

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

**Citation:** Nova Scotia (Community Services) v. BF, 2014 NSSC 94

Date: 20140304

**Docket:** SFSNCFSA-81250 and SFSNMCA - 038261

**Registry:** Sydney

Between:

**Minister of Community Services**

Applicant

v.

**BF, AH, and DM**

Respondents

- and -

Between:

**DM**

Applicant

v.

**BF**

Respondent

<b>Editorial Notice</b>
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Identifying information has been removed from this electronic version of the judgment.
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**Judge:** The Honourable Justice Theresa M. Forgeron

**Heard:** July 25, 26; September 19, 20; October 2, 3, 28, 30, 31;  
December 16, 2013; January 2, 13, 17, 21, 23, 2014 in  
Sydney, Nova Scotia

**Last Submission:** February 13, 2014.

**Oral Decision:** March 7, 2014

**Written Decision:** March 18, 2014

**Counsel:** Danielle Morrison, for the Minister of Community  
Services  
Andrea Rizzato, for BF  
M. Louise Campbell, Q.C. for AH  
Coline Morrow, for DM

**By the Court:**

[1] **Introduction**

[2] E, B, and M are the children of BF and DM. AH is the common law partner and fiancé of BF.

[3] The Minister of Community Services became informally involved in the lives of the children in October 2011, while they were living with BF. Formal protection proceedings were commenced in June 2012. In July 2012, the children were placed in the supervised care of their father, DM, with access to BF.

[4] When this trial began in July 2013, BF and AH argued that the agency should terminate its involvement. They sought to have the children returned to their care. In contrast, the agency and DM submitted that the children were in need of protective services while in BF's care. The agency and DM sought a continuation of the supervision order.

[5] The trial was not concluded in the summer of 2013, due to a series of factors outside the control of the court, including counsel underestimating the amount of trial time required; unforeseen health difficulties of counsel; transportation and weather issues; and scheduling conflicts. As a result, the hearing was not completed until January 23, 2014. By this time, the position of the Minister and DM had changed. The Minister stated that its involvement was appropriately terminated. The other parties, and the court, concurred with the Minister's position. The child protection hearing, thus, evolved into a parenting dispute between BF and DM.

[6] **Issues**

[7] The following issues will be determined in this proceeding:

- What principles apply to parenting decisions?
- What parenting plan is in the best interests of the children?
- What parenting schedule is in the best interests of the children?
- What is the appropriate maintenance order?

[8] **Background**

[9] BF and DM were involved in a lengthy relationship. Their three children, E, who is 10 years old; B, who is 9 years old; and M, who is 6 years old, spent their early lives in Eskasoni, in the care of the parties. The children faced many challenges given their parent's dysfunctional relationship which was cloaked in violence and substance abuse.

[10] BF was addicted to marijuana, prescription medication, and alcohol, although she stopped all drug and alcohol intake during her pregnancies. DM abused prescription medication, marijuana, and alcohol until about 2005. In 2005, DM sought treatment and has been sober ever since. Once he was drug and alcohol free, DM was no longer violent towards BF.

[11] Mi'kmaw Family and Children Services were involved with the parties at various times between 2003 to 2010. The chaotic family life continued after 2005 because of BF's substance abuse. The parties' relationship ended in 2010.

[12] BF and the children moved from the family home in Eskasoni to Sydney. DM showed little interest in the children after they moved to Sydney. He did not re-engage until July 2012, when the child protection proceedings were initiated.

[13] After moving to Sydney, BF met AH. They began to date in the summer of 2011. Like BF, AH's past history was not promising. It, too, was riddled with violence, substance abuse, and child protection issues.

[14] AH was well known to the local agency by the time he and BF began dating. AH's child, L, was born in January 2010 in Alberta. The Alberta agency took L into care because of protection concerns centred around domestic violence and drug use, including an overdose on the part of AH.

[15] AH returned to Cape Breton at the urging of his parents. Eventually, in the summer of 2010, L was also transferred to Cape Breton. Between the summer of 2010 and May 2011, AH worked co-operatively with the agency towards reunification. Unfortunately, AH began to abuse alcohol and illicit drugs after May 2011; the agency no longer supported reunification. Child protection

proceedings were terminated after AH agreed that L should be placed in the custody of his sister, while he would exercise supervised access.

[16] BF and AH were aware of the other's past history. Neither seemed particularly troubled by this knowledge. Undaunted, they forged ahead with their relationship. Not surprisingly, the agency became involved after being alerted to the inevitable protection concerns which arose. Domestic violence and substance abuse were the identified issues.

[17] On September 3, 2011, AH assaulted BF outside a local bar, while both were heavily intoxicated. A third party witness reported the assault to the police. AH was charged, and placed on an undertaking to have no contact with BF or her children, nor to attend at her residence. Further, AH was not allowed to consume alcohol or other intoxicating substances. This incident led to a conviction of assault, illegal possession of liquor, and intoxication in a public place.

[18] The undertaking meant little to either AH or BF. They continued to have contact on a regular basis. AH continued to be involved with the children. AH regularly consumed marijuana and alcohol. BF was also abusing alcohol at the time.

[19] On September 11, 2011, AH was arrested for public intoxication at a church; BF was likewise present. He was once again charged, and convicted, with breaching two conditions of an undertaking.

[20] The agency became aware of the relationship between AH and BF in October 2011. Agency workers addressed their concerns, in unambiguous terms, with BF, who denied the allegations, but confirmed that she, nonetheless, would have no further contact with AH.

[21] This promise was meaningless. To the contrary, BF co-operated in having AH's undertaking varied so that he and BF could see each other, although the prohibition against contact with the children and residence remained. Despite this prohibition, AH continued to see the children and to attend at the residence. On occasion, BF and AH were caught.

[22] On March 14, 2012, AH was arrested at a local department store. BF and the children were present. AH was under the influence. AH was again arrested for failure to comply with an undertaking, and later was convicted.

[23] On April 2, 2012, the police found AH in BF's residence, with the children present. AH told Constable Dicks that he and BF were engaged and he couldn't understand why they couldn't be together. AH was arrested, charged, and later convicted of failing to comply with a condition of an undertaking.

[24] On April 19, 2012, the police responded to an incident report involving BF and AH. AH was charged with assault and breach of probation. The charge of assault was eventually withdrawn, and AH was convicted of a breach. He was placed on a new undertaking that included a provision to have no contact with BF, and not to consume alcohol.

[25] On May 13, 2012, AH and BF became embroiled in a verbal altercation with a neighbour. AH was charged, and eventually convicted, of failing to comply with the conditions of an undertaking.

[26] In June 2012, the agency initiated court proceedings because all efforts to address the protection concerns on a voluntary basis were futile. The interim stage of the proceeding consisted of four court appearances, as follows:

- On June 11, 2012, the children were placed in the interim care and custody of BF, subject to the supervision of the agency. BF and AH were listed as the Respondents.
- On July 3, 2012, DM was added as a party. The children remained in the interim care and custody of BF, subject to the supervision of the agency.
- On July 18, 2012, the children were placed in the interim care and custody of the agency with access to BF and DM. The children were taken into care because AH was having contact with BF and the children in defiance of the supervision order.

