dr. Fedortchouk taking her sabbatical year when it became available. She emphasized that the opportunity to learn new methods and to use equipment not available in Halifax was a benefit of a sabbatical period outside the city. Sabbatical periods are for one year every seven years or six months every three and one half years.

[111] Dr. Jamieson confirmed that once the year is approved, which is fairly routine, every seven years the professor has responsibility to make all the arrangements. This includes what to do during the year; where to do it and for what periods. It is not uncommon for a professor to go away for parts of a year and to return in between; for a professor to focus on one institution's work or to travel visiting labs in various parts of the world to learn methods and use equipment that might not be available.

[112] The plan often evolves and changes and is not rigid. A professor must apply by October for a sabbatical leave beginning after that school year. Often the application is tentative since arrangements with other institutions may not be confirmed at that point. As stated, sabbatical leaves are typically approved.

[113] Dr. Jamieson had high praise for Dr. Fedortchouk's work as both a teacher and a researcher. She is well respected by her colleagues and her students. She also confirmed that the institution Dr. Fedortchouk will attend over the fall and in

fact where she started July 1, is a world class facility where the use of the lab by visiting professors is cost free.

[114] Dr. Jamieson was unaware of Dr. Fedortchouk's plans for her sabbatical period after Christmas. She did know she had decided against Maui.

[115] She confirmed also that a professor is not required to take a sabbatical year. However, she said if one does not it will hinder opportunities for promotion and for approval of a future sabbatical. Dr. Fedortchouk's job is secure regardless and her current income would not have been affected had she decided to not take a sabbatical.

[116] Dr. Jamieson herself took two sabbaticals. When her daughter was five she and her husband and daughter spent several months in Australia during the Australian summer so the child did not attend school. When the child was twelve, they spent several months in Vancouver where the child attended English language school. She is married to a professor and their sabbatical years coincide.

[117] Dr. Marcus Zentilli was called by Dr. Fedortchouk to provide evidence of his sabbatical experiences.

[118] Dr. Zentilli is the retired Dalhousie professor Dr. Fedortchouk replaced. He spoke positively of the benefits to him and his family as a result of his two sabbatical years. He went to Colorado the first time, when his children were 12 or 13. He later went to France when the younger child was 16. He is familiar with life in Switzerland because he has family living there. He returned from Switzerland in the past month. He spoke very positively about the country and its people.

[119] Dr. Fedortchouk testified for a full day and was cross examined for half of a second day.

[120] She began by observing that Galina is not alienated from her father. She expressed the view that Mr. Boubnov shows the children affection in various ways but does not involve himself in activities with them.

[121] At various points in her evidence she stated that she has been the parent who investigated and organized activities for the children. In her view, Mr. Boubnov can not be relied upon to organize the children or to transport them in a timely way. Dr. Fedortchouk described Mr. Boubnov's work obligations as unpredictable and therefore, his availability as a parent less reliable. She also described his back up plan with babysitters as weak because of the limited availability of these persons. She believes Mr. Boubnov resists or is unable to retain professional nannies to care for the children.

[122] Dr. Fedortchouk believes Mr. Boubnov's accommodations are inadequate. In addition to being small, crowded and consisting of a basement apartment, she raised concern that they were unhealthy for Galina.

[123] Dr. Fedortchouk disputed evidence of other witnesses who had suggested she was less involved than Mr. Boubnov. She explained that Galina would only be without a lunch because Mr. Boubnov did not provide it. She said she paid for a hot school lunch for her weeks. She testified that Ms. Skazhenyuk had very little by way of observations of the children. She questioned the objectivity of Ms. Knubley-Mallory on the basis that Mr. Boubnov is her husband's lawyer.

[124] She said Anton is healthy and progressed well under the tutoring of Ms. Shatokhina. She described a dramatic increase in his Russian vocabulary. She was critical of Mr. Boubnov for, in her view, not devoting more time to Anton's need for language improvement. She was unsupportive of Mr. Boubnov visiting Ms. Bar and her family after the pool activities, typically on the week end.

[125] In her view, the oldest boy Arsenji is an example of Mr. Boubnov's failure as a parent. She pointed to his poor academic history as attributable, in large part, to a lack of attention by Mr. Boubnov. She was critical of Mr. Boubnov for not arranging for Arsenji to be on the wait list for an education in the trades. She says Arsenji's alienation from her is also largely attributable to Mr. Boubnov's lack of support of her. Finally, she says that but for her initiative, Arsenji's diagnosis as suffering from ADD would not have occurred and his current progress would not have been realized.

