

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Giles v. Blois*, 2014 NSSC 237

Date: 20140620

Docket: SFHMCA-072842

Registry: Halifax

Between:

Cynthia Lee Giles

Applicant

v.

Bain Frederic Blois

Respondent

Judge: The Honourable Justice R. James Williams

Heard: March 25 and March 27, 2014 in Halifax, Nova Scotia

Oral Decision: June 20, 2014

Written Release: July 2, 2014

Counsel: Terrance Sheppard, for the Applicant
Bain Blois, self-represented

By the Court:

[1] Cynthia Lee Giles and Bain Fredric Blois lived in a “common law” relationship from late 1998 until February 26, 2009 when they separated. They have two children:

Giles Bain Stuart Blois (b. December 4, 2000), now 14 ½ years old;

Geneva Merium Kathryn Blois (b. May 18, 2004), now 10 years old.

Separation

[2] The parties separated in February 2009. Justice Legere-Sers of this Court described the separation in her March 31, 2011 Interim Decision as follows (in paragraphs 17-21):

17. In February 2009 at separation, the parties had a heated dispute. The applicant returned to her bedroom; the respondent followed her, began throwing things from table tops and flipped the bed that she was sitting on. She landed on the floor.

18. The respondent left; the police were called by a family member and the respondent was charged. That charge subsequently resulted in a plea of guilty to a charge of destruction to property. The respondent was placed on an undertaking that he would have no contact with the applicant.

19. The applicant testified she was not advised of the plea arrangement until well after it occurred.

20. Following this incident, the children remained in the home with the mother. The father was originally permitted parenting time at a family member’s home (he denies it was supervised) once per week. This was ultimately increased to parenting time on his own.

21. The incident occurred February 2009. The parties entered into the parenting agreement in May 19, 2009.

Separation Agreement

[3] On May 19, 2009 the parties entered a Separation Agreement. The parties agreed that neither would pay spousal support.

[4] With respect to parenting, and child support, Schedule A of the Agreement provided, in part:

1. The parties acknowledge that there are two children of their relationship, namely, Giles Bain Stuart Blois, born December 4, 2000, and Geneva Merium Kathryn Blois, born May 18, 2004. The parties shall have joint custody of the children.
2. The Mother shall have primary care of the children. The Father shall have parenting time on an equal basis with the children.
3. The parties shall each enjoy 2 weeks of uninterrupted summer vacation with both of the children. The Father shall notify the Mother no later than May 1 of each year of his intended vacation access. The Father shall have first choice of the vacation block access with the children in 2009 and every second year thereafter. The mother shall have first choice of the block vacation access with the children in 2010 and every second year thereafter.
4. Notwithstanding the above noted weekly alternating schedule, in Christmas 2009 and every odd numbered year thereafter, the Mother shall have the children from Christmas Eve at 4:00 pm to Christmas Day at 3:00 pm. In Christmas 2010 and every even numbered year thereafter, the Father shall have the children from Christmas Eve at 4:00pm to Christmas Day at 3:00 pm. After the above noted Christmas access the children shall be returned to the respective parent that the regular access schedule dictates at the time.
5. The parties acknowledge the importance of the children maintaining a close relationship with both parents and the parties agree that while the children are in the Husband's or the Wife's care, they shall have the right of free communication with the other parent.

Emergency Medical Care

6. Each parent has the right to authorize emergency medical care and treatment for the children while they are in their respective care and the other parent shall be notified as soon as possible.

Right to Information

7. Either Parent may request and obtain information regarding the health, education and general well being of the children, including but not limited to, access to school and medical reports, and the right to obtain copies of all medical, educational and religious records pertaining to the children directly from third parties.

Joint Decision Making

8. The parties shall consult with each other on all major questions relating to the health, education and general well being of the children. It is agreed that decisions regarding religion, education, and non-emergency medical matters shall be made by the primary caregiver of the children, if a joint decision cannot be arrived at between the parties.

Mobility

9. The parties agree that each parent shall provide to the other parent thirty (30) days advance notice of their intent to take the children on vacation outside of Nova Scotia and Canada.

CHILD SUPPORT

10. The parties acknowledge that they have exchanged financial information in compliance with s. 17 of the *Divorce Act* (1985) (as amended). Based on this information, the parties agree that the Husband has an annual income of \$75,000.00 and that the Mother has an annual income of \$46,200.00 as of the date of this agreement.