- On July 20, 2012, the children were placed in the interim care and custody of DM, under the supervision of the agency. BF was granted supervised access.

[28] The protection hearing was held on September 4, 2012. The parties consented to a finding under s. 22(2)(b) of the *Children and Family Services Act*. The children were placed in the care and custody of DM, subject to the supervision of the agency. Services and access were outlined.

[29] The disposition hearing was held on November 21, 2012. Services and access were defined, as well as the agency plan of care. E, B, and M have remained in DM's supervised care during all subsequent review hearings.

[30] BF and AH participated in services over the course of the protection proceeding, albeit with a lack of enthusiasm during the initial period. Services which were engaged include the following:

- Second Chance by AH
- Family Support by BF
- Transition House Outreach, Phases 1 and 2, by BF
- Preliminary Mental Health Assessment by AH
- Parental Capacity Assessment by BF and AH
- Addictions Services Assessment and Counselling by BF and AH
- Couples Counselling by BF and AH
- Individual Counselling by BF
- Intensive Domestic Violence Programming by AH through the Domestic Violence Court
- Family Resource Centre Programming by BF and AH

[31] AH also attended the Nova Scotia Community College, Marconi Campus and successfully earned a certificate in [...]. AH was seasonally employed upon graduation. He likewise found another job when he was laid off. AH intends to obtain his red seal in this field. He is motivated, intelligent, articulate, and capable. He will succeed with this plan, unless he relapses.

[32] On April 3, 2013, Ms. Kehoe received a voicemail message from AH's cell number. It was a "pocket dial." AH did not know that he was sending the

recording. Ms. Kehoe was disturbed when she listened to the voicemail message, which involved AH and a puppy. Ms. Kehoe reported the incident to the local SPCA. There was no investigation by the SPCA. Ms. Kehoe played the voicemail message in court. The dog no longer lives with BF and AH.

[33] Further, another child was born to BF and AH during the course of this proceeding - J on May \*. Separate child protection proceedings were commenced on J's behalf. J has been in the supervised care of AH and BF since birth. By all reports, J is a happy, bright little girl, who is developmentally advanced.

[34] Around the time of J's birth in May \*, 2013, E was taken to the hospital because he had been pricked with a needle while playing outside. BF convinced AH to come with her to visit E while he was in the hospital, despite the fact that such contact was in violation of the supervision order. Once the visit was over, AH contacted the agency to report the breach.

[35] Access between the children and BF, and then AH, increased as the protection proceedings advanced in light of positive lifestyle changes, and the concurrent reduction in risk. Access eventually included over night and extended visits. Positive access reports were received.

[36] In addition to the protection proceedings, DM commenced an application for custody under the provisions of the *Maintenance and Custody Act* on June 25, 2013. The *Maintenance and Custody Act* application was heard in conjunction with the protection hearing.

[37] During the course of the 14 day trial, the court benefited from hearing evidence of the following groups of witnesses:

- Educators involved with the children: Principal C., Principal F., C.A.G., and C.A.J.;
- A psychiatrist, Dr. Shullaih, who completed a preliminary mental health assessment of AH;
- A psychologist, Dr. Landry, who conducted a parental capacity assessment of BF and AH;



- Service providers who were involved with BF, or AH, or both: Family Support Worker Donna MacDonald, AnnDelynn MacDougall of Family Services of Eastern Nova Scotia, and Dale Sharkey of Addiction Services;
- Agency workers: Ainslie Kehoe, Leo MacKinnon, and Aaron Rice;
- Police Officers: Constables Dicks, MacDonald, MacNeil, and Morrison; and
- The parties and family members: BF, AH, SH, DM, and GM.

[38] The contested hearing was held on the following dates: July 25 and 26; September 19 and 20; October 2, 3, 28, 30, 31; December 16, 2013; January 2, 13, 17, 21, and 23, 2014. After the testimony was completed, the parties requested the opportunity to supply written submissions to the court. Written submissions were filed, with the last submission being received on February 13, 2014. The matter was adjourned for oral decision to March 7, 2014.

[39] **Analysis**

[40] **What principles apply to parenting decisions?**

[41] The court's authority to create parenting orders is found in s. 18 of the *Maintenance and Custody Act*. The court must review the plan of rival claimants to choose the course that will best provide for the healthy development of the child: **K.(K.) v. L.(G.)**, [1985] S.C.J. No. 7 (SCC); s. 18 (6)(d) of the *Act*.

[42] All decisions affecting the parenting of children must be based upon the best interests principle: s. 18(5) of the *Act*. The best interests principle has been described as one with an inherent indeterminacy and elasticity: **MacGyver v. Richards** (1995) 22 O.R. (3d) 481, (Ont. C.A.) 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. Section 18(6) of the *Act* details the factors which the court must consider when assessing the best interests principle.

Many of these factors were embodied in the oft cited decision of **Foley v. Foley**, (1993) 124 N.S.R. (2d) 198, (NSSC).

[43] In assessing evidence related to best interests, this court must have regard to the standard of proof and make credibility determinations. In **C.(R.) v. McDougall**, 2008 SCC 53, Rothstein, J. confirmed that there is only one standard of proof in civil cases - that is proof on a balance of probabilities. In every civil case, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred. The evidence must not be considered in isolation, but must be based upon its totality. The evidence must always be clear, convincing, and cogent to satisfy the balance of probabilities test.

[44] Further, the court must assess the impact of inconsistencies on questions of credibility and reliability, which relate to the core issues. It is not necessary that every inconsistency be reviewed, but rather a judge must address in a general way the arguments advanced by the parties: **C.(R.) v. McDougall**, *supra*, paras. 40, 45 and 49.

[45] In **Baker-Warren v. Denault**, 2009 NSSC 59, as approved in **Hurst v. Gill**, 2011 NSCA 100, this court reviewed factors to be considered when making credibility and reliability determinations at paras. 18 to 20, which state as follows:

18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" **R. c. Gagnon**, 2006 SCC 17 (S.C.C.), para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" **R. v. M. (R.E.)**, 2008 SCC 51 (S.C.C.), para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: **Novak Estate, Re**, 2008 NSSC 283 (N.S. S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: **R. v. Norman (1993)**, 16 O.R. (3d) 295 (Ont. C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in **Novak Estate, Re**, *supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See **R. v. D.R.**, [1966] 2 S.C.R. 291 at 93 and **R. v. J.H.** *supra*).

[46] I have reviewed the totality of the evidence. I have only considered the evidence that was properly before the court by way of exhibits, or as elicited while a witness testified, or orders that form part of the court file. I have also considered the law and the legal submissions of the parties.

[47] The *Maintenance and Custody Act* file reveals an outstanding interim order dated April 6, 2005. This order placed E and B in the interim custody of BF, with

a trial date scheduled for April 27, 2005. It appears that the trial did not occur. Instead, the parties reunited and M was born. After the final 2010 separation, BF became the defacto custodial parent until the child protection proceedings were initiated. I, therefore, assign the burden of proof to DM in this proceeding.