[126] Dr. Fedortchouk recalled the numerous periods of time when she successfully cared for three or more of the children and in her opinion,

demonstrated that she, in contrast to Mr. Boubnov, can do so successfully. She referenced the 2008 - 2009 period of seven (7) months as the most recent example. Mr. Boubnov was working in Vancouver at that time.

[127] She said even in July 2013 Ms. Shatokhina had care of the children for six (6) of the twenty four (24) nights Mr. Boubnov was responsible for them. She was in the first month of her sabbatical in Zurich at that time.

[128] She says she has always arranged for the children's medical care and attended their appointments.

[129] Dr. Fedortchouk says her plan for the next year offers exciting and interesting possibilities for the children. Mr. Boubnov's mother is in Bulgaria and is available to see the children. Her own mother proposes to visit for three months from Russia; she has a brother in France and friends in London, both of whom will host her and the children. She proposes to travel on the week ends throughout Switzerland. She says she has limited professional responsibilities and flexibility to be available with the children. In addition, she proposes to employ Ms. Shatokhina as a nannie to care for the children.

[130] She does not want the other children to be left with Mr. Boubnov and for the same thing to happen to them as has happened to the oldest boy.

[131] She referred to Exhibit #43, an affidavit of Mr. Boubnov filed May 10, 2012 wherein Mr. Boubnov outlined his history of depression and mental health issues.

[132] Dr. Fedortchouk says arrangements to co-parent can not be made with Mr. Boubnov because of his contradictory messages. She provided e-mails to illustrate this, in particular Exhibits 30 and 32. She pointed to Yasha's reading list (Exhibit #39) that was only regularly signed by her as evidence that she was the only parent regularly sitting with Yasha and reading. The homework record requires that parents sign to indicate when they have read with a child. She pointed to Exhibit #36 as containing a record of late delivery of the children to school by Mr. Boubnov. Finally, she said Yasha's library privileges were suspended because he was losing his books and Mr. Boubnov was responsible for this since it would not happen at her house.

[133] In conclusion, Dr. Fedortchouk argued that the best schedule for the children is for them to be with her after school and over night on any school day and for Mr. Boubnov to have time with the children on week ends and during holiday periods, and for up to a month at a time when she is travelling. She believes that if any of her trips require her to be away for more than a month, the children should be with her.

[134] On cross examination, Mr. Boubnov elicited confirmation from Dr. Fedortchouk that she has not been in his apartment for more than two years. Dr. Fedortchouk also confirmed that after having Galina assessed by medical professionals, no professional suggested the presence of carpet in Mr. Boubnov's apartment was a health issue. Dr. Fedortchouk remains critical of Mr. Boubnov's decision to remain in a basement apartment. It was suggested to Dr. Fedortchouk that when he receives his share of the matrimonial assets, i.e. \$40,000 from her in November 2013 he will be in a better position to buy a house. Dr. Fedortchouk said she did not intend to pay this amount and proceeded to explain. The Court did not permit the parties to embark on that exchange.

[135] Dr. Fedortchouk confirmed that the opinion expressed to her by Dr. Curtis that Mr. Boubnov had mental health issues was based on what Dr. Fedortchouk told him. As recounted by Dr. Fedortchouk, Mr. Boubnov's delivering pizza, after working as a prosecutor during the day in Vancouver, was evidence of Mr. Boubnov, like Arsenij, having ADD.

[136] Dr. Fedortchouk confirmed that as early as 2007 and 2008 concerns existed that Arsenij had ADD. She also confirmed that, in her view, the diagnosis was incomplete. She said that the diagnosis was not made until February 2013 when Dr. Curtis made it.

[137] Mr. Boubnov also drew Dr. Fedortchouk's attention to events in January 2012; January 2013 and June 2013; events characterized by Mr. Boubnov as evidencing her refusal to allow Galina to go with Mr. Boubnov for Mr. Boubnov's week as ordered by the Court. Dr. Fedortchouk confirmed that Galina did not go on the days directed and offered an explanation. She explained that Galina had anxiety and did not want to go. In the case of June 2013, the Court heard that Galina did not go to her father's at all for the entire month. She only went after July 2, 2013 when Dr. Fedortchouk left for Switzerland.