11. The parties acknowledge that the Father is assuming a large amount of matrimonial debt and as such qualifies for an undue hardship claim. The Mother agrees that the table amount of child support shall not be payable by the Father in recognition for the undue hardship that he would face should he be required to pay the table amount of child support as per the *Child Support Guidelines* and the matrimonial debts.

12. Beginning June 1, 2009 and continuing the first of each month until May 1, 2010, the Father shall pay to the Mother \$600.00 per month. Beginning June 1, 2010 and continuing until further order of the court, the Father shall pay to the Mother \$650.00 per month for child support.

13. The parties agree that pursuant to s. 7 of the *Federal Child Support Guidelines*, they shall proportionally share the after tax cost of the extra expenses for the children and further provided that the special expenses shall be defined as:

- a. The children's special educational expenses or extraordinary expenses for extra-curricular activities;
- b. Expenses for post secondary education; and
- c. Childcare for the purposes of the primary caregiver's employment or attendance at a post-secondary educational institution.

14. The parties agree that in addition to the table amount of child support listed above, the payment will be 50% of the child care expenses. The parties also agree that this payment shall commence the 1st day of June 2009 and the payments shall continue on the first of every month thereafter until further order from the Court.

Health/Medical Insurance

15. The Mother warrants that he [*sic*] is maintaining health and medical insurance plans through her employment for the benefit of the children so long as they are dependent children.

Uninsured Health Expenses

16. The parties shall equally share the cost of any health expenses including medical, dental, orthodontic or optical expenses for the children, where those expenses are not covered by insurance.

Disclosure

17. The parties agree that in accordance with the *Child Support Guidelines* they shall exchange the following documentation for child support purposes, on or before the June 1 of each year:

- a. A copy of his or her personal income tax return filed for the most recent taxation year;
- b. A copy of every notice of Assessment or Re-Assessment issued to him or her for the most recent taxation year;
- c. Any additional information that may be required to accurately determine the parties' annual income.

Other Financial Arrangements

19. the Husband and Wife warrant that for as long as the children remain dependent children, they will designate the children as a beneficiary "in trust" of any insurance policies they may own at the present time.

[5] The Separation Agreement provided for the parties' home to be sold and expenses related to the home shared. Ms. Aisthorpe, Mr. Blois' current partner, purchased the home. The Separation Agreement provided that Mr. Blois retain their cottage. Ms. Giles received a \$15,000.00 equalization payment. Ms. Giles gave Mr. Blois Quit Claim Deeds for both properties.

Interim Hearing

[6] The Interim Application by Ms. Giles sought to register the Agreement, and to alter its' child support and parenting provisions. Communication issues and Mr. Blois' business travel were compromising the parties' parenting Agreement. Justice Legere-Sers of this Court heard the Interim Hearing. The Order arising from the April 18, 2011 hearing provided:

Interim Custody

1. Interim custody of the following children is granted to both parties jointly:

Name of Child	Date of Birth
Giles Bain Stuart Blois	December 4, 2000
Geneva Merium Kathryn Blois	May 18, 2004

Terms for interim joint custody and interim parenting times

2. Cynthia Lee Giles has primary care and residence for the children and Bain Frederic Blois shall have interim parenting times as follows:
 - (a) Every other weekend, commencing on May 6, 2011 and continuing therein, with parenting time commencing Friday following school and continuing until Monday morning;
 - (b) Parenting time one overnight per week to commence Thursday following school and continuing until Friday morning. When such parenting time occurs on Bain Freric [*sic*] Blois' parenting weekend, the children shall remain in his care until Monday morning. This parenting time may be altered so long as consultation and consensus is obtained from Cynthia Lee Giles in advance.
3. Should Bain Frederic Blois be unavailable for his parenting time with the children, he shall advise Cynthia Lee Giles, in writing, of this well in advance of this absence, being as soon as he becomes aware of his impending absence. Bain Fredric Blois shall advise Cynthia Lee Giles, in writing, of his intended regular travel schedule as to his periods away from his home six months in advance of such travel.
4. Should Bain Frederic Blois be unable to personally care for the children during his parenting times with them, the children will be immediately returned to the care of Cynthia Lee Giles.
5. The parties shall have unlimited telephone contact with the children when they are in the other parties' care.
6. Bain Frederic Blois shall immediately address the need to have telephone conversations regarding the best interests and needs of the children with Cynthia Lee Giles on a regular basis. Bain Frederic Blois shall also respond to emails from Cynthia lee Giles regarding the needs of the children forthwith.
7. Neither party will enroll the children in an extra-curricular activity without first obtaining the consent of the other party.
8. Should Bain Frederic Blois be unwilling to attend parent sessions with Cynthia Lee Giles at the children's school(s), Bain Frederic Blois shall make alternate arrangements to attend these sessions separately to address any deficiencies with respect to the children's needs.
9. The parties shall discuss all important issues with respect to the children and shall come to a mutual decision with respect to same. With respect to the children's medical decisions, including counseling, should Cynthia Lee Giles be unable to obtain Bain Frederic Blois' opinion following an attempt to obtain same or should the parties disagree, Cynthia Lee Giles shall have the final decision-making authority. As such, the children's medical professionals, including their counselor, shall have the right to address the children's needs with the permission of the mother and without need to have the permission of the father.