[48] I have also made credibility and reliability findings given the conflict in the evidence. I accept the evidence of the professional witnesses who testified, including the teachers and principals, protection worker, access facilitators, family support worker, police officers, and counsellors. These witnesses were both credible and reliable. They kept records. They were trained in record keeping in concert with their professional obligations. They had no vested interest in the outcome. Each of these witnesses provided clear, convincing, and cogent evidence of the factual information which each observed. They did so in a candid, unbiased, and professional manner. Where the evidence of the parties conflicts with any of these witnesses, I accept the evidence of the professional witness.

[49] Further, there are no credibility issues in respect of the expert evidence tendered by Dr. Landry and Dr. Shullaih. Reliability issues arise because each expert opinion was based, in part, upon the self reports of AH or BF. AH and BF did not always report accurate factual information. Further, as candidly noted by Dr. Shullaih, his report and opinion were not intended to be viewed as a final assessment. Dr. Shullaih anticipated further meetings with AH. Because these meetings did not occur, Dr. Shullaih's opinion is best viewed as a preliminary one.

[50] I also accept the evidence of GM, who is the partner of DM. GM was forthright, thoughtful, and accurate when testifying. She provided balanced evidence. GM was credible and reliable.

[51] DM's evidence must be viewed with some caution. Although he was able to make admissions against interest, there were times when he attempted to minimize evidence or to create what he perceived to be a better set of facts. Examples include the following:

- DM's statement that many of his past legal problems were associated with fishing and game infractions. They were not.

- DM's statement that he did not actually use the back scratcher when disciplining, when in fact he told Ms. Kehoe that he had on a few occasions.
- DM's statement that the children attend church services on a regular basis, when in fact they usually only attend during special occasions and holidays according to GM.

[52] SH's testimony must likewise be viewed with caution. She, at times, minimized the violence which had occurred in the past in her home, although she was also capable of contacting the agency when child protection concerns arose in relation to L.

[53] Of all of the witnesses, however, the evidence of BF and AH must be viewed with the greatest of caution. Reliability was an issue. BF and AH's perceptions of past events were skewed and distorted because they were often impaired when the events occurred. They were not accurate historians. Credibility was also in issue. The evidence of BF and AH was, at times, inconsistent with their self-reports to professionals, at other times, was inconsistent with the evidence of professional witnesses, and finally was presented with a view to minimizing negative conduct. Examples in support of this conclusion include the following:

- BF and AH gave inconsistent accounts of their drug and alcohol usage to the court, addiction services, and Dr. Landry.
- BF, who was supported by AH, consistently complained that DM was neglecting the children when they were in his care, and in particular noted concerns with hygiene and dental health. These complaints were not supported by other witness, including the teachers and access workers, who were involved with the children.
- BF and AH minimized the domestic violence issue with the agency, service providers, and the court. In addition, BF minimized her neglect of the children between 2010 and 2012.

[54] These credibility and reliability findings have been useful in the court's ultimate assessment of the children's best interests, based upon the legislative

factors, in the unique circumstances of the case, and given the assigned burden of proof.

**[55] What parenting plan is in the best interests of the children?**

*[56] Position of the Agency*

[57] As the agency is seeking a termination order, the Minister did not support either party in their bid for primary care of the children. Rather, the agency provided the court with a summary of the salient facts from the agency's perspective, and based upon the evidence that was proffered.

*[58] Position of BF and AH*

[59] BF is seeking custody and primary care of the children, with access to DM. She is supported by AH. BF and AH argue that it is in the best interests of the children to be placed in their primary care for many reasons, including the following:

- BF and AH are best positioned to meet the physical, educational, emotional, and social welfare needs of the children.
- BF was the children's primary care provider at all times, except from July 2012 to present, after the child protection proceedings were initiated.
- BF and AH have taken all necessary courses and have engaged in all recommended services. They have learned the necessary skills to communicate effectively, parent appropriately, and maintain abstinence from illicit drugs and alcohol.
- BF and AH have effected necessary life style changes. They can provide the children with the stability, love, and nurture they require in a violent free environment. In contrast, they state that DM is a violent man, who has not taken domestic violence training.

- BF and AH's home is safe, with a large backyard and ample playing space. In comparison, they argue, that DM's home is not safe, one of the bathrooms lacks a sink, and the home may be contaminated with asbestos and mould.
- The children receive a sense of security from BF and AH by virtue of their positive and outgoing attitudes, and by virtue of the fact that BF was the primary care giver. Although the children love their father, they will be better served in the care of BF and AH.
- BF and AH acquired and actively implement proper discipline techniques to ensure the children are provided with structure and routine. In contrast, DM uses physical force, such as a backscratcher, to discipline the children, and this will negatively impact their emotional and social security.
- BF and AH are best able to meet the educational needs of the children. The children failed their school year while in DM's care. BF and AH are best positioned to ensure positive educational outcomes for the children.
- BF and AH support the biracial heritage of the children. They are concerned that racial slurs are being encouraged in the M household. BF and AH's support of the children's First Nation status is confirmed by their plan to enroll the children in a school in Membertou.
- BF and AH are willing to foster a relationship between the children and DM. They are also willing to openly communicate about the children. DM, they suggest, limits their involvement in the children's lives and only engages in minimal communication.
- BF and AH exercise better parenting judgement. They note that DM has consistently made poor choices, such as allowing the children to have chewing tobacco; not supervising the children while they are playing; discussing inappropriate topics with the children; and not meeting the health needs of the children. BF indicated that the

children's hygiene was compromised while they were in the care of DM, as evidenced by DM placing duct tape on blisters; the children contracting impetigo, and other diseases connected with poor hygiene; and the children having poor oral health. DM also allows the children to engage in adult activities without the use of safety equipment, such as driving lawn mowers and dirt bikes.

- BF states that DM is perpetuating sexist stereotypes that will negatively impact upon all three children.
- BF and AH will ensure that the children attend structured and unstructured activities, such as hockey and ballet, while in their care. The children do not have to live in Eskasoni to participate in organized sports and activities. Further, they will support the children's involvement in religious matters, and would like to be advised in advance, and in a timely fashion, of any milestone activity, so they too can be present.
- AH is a better role model in that he has obtained an education, and is employed, while BF intends to either upgrade her educational skills, or obtain employment, once J is 18 months old, and is eligible for daycare. In contrast, DM is not employed, is in receipt of assistance, and has no plans for financial independence.
- DM refused to have any meaningful relationship with the children between 2010 and 2012. Not only did he fail to provide financial support, he likewise did not engage emotionally with the children. He was an absent father.
- The children have a close and loving relationship with their sister, J. Placing the children in BF's care, will promote the continuation of the sibling relationships. Siblings should be kept together as a family unit, whenever possible.
- The children have significant ties to other members of the F and H families. These relationships are supportive and would be enhanced if the children were placed in BF's custody. On the other hand, there



is no evidence to show that the children would suffer a loss of significant relationships if removed from the custody of DM.