[138] Dr. Fedortchouk confirmed that no plan has been confirmed for her or for the children for her planned second period of sabbatical, for several months beginning in the spring of 2014. She is hopeful that she will be in Germany but Australia remains an option. It appears that this decision will be made over the fall of 2013.

[139] In the current situation, she proposes that the children be with her in Switzerland for the period August 10, 2013 to January 10, 2014 and to then return to Halifax. In mid March 2014 she proposes to leave with them and to live in Germany until late July 2014 (or Australia). She described her living accommodations for the fall of 2014 in very positive terms.

[140] The last witness was Mr. Boubnov. He relied on his affidavits tendered in this proceeding and offered some *vive voce* evidence.

[141] Mr. Boubnov relies principally on Exhibits 10, 44 and 23. These documents outline his plan for the children and contain his response to various allegations against him and his observations of Dr. Fedortchouk's parenting approach.

[142] In his oral direct evidence, he stated that he is probably the only Russian speaking lawyer east of Montreal and as a result, most members of the Russian community in Nova Scotia approach him from time to time. In many cases, he volunteers his services. He explained that he socializes with other members of the Russian community in Halifax.

[143] He makes no apologies for delivering pizza when he lived in Vancouver in '08/'09. He said he worked as a lawyer during the day as a prosecutor but was prohibited from working as a lawyer in a private practice. He needed the money.

[144] He explained that he kept the apartment he currently occupies because it is near Arsenij's school. He plans to buy a house when he receives the payment of \$40,000 as an equalization of matrimonial property.

[145] Mr. Boubnov complained that Dr. Fedortchouk disregards Court directions with respect to the parenting schedule and interferes with his parenting. He disagreed with the suggestion that he is late picking up his children from their

mother. He also disagreed with the suggestion that he does not help in arranging their activities.

[146] He explained that his law practice was particularly busy in July 2013 because he long ago accepted Court dates for July believing the children would be with him in August. This was changed at Dr. Fedortchouk's request and the Court's direction. (It was changed to reflect the possibility that Dr. Fedortchouk might be permitted to leave with the children on August 10, 2013.)

[147] Mr. Boubnov, in response to a direct question from the Court, said he wishes to have primary care of the children until the final divorce hearing. He said that given Anton's "tender" age and the relationship with his mother, it was probably in Anton's best interest to be with his mother over the fall. He said he would be very happy to have Anton with him if the Court decided that was in Anton's best interest. He said that the extended time he had with Anton in July 2013 had allowed them to bond and advance their relationship.

[148] Mr. Boubnov described his efforts to guide the parties' oldest child Arsenij. Arsenij will not be attending school this fall. Mr. Boubnov wants him to work construction, partly in the hope that the experience will motivate him to further his education in university or the trades.

Best Interests Defined

[149] The decision on whether the three children may relocate to live with their mother requires the Court to consider an assessment of their best interests. In *Mo v. Ma* [2012] N.S.J. 239 Justice Forgeron succinctly described the principle as follows:

21. In making parenting decisions, I must ensure that the children's best interests are met. The best interests principle has been described as one with an inherent indeterminacy and elasticity: *MacGyver v. Richards*, 22 O.R. (3d) 481, paras. 27-29. The test is a fluid concept that encompasses all aspects of a child, including the child's physical, emotional, intellectual, and social well being.

[150] When ruling on the appropriate parenting arrangement for the three children the court is required by s. 16(8) of the *Divorce Act* S.C. 1985, c. 3 (2nd Supp.) to consider only the best interests of the children as determined by reference to the condition, means and other circumstances of the children. By virtue of section

16(10) of the *Divorce Act, supra* the Court is required to provide for as much contact between the children and each parent as is consistent with the best interests of the children and the court is to specifically consider the willingness of each parent to facilitate such contact. Furthermore s. 16(9) of the same *Act* provides that the past conduct of each parent is not to be considered unless it is relevant to the ability of that parent to act as a parent.