[60] *Position of DM*

[61] DM states that it is in the best interests of the children to remain in his custody for a number of reasons, including the following:

- Although both parents have suitable housing, DM's home is located in the community where the children lived prior to the parties' separation in 2010. It is a community where their neighbours provide support and friendship.
- The status quo favours DM. The children have positive ties to DM and the Eskasoni community. The children have formed many positive friendships; they play constantly with neighbourhood friends. They are established within the educational community. E is receiving special needs assistance that he requires. B and M are performing exceptionally well this year. The children are also involved in community life through structured and unstructured activities. These positive gains should not be jeopardized. The status quo must be maintained.
- DM and GM maintain a violent free and substance free home. Respect is a value that is affirmed and prioritized. The children benefit from observing this lifestyle.
- DM is better able to provide the children with the discipline, structure, and routine that they require.
- DM has been sober for many years. He understands the importance of attending services as a means of preventing relapse. He regularly attends AA meetings. Neither BF, nor AH, participate in relapse prevention.

- DM maintains a child-focussed home. He ensures that the children's lives are balanced, with emphasis placed on education, spiritual and religious formation, and structured and unstructured activities.
- DM does not experience any mental health challenges that could impact on his ability to parent. Both AH and BF have such concerns. Dr. Shullaih recommended mental health counselling for AH, which he did not pursue. BF is currently being treated for depression. Dr. Landry was cautious in his report about BF and AH, and was concerned about potential stress issues arising if the children were returned to BF.
- DM will facilitate contact with BF, despite the many false allegations levelled against him by BF.
- AH and BF repeatedly failed to follow court orders, and as a result placed the children at risk. AH and BF display little insight into the difficulties and problems associated with their failure.
- AH and BF were not honest with services providers. In consequence, they did not receive the counselling and therapy that was required to effect permanent lifestyle changes.
- BF and AH do not place priority on the children. They have always been guided by their personal needs, even when this placed the children at risk.

[62] *Decision*

[63] At this stage, I must review my findings on the various factors which I considered when determining the best interests of the children in the context of the parenting plans put forth by the parties. I will do so by referencing the factors outlined in the *Maintenance and Custody Act*.

[64] *Children's Physical Needs*

[65] When examining this factor, I must compare the parties' homes and address the safety concerns that were raised.

[66] DM owns his home in Eskasoni. It was the former family home. BF and AH currently rent a home in Sydney. Neither party's home is superior to the other. Each home is equipped with sufficient bedrooms, bathrooms, and other living spaces to meet the needs of the children. Both homes are situated in areas which provide ample outdoor space that is safe for children.

[67] I reject the allegation that DM's home is not safe. I accept the evidence of DM, and of agency workers, who attended at DM's home for both scheduled and unscheduled visits. There is no evidence of a clear, cogent, and convincing nature which would suggest that DM's home is a safety hazard.

[68] To the contrary, DM's home is situated on a street that is supportive of children. There are many families with children living on the street. E, B, and M are fortunate to have so many friends, with whom they interact on a daily basis.

[69] I further dismiss the allegations that DM did not meet the physical needs of the children by neglecting their hygiene and health. These allegations are false. I accept the evidence of DM, Ms. Jeddore, Ms. G., Mr. F., Mr. Rice, Mr. MacKinnon, and GM. These witnesses testified that the children were properly dressed and did not present with hygiene issues while in the care of DM. At times the children's clothing was no doubt messy, and perhaps unkempt, but such is to be expected when children are playing outside. It is healthy for children to play outside, getting exercise in the fresh air.

[70] Further, the court rejects any suggestion that DM did not meet the medical and dental needs of the children. When the children came into DM's care, vaccinations were not up to date. Once the children came into care, DM ensured that the children attended regular dental and medical appointments. The fact that the children caught impetigo, or other rashes, does not mean that DM was not properly caring for the children. Children who attend school, or other public spaces, regularly mix with children who have colds, flues, head lice, and contagious diseases. One can expect that such medical problems have a natural way of circulating.

[71] Both parties can meet the physical needs of the children, provided none of the parties start abusing alcohol or drugs.

[72] *Emotional and Mental Health Issues*

[73] Under this heading, the court must determine if any of the parties are experiencing emotional or mental health challenges which compromise their ability to meet the needs of the children.

[74] I am satisfied that DM does not currently experience any challenges that negatively impact on his ability to parent or to meet the emotional needs of the children. DM has an extensive, but dated, history of substance abuse. DM has an expansive criminal record, most of which predates his sobriety. There was a more recent charge, still dated, from 2008 involving mischief and a failure to attend court. This is not terribly relevant to these proceedings. There are no recent convictions. The court is likewise not concerned about a speeding ticket, or the other motor vehicle infraction in 2010.

[75] I find, on a balance of probabilities, that DM acknowledges his substance abuse history, and sought, and continues to seek assistance to prevent relapse. He attends AA. He involves himself in healthy coping strategies, including Mi'kmaq spiritual exercises and sweats. He no longer associates with people who are involved with illicit drugs. His partner does not use alcohol or drugs. She too has adopted a healthy lifestyle. DM and GM are child and community focussed. DM has a low probability of relapsing at this stage.

[76] In contrast, BF and AH's substance abuse history is more recent. For the purposes of this decision, however, I find that BF and AH have not consumed alcohol or drugs in many months. Drug use likely stopped in August 2012. Alcohol abuse also likely ended in August 2012, although AH continued to consume beer, on an intermittent basis, until the fall of 2012. I do not require another drug or alcohol test to confirm this conclusion.

[77] The question which therefore must be answered relates not to current usage, but rather future usage. Will BF or AH have another relapse after agency supervision ends?

[78] Factors militating against relapse include the positive and dramatic life style changes made to date. AH successfully completed a course of studies at the community college. He is employed, motivated, and future oriented. BF continues to be involved in counselling to resolve self-esteem issues. She too has developed hobbies to occupy her time. AH and BF have learned healthy coping and communication strategies and are currently implementing them. They have the support of AH's family, who do not abuse substances, and who are gainfully employed within the community. BF and AH stopped associating with former acquaintances who were involved with drugs, alcohol, and criminal activities.

[79] Unfortunately, the evidence reveals several factors which increase the likelihood of relapse by BF and AH. First, BF and AH failed to accurately acknowledge the extent of their addictions. BF provided inconsistent information about her history to the court, Dr. Landry, and Addiction Services. She told the court that she only drank alcohol once a month between 2010 and 2012. She advised Dr. Landry that she stopped using drugs in 2007. She characterized her alcohol use as recreational. She indicated to Addiction Services that she stopped using marijuana in 2012, and that alcohol was not a problem for her. The evidence suggests otherwise.

[80] BF has a long standing substance abuse problem, both with alcohol and drugs. She abused prescription medication, marijuana, and alcohol from an early age. The fact that substance abuse was an ongoing issue is confirmed by the chaotic lifestyle which BF adopted while living in Eskasoni, and while living with the children in Sydney after 2010. Because of her substance abuse, BF neglected her children. Her apartment was filthy, there were no sheets or blankets on the children's beds. Clothes were piled throughout the home. There were holes in the walls. The children were dirty. These difficulties had nothing whatsoever to do with the landlord. The neglect was a product of the substance abuse. Indeed, BF has since proven to be an excellent housekeeper who maintains an immaculate home, when she is sober.

[81] Further, BF's judgment was clouded when she was abusing substances. No priority was assigned to the children. She formed and maintained a relationship with a man who was unsafe for her children. She consistently lied, fostered the breach of court orders, and maintained a dysfunctional, violent relationship,

without regard to the needs of the children. To suggest to Addiction Services that alcohol was not an issue, given this context, is deeply troubling.

[82] AH likewise gave inconsistent evidence as to drug and alcohol use. He told Dr. Landry that he used marijuana in his teenage years, while he told Dale Sharkey of Addiction Services that he was using acid at 12 years of age, and cocaine and crack between 17 and 19 years of age. AH told Dr. Landry that he had an ongoing relationship with Dale Sharkey, when in fact AH had concluded that service. AH told the court that he stopped drinking alcohol and using drugs in August 2012; he told Dale Sharkey in October 2012 that he had limited his alcohol intake to a couple of beer on the weekend.

[83] The failure of BF and AH to accurately describe the extent of their substance abuse is indicative of their lack of insight into the nature of the problem. Further, by not being upfront, BF and AH did not receive the type of addiction therapy that they needed. This negatively impacts on the likelihood of a relapse.

[84] This problem is further compounded by the parties' failure to participate in relapse prevention services. Dr. Landry and Dr. Shullaih recommended addictions counselling for AH. AH does not attend Addiction Services, AA, NA, or any similar service. The failure to do so increases the probability of relapse. The court is not suggesting that sobriety cannot be maintained in isolation of therapies or services, however, the court is aware that it is more difficult to do so. Dr. Shullaih stated that the risk of relapse in the absence of professional help is 80%, while with services, the rate of relapse decreases to 20%, according to Canadian studies. BF and AH have chosen the more difficult option. This is not in the children's best interests.

[85] In addition to substance abuse problems, the evidence raises the possibility that BF and AH may experience other mental health disorders that could negatively impact upon parenting. These mental health issues will now be examined.

[86] BF is being treated for depression. Nothing in the evidence, however, suggests that this diagnosis affects her parenting ability. BF is mainly responsible for the care of the home and children when AH is at work. She manages these areas without difficulty. BF is apparently doing an excellent job raising J, with

AH. She is obviously proud of J's accomplishments, and the accomplishments of her other children. BF also engages in hobbies, such as painting and scrapbooking. These hobbies are important, especially as a means of channelling BF's need for stimulation, as described by Dr. Landry. BF's medical treatment is working well. The depression is not interfering with BF's parenting responsibilities.

[87] Some evidence suggested that AH may have antisocial personality disorder. Dr. Shullaih, a psychiatrist, was qualified to give expert opinion evidence in the field of psychiatry. Dr. Shullaih confirmed that he provided a preliminary assessment. The preliminary assessment diagnosed antisocial personality traits, and not a disorder. Dr. Shullaih further clarified that neither the disorder, nor the traits diagnosis would automatically equate to a finding of poor parenting capacity. In any event, Dr. Shullaih noted that further investigation and assessment would be required before a final diagnosis could be made.

[88] Dr. Landry was qualified to provide opinion evidence in the field of psychology, and in particular in the field of parental capacity assessment. Dr. Landry found that AH was not currently experiencing any mental health disorders. Dr. Landry's extensive assessment did not support a finding of antisocial personality disorder. Dr. Landry linked the chaos, violence, impulsive decision making, and extensive criminal activity to significant substance abuse issues. AH's criminal record includes convictions for uttering threats, assaults, failure to comply, breaches, theft and forgery. His criminal history ended in May 2012. Multiple motor vehicle and liquor control infractions spanned from 2006 to 2011.

[89] Based upon the evidence before me, I find that AH is not currently experiencing a mental health disorder. AH's only diagnosis is a significant substance abuse problem, which is in remission at the current time. The court, like Dr. Shullaih, Dr. Landry, and Mr. Sharkey, confirm the positive inroads that AH has made to changing a chaotic, unhealthy lifestyle. Hopefully this will continue in the future when there is no agency involvement.

[90] In summary, although none of the parties have mental health disorders that negatively impact upon parenting, DM's plan is nonetheless superior to the plan of BF and AH. DM has a longer history of sobriety than do BF and AH. Further, DM

actively participates in relapse prevention services, while BF and AH do not. DM's criminal convictions are dated, while AH's record is more recent.

[91] *Children's Social Needs*

[92] DM's plan is marginally superior to the plan presented by BF and AH in respect of this factor. Since the children have been in his care, DM has ensured that they participate in both structured and unstructured social and recreational activities. Structured activities include t-ball, hockey for B and E, and ballet for M. Unstructured activities include swimming, hikes, community activities, and playing with friends. DM will continue to ensure the children's participation in activities, but in keeping with their interests. For example, if M wishes to enroll in hockey, then DM is committed to that plan.

[93] The children were not in organized activities when they were in the care of BF. The court appreciates the financial constraints under which BF was operating at the time, although the court notes that BF nonetheless managed to find money to feed her addictions during this period. I, however, accept that BF will ensure that the children participate in organized activities if the children are returned to her care. The children are also involved in unstructured activities when they are in BF's care. BF and AH take the children on outings to the park, swimming, and attend community and family events.

[94] *Educational Needs*

[95] BF states that the educational needs of the children were jeopardized because of DM. This allegation stems primarily from the fact that the three children failed school after they were placed in DM's care. I reject this submission. I find that the children's failures had little to do with DM.

[96] All three children were woefully behind their peers from an educational perspective prior to July 2012. M had not attended preschool when she was living with BF. M did not know the alphabet or any numbers. DM had no control over M's lack of preschool preparation. Although M failed grade primary because of a lack of knowledge, she nonetheless had excellent attendance and was not a behaviour problem. For this school year, M is now one of the top students in her class. She continues to be described as a happy, cooperative, nice child.



[97] E's educational delay was confirmed by the results of the provincial assessment. At the beginning of the school year, every grade three student across the province must take a standardized assessment. E scored below the required expectations. E was reading at a mid to low grade one level. His math skills were well below average. Similarly, B's educational skills were well below average when he started the school year in Eskasoni. DM was not responsible for the children's lack of knowledge prior to being transferred into his care.

[98] Ms. C., the principal of [...], where E and B attended while in BF's care, testified. She confirmed that neither E, nor B, had actually mastered the educational outcomes expected of children of their age and grade level. Ms. C. advised that E and B did not fail at her school because of school board policy. This policy states that children no longer fail. Children are advanced even if they do not achieve the required outcomes.

[99] It should be further noted that B and E missed more school while they were in the care of BF. In contrast, they missed less time while in DM's care.

[100] Current school information confirms that E is now performing better from an academic and behavioural perspective. Educational strategies have been employed in keeping with the psycho-educational assessment. These include an IPP and modifications to meet E's unique needs. E's behaviours have also improved. E's behavioural issues were noted while he attended [...] school; behavioural issues are not a new challenge.

[101] In addition, current school information indicates that B is likewise improving. The school noted that B has excellent work habits; his homework is done daily; he likes reading; he's well mannered; he's well dressed; and he loves to do well. B has made substantial academic gains while in DM's care.