[151] Justice Goodfellow in *Foley v. Foley* [1993] N.S.J. 347 enumerated a helpful list of considerations that frequently must be addressed when the best interests of a child must be determined depending on the facts of a particular case. They are the following:

1. Statutory direction Divorce Act 16(8) and 16(9), 17(5) and 17(6);
2. Physical environment;
3. Discipline;
4. Role model;
5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;
6. Religious and spiritual guidance;
7. Assistance of experts, such as social workers, psychologists- psychiatrists- etcetera;
8. Time availability of a parent for a child;
9. The cultural development of a child;
10. The physical and character development of the child by such things as participation in sports;
11. The emotional support to assist in a child developing self esteem and confidence;
12. The financial contribution to the welfare of a child;
13. The support of an extended family, uncles, aunts, grandparents, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's

obligation to promote and encourage access to the other parent. The Divorce Act s. 16(10) and s. 17(9);

15. The interim and long range plan for the welfare of the children;

16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and

17. Any other relevant factors.

[152] I would add “maintaining the status quo” as a consideration for the court in appropriate circumstances. The duty of the court in any custody application is to consider all of the relevant factors to determine what is in the child(ren)’s best interests.

[153] When relocation of a child is proposed by either parent, the analysis requires a consideration of the principles enunciated by the Supreme Court of Canada beginning with *Gordon v. Goertz* [1996] S.C.J. 52:

49 The law can be summarized as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
6. The focus is on the best interests of the child, not the interests and rights of the parents.
7. More particularly the judge should consider, *inter alia*:

- (a) the existing custody arrangement and relationship between the child and the custodial parent;
- (b) the existing access arrangement and the relationship between the child and the access parent;
- (c) the desirability of maximizing contact between the child and both parents;
- (d) the views of the child;
- (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
- (f) disruption to the child of a change in custody;
- (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.

50 In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[154] As stated, a parenting order has been in place since registration of the separation agreement on May 6, 2011. That order essentially provided for shared parenting of the parties' two middle children and for primary care of the youngest by Dr. Fedortchouk and primary care of the oldest by Mr. Boubnov.

[155] The parties do not contest that a change of circumstances exists and the parenting arrangement must be revisited.

[156] The Supreme Court of Canada in *Gordon v. Goertz supra* at paragraph 17 stated:

17 The threshold condition of a material change in circumstance satisfied, the court should consider the matter afresh without defaulting to the existing arrangement: *Francis v. Francis* (1972), 8 R.F.L. 209 (Sask. C.A.), at p. 217. The earlier conclusion that the custodial parent was the best person to have custody is no longer determinative, since the existence of material change presupposes that the terms of the earlier order might have been different had the change been known at the time. (*Willick v. Willick, supra*, at p. 688, per Sopinka J.) The judge on the variation application must consider the findings of fact made by the first judge as well as the evidence of changed circumstances (*Wesson v. Wesson, supra*, at p. 194) to decide what custody arrangement now accords with the best

interests of the child. The threshold of material change met, it is error for the judge on a variation application simply to defer to the views of the judge who made the earlier order. The judge on the variation application must consider the matter anew, in the circumstances that presently exist.

[157] An assessment of the child's best interests will determine the Court's ruling on the application to permit the children to relocate for the coming academic year. I am mandated to consider *inter alia* the existing custody arrangement and the children's relationship with both parents and his wishes.

Conclusion

[158] The oldest of the four children Arsenij, soon to be 18, will remain in Halifax. He completed his grade 12 studies over the summer of 2013. He lives with his father and it is expected that he will continue to do so.

[159] The youngest child Anton will be three years old on September 15, 2013. He has always been in the primary care of his mother. I am satisfied that the parenting arrangement put in place by me in June 2012 should be altered to permit Anton to be with his mother in Switzerland until early January 2014. At that time Dr. Fedortchouk will be returning to Halifax.

[160] I have come to this conclusion because Anton's world has revolved around his mother. She will have additional time to devote to his care while in Switzerland. Given that I am directing that Galina, age 11 and Iakov (Yasha) age 8 will remain in Halifax for this period, Dr. Fedortchouk will have less responsibility for the children. She will have a better opportunity to benefit professionally from her sabbatical time in Switzerland. Dr. Jamieson testified as to the importance of a professor's sabbatical pursuits to the career advancement of the professor.

[161] Dr. Fedortchouk is a well respected scientist in her field. The lab in Switzerland where she will be spending her time over the fall is a leading facility. It is important that Dr. Fedortchouk maximize the benefit of this experience. She is the higher income earner as between the parties. This is in the interest of the children.

[162] Dr. Fedortchouk will have flexibility in being available to Anton during the day.

[163] Galina and Iakov are both in school in Halifax. Each has been in a shared parenting arrangement, alternating weeks between their parents. The parents agreed to that arrangement and incorporated it into their separation agreement dated December 20, 2010.

[164] The evidence establishes that the parents have been in ongoing conflict since 2012. Each now seeks primary care of the children. I earlier reviewed the frequency of the involvement of the Court in their lives.

[165] The lives of these parents have become preoccupied by their litigation. I am satisfied the children have suffered from that preoccupation. It would be impossible for them to avoid the stress. I believe the children will benefit from the fact that their parents will be on different continents over the coming months.

[166] It is clear that these parents do parent differently. Dr. Fedortchouk has what one witness described as a classical parenting style. Such a style she opined places demands on children “to perform” and to achieve. It is a ‘stricter’ parenting style than that endorsed by Mr. Boubnov.

[167] Mr. Boubnov shares the same ambitions for the children as does Dr. Fedortchouk. I am satisfied, however, that he is more accepting of their deviation from a parent’s plan for the child. He was described as externalizing his affection with hugs, kisses and the like. One witness criticized him for this on the basis that greater demands of his children would reflect greater affection for them.

[168] It is not uncommon for parents to have contrasting parenting styles. In an intact family, the styles often merge; the parents learn from each other and the children benefit.

[169] In the current context and at this stage of these children’s lives, Europe does not offer much that they can not achieve later. These children require stability, continuity and the opportunity to do so in an environment they have come to know, which is Halifax.

[170] Europe offers many new experiences for them. However, there are many opportunities for their lives to be enriched without a move.

[171] The opportunity for the middle children to live with their father and older sibling without the parental conflict is a valuable and necessary life experience for them.

[172] The plan to move these children for 4 - 5 months, to return them to Nova Scotia for several months and to then move them for an additional several months is not a child-centred plan. Given the stress on these children, this is particularly so. It will require the children to attend three (3) different schools over a ten month period. This is only one example of the disruption such a move will force upon Galina and Iakov.

[173] Dr. Fedortchouk offered no details of the plan for the children for the period March - July 2014. She clearly is not settled on where she will be spending these sabbatical months. She said it will probably be Germany but could be Australia. In January the plan was for her to go to Maui for the second part of her sabbatical beginning in January 2014. These children require more certainty than she offers.

[174] Mr. Boubnov is a committed parent. I am satisfied that he organized his life to be there for his children and will continue to do so. It has been challenging for him. He was required to get licensed to practice in a community where he has no history. His ability to communicate in English has undoubtedly been a challenge.

[175] As a self employed person travelling throughout the Province to represent persons in receipt of legal aid funding, his work ethic has been impressive. The result has been lateness on occasion, fatigue and scarce financial resources. Nevertheless, he cared for his children on week ends, evenings and during many weeks.

[176] There is no question that Dr. Fedortchouk is a dedicated and hard working parent. She has a demanding career and places a high priority on meeting the demands of her teaching, research and studies. She values the well being of her children and also works hard to direct, to educate and to nurture them.

[177] Mr. Boubnov offers a plan for these children that is within an acceptable range.

[178] I am satisfied that he poses no risk to their safety. He will ensure that they are appropriately dressed, bathed, groomed and fed. He will also work with them on their homework. He will provide a nurturing and loving environment for them.

[179] His demonstrated work ethic is a valuable example for the children. He will discipline the children as required. He will foster their cultural education through the Russian school and he will support their participation in sporting and musical activities. His parenting approach will be good for the development of the children's self esteem.

[180] I am also satisfied that he will facilitate the relationship between the children and their mother.

[181] It is in the best interests of Galina and Iakov that they be in Mr. Boubnov's care for the period ending June 30, 2014 when Dr. Fedortchouk completes her sabbatical.

[182] A final divorce hearing will be scheduled for some time in June/July 2014.

[183] Given the foregoing conclusion, the following is also ordered:

1. Mr. Boubnov's obligation to pay part of the ongoing child care expense and arrears of the same is continued. This obligation is reflected in an order of this Court dated June 20, 2012.

Any other obligation on Mr. Boubnov to pay Dr. Fedortchouk for past or ongoing child care expenses is suspended.