[102] For their part, BF and AH have purchased age appropriate workbooks and reading materials, which the children complete during access visits. AH's mother is also a teacher who is involved in programming for high needs children at a local school. She indicated her willingness to assist with any special educational needs that E, or the other children, may have. BF and AH would be well served to take her up on the offer.

[103] DM's educational plan for the children is superior to that of BF from an historical perspective. The children struggled with academics while in BF's care. All three children have made significant advancements since they were placed in DM's care. Further, as E has been diagnosed with a learning disorder, the school has engaged the necessary resources. DM is co-operative with all school officials and has established a homework routine to maximize the children's educational outcomes.

[104] *Stability and Safety Needs*

[105] Both parents are currently able to provide stability to the children, and meet their safety needs, provided there are no relapses.

[106] I dismiss the allegations that suggest that DM's home lacks stability and that his care poses safety risks to the children. To the contrary, I find that DM's home is one where routine and structure are followed. The children gain stability from this. It is clear from the evidence of GM and DM, which I accept, that the children have nurturing care while under DM's charge. The children have benefited as evidenced in the positive changes which have occurred since the children were placed in DM's care. Both agency workers and educators have confirmed that the children are happy and engaged.

[107] BF reported many safety issues involving DM. The agency investigated these complaints. They dismissed all but two. Specifically, the agency spoke to DM about the children's use of chewing tobacco. I accept the evidence that DM and GM will not permit the children to use chewing tobacco again. The second issue concerns the use of the backscratcher. This will be addressed later in the decision.

[108] The other issues raised by BF, and dismissed by the agency, do not pose safety risks, on a balance of probabilities for the following reasons:

- The children ride dirt bikes, while supervised by DM, and they drive a lawn mower with no blades. The use of these vehicles, in the manner described, do not produce protection concerns.

- The fact that DM, on a couple of occasions, used duct tape when in a pinch, to cover some blisters on the feet of one of the children, does not pose a protection risk, although it would have been better to put a bandaid on the blister after disinfecting the site.
- The children do not engage in risky, unsupervised activities in the care of DM. It is not unusual for children to play outside, given the ages of the children, without parental supervision. Workers confirmed that the street where DM's home is located is a family friendly neighbourhood with many children. It is not uncommon, or inappropriate, for children to play in each other's homes, or outside, when an adult is not always present. Children need time to play and develop on their own.

[110] I am also satisfied that the safety needs of the children are presently being met in the care of BF and AH. In the past, however, the children experienced a significant amount of instability. Substance abuse and violence prevented BF from supervising the children adequately and exposed them to harm. There are currently no safety or stability risks in the home of BF or AH. This state will continue provided the parties do not relapse.

[111] *Relationship and Communication with Other Parent*

[112] At first blush, it appears that BF is the parent who is best able to communicate on issues affecting the children, and is most willing to foster a relationship with the other parent. BF articulated all the correct words, and verbalized these sentiments in her evidence. The court's review, however, must go beyond words.

[113] When one examines conduct, the court is left with the conclusion that BF was, and is not, supportive of DM. She consistently made false allegations about DM's parenting to child protection authorities. The vast majority of these allegations were found to be without merit. Indeed, the agency, who is entrusted with the investigation of such complaints, regularly reported that the children's hygiene, medical needs, and safety needs, were, in fact, being met by DM. BF made false allegations in an attempt to bolster her parenting plan. This conduct, shows a blatant disregard for DM and his parenting of the children. BF also made false assault allegations about DM in an attempt to bolster her position. She

accused DM of assaulting her after he stopped using drugs and alcohol from 2005 to 2010. I reject these allegations.

[114] In contrast, DM did not make unfounded allegations against BF. DM did acknowledge that he inappropriately explained to the children why they were taken into care. This error in judgement is not one which will likely be repeated.

[115] I further find that DM has been supportive of the access arrangement between BF and the children. Although DM does not engage in conversation with BF, he does not act negatively towards her, nor does he speak disrespectfully to her, or about her to the children. GM provides BF with the hockey schedule. DM follows court orders.

[116] The court does not require BF and DM, or their respective partners, to be friends. All that is required is to have the parents communicate on a business level about the needs of the children. The court order will address how this communication will be transferred between the parties later in this decision.

[117] DM's plan is superior to BF's plan in respect of this factor.

[118] *History of Child Care*

[119] BF argues that she was the primary care giver of the children until July 2012. She argues that the history of child care favours the return of the children to her in that DM has only acted as primary care parent for less than two years.

[120] I disagree with this argument. The history of child care does not favour BF. When examining this factor, the court is not simply concerned with a mathematical time calculation. More is required than adding and comparing the number of hours, days, and years spent with children. Instead, the court must examine the quality of the child care.

[121] In this case, BF continuously used substances and was involved in domestic violence while caring for the children. The children suffered as a result. They lacked appropriate supervision. Their education and health suffered. They lacked structure, routine, and discipline in BF's care. The children learned many

negative behaviours during this period. The status quo that developed during BF's years of primary care was not always a favourable one.

[122] The court also notes serious deficiencies in DM's history of child care. He too struggled with addictions, and was violent, while in a care giving role. Although he stopped using in 2005, he continued to live with BF until 2010. He witnessed BF's addiction and ongoing conflicts, yet remained with her and the children. DM did not seek custody after BF left with the children to live in Sydney in 2010. More importantly, DM all but dropped out of the children's lives from 2010 until July 21012. He allowed his negative feelings for BF to interfere with his obligations as a parent.

[123] DM's history of child care, however, did not end in 2010. He stepped up to the plate when he became aware of the protection proceedings. DM has worked co-operatively with the agency and with all professionals involved with the children. The children have progressed under his care.

[124] Family law decisions must be forward thinking. At the present time, DM supplies the children with the care that they require, in an environment that is enriching, loving, nurturing, and free from violence and substance abuse. To her credit, BF currently is offering a similar environment. She has learned appropriate parenting and discipline skills, and has implemented positive changes in her life and in the lives of the children.

[125] *Discipline*

[126] Both parents are currently using appropriate discipline to correct and direct the children's behaviours.

[127] In the past, both parents found the behaviour of E and B to be challenging at times. So has the agency. Indeed, access workers used to drive the children in two vehicles in an effort to separate E from B and M so that the children could be safely transported to and from access. Similarly, the educators from the schools in Sydney and Eskasoni also commented on the behavioural challenges of E, and in the past, of B. M does not display behavioural issues.

[128] The source of the children's behavioural issues is multi-faceted. First, the children were exposed to violence and substance abuse on a regular basis. They did not observe positive role models in respect of acceptable behaviour, healthy problem solving, healthy stress management, and healthy relationships. Instead, they were fed a diet of abuse, neglect, and substance abuse. Second, at least one of the children, E, has developmental and learning challenges. He is being tested for ADHD. Disorders can frequently result in behavioural problems. Third, BF was not disciplining the children properly. She saw her role as that of a friend. Fourth, each of the children have their own temperaments which likewise impact on behaviour.

[129] At this stage, the parties, and the school educators, have been employing similar discipline methods. The children no longer experience chaos in their home life. Routine, consistency, and structure are the norm. E is being monitored by his pediatrician. The school has implemented resource services to assist E. The behaviours of all the children have improved.