Mr. Boubnov has been subject to an order to pay \$650 per month for child care (ongoing and arrears) since June 2012.

2. Primary care of the parties' children Arsenij, Galina and Iakov is to rest with Mr. Boubnov.
3. Primary care of the child Anton is to rest with Dr. Fedortchouk. She is authorized to travel with and keep him in her custody while she is in Europe on sabbatical between September 1, 2013 and July 1, 2014. For the month of August 2013, Anton shall be cared for by Mr. Boubnov.

During the month of August 2013 Galina and Iakov are to be in their mother's care and the Court is told she proposes to travel with them to Europe. She is planning to return to Halifax in early September 2013 at which time she will take custody of Anton.

4. While each parent has primary care of a child or children until July 1, 2014, that parent will make decisions as to the care and activities of the children. Any changes in the current education plan for Galina and Iakov must be communicated to Dr. Fedortchouk by Mr. Boubnov. Any health or other significant issues pertaining to any of the children shall be communicated to the other parent in a timely way.
5. In the event that Dr. Fedortchouk returns to Halifax after December 2013 with a view to remaining, the shared parenting arrangement for Galina and Iakov shall not be reinstated.

The parties are directed, however to cooperate to ensure the middle children will maximize their time with Dr. Fedortchouk over the winter of 2014. The Court is concerned that a requirement that shared parenting be reinstated will result in more disruption for the children and more conflict. A final divorce hearing in June or July 2014 will resolve the issue of the children's parenting into the future.

The Court is concerned that financial considerations are a significant factor influencing the position of each parent and the plan put forward for the children. More specifically, the child support implications and the potential requirement to contribute to the special expenses for the children are burdens each parent wishes to avoid.

6. The parties are directed to not discuss this litigation or any of the evidence offered or arguments made by either party with the children. They are directed to actively protect the children from being exposed directly or indirectly to their conflict.
7. If either parent has the opportunity to spend time with a child in the other parent's care because of a short visit to Europe or Nova Scotia as the case may be, the parties shall cooperate to ensure access occurs.
8. The Court is aware of the provision of the separation agreement pertaining to the payment of the child care expense for Anton. Dr. Fedortchouk is reminded that any child care arrangement she makes for Anton must be reasonable and economical. She is advised that her decisions in this respect may come under Court scrutiny.
9. Effective September 1, 2012, the parties will be under an obligation to pay ongoing child support to the other. Dr. Fedortchouk will earn approximately \$80,000 as salary during her sabbatical and \$4,200 per month for the seven months she will be in Zurich. She will also have free

accommodation in Zurich. In addition, she will earn approximately \$27,000 over the year in rental income (before deductions).

For the purpose of determining her child support obligation I am determining her annual salary to be \$100,000. I fix Mr. Boubnov's salary at \$40,000. This I do on a without prejudice basis given that the parties' financial history needs to be more fully explored and adjustments can be made at that time.

This will be a split custody situation. On this basis, the offsetting child support obligation payable by Dr. Fedortchouk is \$1,434. This reflects Mr. Boubnov's obligation to pay \$336 for one child in Dr. Fedortchouk's care and Dr. Fedortchouk's obligation to pay \$1,760 for three children in Mr. Boubnov's care.

Dr. Fedortchouk is also ordered to contribute \$500 per month as a contribution to the special expenses of the children, including child care commencing September 1, 2013.

Both parties are directed to maintain complete records of their expenditures on the children. Neither has blanket authority to incur expenses without consulting the other. Each should be aware that, at a later date, an expense may be ruled as excessive and not shareable as an obligation of the other parent.

10. The total calculation is therefore as follows:

\$650	payable by Mr. Boubnov for care of Anton as per June 2012 order
	(\$400 ongoing and \$250 on arrears)
<u>\$336</u>	child support for Anton
<u>\$986</u>	payable by Mr. Boubnov
\$1,760	child support payable by Dr. Fedortchouk
<u>\$ 500</u>	for special expenses for the children
<u>\$2,260</u>	

The net amount payable by Dr. Fedortchouk is therefore $\$2,260 - \$986 = \$1,274$. This shall be paid to Mr. Boubnov commencing September 15, 2013

The Court has estimated special expenses in an effort to avoid further litigation and to provide certainty for this family until the final hearing in June/July 2014.