[130] I must now deal with two submissions made by BF. I reject the submission that DM was violent with the children when using a backscratcher. DM did use the backscratcher as a means of enforcement on a few occasions, until he had discussions with Ms. Kehoe. The backscratcher was not used as a source of violence. It was not used in anger. The children were neither afraid of DM, nor of the backscratcher. I accept Ms. Kehoe's evidence that the children giggled when they talked to her about the backscratcher. DM no longer uses the backscratcher.

[131] I also reject the submission that DM is sexist, or that he engages in traditional stereotypical thinking which shows a disrespect for M or females in general, or which would be harmful to the children. This allegation is without foundation.

[132] Both parties are encouraged to continue to apply consistent and appropriate discipline, structure, and routine in their parenting of the children. They are also urged to follow any reasonable advice of specialists in relation to the special needs of the children, and in particular, of E.

[133] *Cultural, Linguistic, Religious, and Spiritual Heritage*

[134] The children are fortunate to have two cultural heritages. The children will be able to engage in their cultural, linguistic, religious, and spiritual heritages in the parenting plan that the court will develop. All parties acknowledge the importance of culture to the children's best interests. The court accepts the parties' commitments.

[135] The children's first language is English. They are also learning Mi'kmaw, and to appreciate their First Nation's culture and spiritual heritage. E and B enjoy participating in sweats; M does not. Her wishes are respected.

[136] For their part, BF and AH plan to enroll the children in the school in [...] if they are granted custody, so that the children receive the benefits that would be available in a First Nations school. BF and AH promote the children's First Nations heritage.

[137] Neither party's plan is superior to the other in respect of this factor.

[138] *Children's Views*

[139] I have no direct evidence of the views and wishes of the children. This factor is neutral to my decision.

[140] *Children's Relationships with Family Members*

[141] The children enjoy healthy and supportive relationships with each of their parents, and with each of their parent's current partners. There is no evidence of negative attachments. The children also have positive relationships with their sister, J and extended family members. In the past, BF and AH were abused by their fathers. There is no evidence of current abuse. BF and DM must ensure that the children are not exposed to violence from the extended family.

[142] I further disagree with the suggestion that the children should be placed in the care of BF because of J. This is but one factor in determining the best interests of the children. Further, the evidence is that DM and GM are supportive of the relationship between the children and their sister, J.

[143] The children are encouraged to have relationships with all extended family members, and other third parties, provided such relationships are healthy, child focussed, and appropriate.

[144] *Family Violence*

[145] Family violence, abuse, or intimidation, is a significant factor in determining the best interests of children. Sections 18(6)(j) and (7) of the *Act* detail the considerations which the court must review when examining this issue. Family violence, abuse, and intimidation cause significant problems to children. In addition to compromising a child's physical integrity, a violent and controlling parent tears at the confidence and self esteem of a child. A violent and controlling parent teaches violence as an acceptable means of dispute resolution. It is not. A violent and controlling parent teaches violence is part of a loving relationship. It is not. Violence was part of the family life of E, B, and M for too long. Fortunately, these children are resilient. Fortunately, the parties no longer engage in violence.

[146] DM ceased being violent once he stopped using substances in 2005. His current partner, GM, is an independent, free thinker. GM would not remain in a violent relationship. GM would not allow children to be in a violent relationship. The court is confident that there is no violence in DM's home.

[147] The court is also confident that AH and BF stopped engaging in family violence once they stopped abusing substances in 2012. The court is hopeful that BF and AH will not relapse. Provided there is no relapse, violence is not likely to be part of their relationship. There have been no incidences of family violence in excess of one year. BF and AH completed family violence training. They continue to participate in counselling with Family Services of Eastern Nova Scotia. Their communication and problem solving skills have improved.

[148] In summary, although the children were exposed to many years of violence and substance abuse, it appears, at present, this is no longer an issue. Neither party's plan is superior on this issue.

[149] *Ultimate Decision on Parenting*



[150] In making my decision, I reviewed the totality of the evidence, the submissions of counsel, and the law. DM has proven that it is in the best interests of M, B, and E to live in his primary care. DM's plan is superior to BF's plan. The children have experienced stability, and an enriching, loving environment while in the care of DM since July 2012. They have established roots in their community. They are engaged with professionals. They have a healthy social environment where their physical, emotional, educational, recreational, cultural, spiritual, and linguistic needs are met. DM's plan is one which provides the children with the best opportunity to succeed in all aspects of their lives.

[151] Although BF and AH have made significant inroads, and are currently maintaining a loving and nurturing environment, their plan is nonetheless inferior to the plan presented by DM. BF and AH do not engage in relapse prevention services. They minimized the extent of their addictions. Their lifestyle changes are more recent in comparison to those made by DM. DM did not level false allegations against BF. DM will abide by court orders. BF and AH do not have a positive track record of adhering to court orders. The best interests of the children is achieved by allowing them to remain in the primary care of DM, with access to BF.

[152] Once primary care is established, the court must determine the type of custodial arrangement that will meet the best interests of the children. In **Baker-Warren v. Denault**, *supra*, this court reviewed principles of custodial designations in high conflict families at paras 24, 26, and 32, which provide as follows:

24. Where parental relationships are rift with mistrust, disrespect, and poor communication, and where there is little hope that such a situation will change, joint custody is ordinarily not appropriate: **Roy v. Roy**, [2006] W.D.F.L. 2830 (Ont. C.A.) This lack of effective communication, however, must be balanced against the realistic expectation, based upon the evidence, that communication between the parties will improve once the litigation has concluded. If there is a reasonable expectation that communication will improve despite the differences, then joint custody may be ordered: **Godfrey-Smith v. Godfrey-Smith** (1997), 165 N.S.R. (2d) 245 (N.S. S.C.).

26 Courts have increasingly embraced the concept of parallel parenting in circumstances similar to the case at bar. A parallel parenting regime is a mechanism which can be employed where there is high parental conflict, and where a sole custody order is not in the child's best interests. A parallel parenting regime permits each parent to be primarily responsible for the care of the child and routine decision-making during the period of time when the child is with him/her. Significant decision-making can either be allocated between parents, or entrusted to one parent. Parallel parenting ensures that both parents play an active and fruitful role in the life of their child while removing sources of conflict through a structured and comprehensive parenting plan.

...

32 The adoption of a parallel parenting regime is not a solution for the vast majority of the cases before the courts. It is reserved for those few cases where neither sole custody, nor cooperative parenting meets the best interests of the child. This is one such case. The adoption of a parallel parenting regime is in the best interests of Kyra in the circumstances.

[153] In this case, I find it is in the best interests of the children to be placed in the sole custody of DM. A joint or parallel parenting regime will, on a balance of probabilities, result in more conflict between the parties. This will be detrimental to the children. I am concerned that a joint or parallel parenting regime will create a power struggle between BF and DM. BF will likely increase the intensity and frequency of complaints to child protection authorities in a bid to become the primary care parent. Further, BF has a history of failing to follow court orders, which is central to the successful operation of a joint custody or parallel parenting regime. Sole custody is the appropriate solution in this case in order to achieve the best interests of the children.

**[154] What parenting schedule is in the best interests of the children?**

[155] The parenting plan which has been crafted is based upon the unique factors of this case, the needs of the children, and the ability of each parent to meet those needs. In addition, the schedule must take into account the impact that the distance between Eskasoni and Sydney has on transportation and educational issues. In this context, the parenting plan that is in the best interests of the children is as follows:

- *Sole Custody:* DM will have sole custody of the children, BM, born \*; EM, born \*; and MM, born \*.
- *Substance Free and Violence Free Homes:* DM and BF must not consume alcohol or illicit drugs while in a child care giving role. DM and BF must not permit alcohol or illicit drugs to be in their homes, when the children are present. DM and BF must ensure that the children are not exposed to violence or substance abuse.
- *Professional Records and Information:* Each party has the right to communicate with all professionals involved in the children's care, and each has the right to obtain information and documentation respecting the children from all health professionals, educators, and social welfare professionals, without the further consent of the other party.
- *Communication between the Parties:* Matters respecting the children's health, education, religion, and general or spiritual welfare, will be subject to communication between the parties. All communication will be respectful and child focused, and will be facilitated by email communication, and in the event of emergency, telephone communication. DM will provide BF, via email communication, which may be facilitated by a third party, such as GM, with particulars relating to school tests, projects, and assignments; the results of any psycho-educational, pediatric, medical, or dental assessment; particulars related to significant illnesses that the children contract, as well as medication to be taken; schedules for all organized activities (hockey and ballet), performances, concerts, parent teacher meetings, and other major events in the lives of the children. Such will be provided on a timely basis, and at least once every ten days.
- *Respectful Communication:* All communication between the parties must be respectful and child focused. All communication with the children about the other party, or their partner, or extended family, must be respectful.

- *Meetings, Concerts, and Activities:* Both parents are entitled to attend parent teacher meetings, and major school events such as concerts, programs, and activities. In the event tickets are limited to performances, each parent will have priority for tickets.
- *Travel:* Each party will notify the other party of travel plans involving the children. Notice will include dates of travel, location, address, and telephone numbers where the children can be reached, and any applicable flight details. Both parties will accommodate any requirements for passport documentation to allow the children to vacation with the other parent, or with the school, outside of Canada.
- *Telephone Access:* BF and DM will have reasonable telephone access to the children at reasonable times while the children are in the care of the other of them.
- *Regular Access Schedule:* The children will be in the care of BF every Friday after school until Saturday at 6:00 p.m. DM is responsible for transporting the children to BF's care, and BF is responsible for transporting the children to DM's care after the conclusion of the access visit.
- *Special Occasions and Holidays:* The regular access schedule will be suspended for special occasions and holidays, and this parenting schedule will be followed in its stead:
  - a. *Spring Break:* Spring break is deemed to cover a nine day period from 3:00 p.m. on Friday of the last day of school until 3:00 p.m. on Sunday before school recommences. Unless the parties agree otherwise in writing, the children will spend the first half of spring break from Friday of the last day of school until 3:00 p.m. on Wednesday with DM. The children will spend from 3:00 p.m. on Wednesday of the spring break vacation until 3:00 p.m. on Sunday of the spring break vacation with BF. The parties will revert back to the regular

schedule after the conclusion of the spring break holiday.

b. *Easter*: Easter is deemed to cover the period from 3:00 p.m. on Holy Thursday until Easter Monday at 3:00 p.m. The children will be in the care of BF from 3:00 p.m. Holy Thursday until 10:00 a.m. on Easter Sunday. The children will be in the care of DM for the balance of the Easter holiday.

c. *Mother's Day*: The children will spend the Mother's day weekend with BF by extending regular access to Sunday at 5:00 p.m.

d. *Long May Weekend*: The long May weekend is deemed to cover the period from 3:00 p.m. on the Friday before the long May weekend until Monday at 3:00 p.m. The children will be in the care of BF for every long May weekend.

e. *Father's Day*: The children will spend the Father's day weekend with DM. BF will not exercise access to the children during the Father's day weekend.

f. *Summer Vacation*:

i. Each party will have the children for two weeks of summer vacation, which will not be taken consecutively, during the school summer holiday. DM will provide BF with notice of the two weeks he intends to take for summer vacation no later than May 1st of each year. DM will have priority for vacation during the days of the [...]. BF will

provide DM with notice of the two weeks she intends to take for summer vacation no later than May 31st of each year. BF will have priority for vacation during Sydney Action Days.

ii. For the balance of the summer school vacation, the children will be in the care of BF from 3:00 p.m. on Thursday to 6:00 p.m. on Saturday during the non-vacation weeks.

g. *Labour Day Weekend*: The children will spend every Labour Day weekend commencing Friday at 3:00 p.m. until Monday at 3:00 p.m. with BF, at which time the parties will revert back to the regular schedule.

h. *October 1st Treaty Day*: The children will spend Treaty Day in the care of DM.

i. *Thanksgiving*: The children will spend every Thanksgiving weekend with DM. BF will not exercise access during the Thanksgiving day weekend.

j. *Halloween*: The children will spend Halloween with the parent in whose care they are regularly scheduled to be.

k. *Christmas*: Christmas is deemed to cover the period from 3:00 p.m. on December 23rd, until 3:00 p.m. on January 3rd. The children will be in the care of DM from 3:00 p.m. on December 23 until 3:00 p.m. on December 25; and from 3:00 p.m. on December 28 until 3:00 p.m. on December 31. The children will be in the care of BF from 3:00 p.m. on December 25 until 3:00 p.m. on December 28, and from 3:00 p.m. on December 31 until 3:00 p.m. on January 3, at which time the parties will revert back to the regular schedule.

1. *February Long Weekend*: The children will be in the care of BF for the February holiday commencing at 3:00 p.m. on Friday until 3:00 p.m. on Monday, at which time the parties will revert back to the regular schedule.

m. *Ad Hoc Special Family Events*: The parties will use their best efforts to accommodate any special family reunion, wedding, or event, which is scheduled at a time when the children are in the care of the other party. Written notice will be provided well in advance of the scheduled event to determine if the regular schedule can be altered to permit the children's attendance at the special function. The parties will be as flexible as possible in such circumstances, however, no change in the schedule will occur without the express and written authorization of the party in whose care the children are scheduled to be at the time of the special family function. If accommodation cannot be made, the party refusing must provide the other party with written reasons for the refusal. Make up time will be provided to the party who agrees to rearrange the schedule at that parties' request.

[156]        **What is the appropriate maintenance order?**

[157]        Both parties' incomes are currently below the threshold required for the payment of child support. No child support order will issue.

[158]        **Conclusion**

[159]        The agency's involvement, and all child protection proceedings are terminated. Sole custody of the children is granted to DM, upon the terms and conditions outlined, and in the best interests of the children. The access schedule will ensure consistent contact with BF, J, and extended family members.

[160]        Ms. Morrow is to draft the order pursuant to the *Maintenance and Custody Act*; Ms. Morrison is to draft the order under the *Children and Family Services Act*. Counsel are commended for the quality of their presentations and briefs.

Forgeron, J.