Interim child maintenance payments

10. Bain Frederick Blois must pay interim child maintenance to Cynthia Lee Giles in the amount of \$1,084.00 each month, based on the applicable table amount of the Child Maintenance Guidelines.

11. Bain Frederic Blois must pay to Cynthia Lee Giles his prorated share of the child care after tax costs.

12. Bain Frederic Blois must pay to Cynthia Lee Giles his proportionate share of counseling for the children. Cynthia Lee Giles shall provide Bain Frederic Blois with the bill for any amount that is not covered by insurance and Bain Frederic Blois shall pay his proportionate share within fifteen (15) days of receipt of same.

[7] Mr. Blois was found to have an income of \$75,000.00.

Trial: March 2014

[8] The trial of this matter was heard March 25, 27 and 28, 2014. Mr. Blois was self-represented. Evidence was heard from Cynthia Giles, Cheryl Lynn Cross (a former child care provider of the parties), Bain Blois and Marie Aisthorpe (Mr. Blois' partner). Ms. Aisthorpe (a widow) and Mr. Blois met in late March 2009 . Twenty-eight exhibits were filed, including Affidavits (apart from those of the parties) from:

- Grant Walsh
- Darlene Burton
- Elaine Warwick
- Raeanne Austin
- Linda Ricker
- Angela Rodriguez
- Nancy Theriault
- Kim Thomas
- Jeanne Buffet

[9] The Affidavit evidence is predominantly from friends and neighbours of Mr. Blois and Ms. Aisthorpe. They speak very positively of Mr. Blois and Ms. Aisthorpe's parenting. An affidavit was also filed from Toni Marie Aisthorpe, Ms. Aisthorpe's eldest daughter, who is in university. It was not very helpful to the Court. Eric Bourque, Ms. Giles' partner, also filed an Affidavit. It details a series of concerns with Mr. Blois' past ability to co-parent.

[10] Mr. Blois and Ms. Giles have both, at times, been less than cooperative or flexible with each other. On the whole, Mr. Blois was probably more responsible for past parenting difficulties than Ms. Giles. Each has triggered problems or misunderstanding at times, however.

[11] Despite these concerns (and those expressed by Ms. Giles), I conclude that Mr. Blois and Ms. Giles appear to have come a long way since the difficulties that led to their separation and the Interim Hearing.

[12] Well before this trial, the parties agreed that Mr. Blois would provide before and after school care for the children.

[13] At trial, the parties agreed, sometimes with the assistance of the Court, to a number of issues. They included, agreement that:

1. There will be a joint custody Order.
2. Medical care, as recommended by the children's doctor will be followed through on by both parents.
3. The parties will discuss all important issues concerning the children with each other and attempt to come to mutual decisions. They agree that in the event that Ms. Giles is unable to secure Mr. Blois' views or input, she will decide the issue. (I would add that if they reached an impasse, Ms. Giles would have, subject to court application, the final decision-making authority.)
4. Each parent will have unlimited telephone access to the children when they are in the other's care.
5. Both parents will advise the other of any overnight travel they take, ensuring the other has a contact number.
6. Before and after school care will be at Mr. Blois' home. This is subject to adjustment when High School is reached.
7. Each parent will have two one-week blocks of parenting each summer. Mr. Blois will pick his weeks by May 15 each year; Ms. Giles will advise of her weeks by May 22 each year. By May 22, Ms. Giles will also designate two additional weeks in the summer for which Mr. Blois will be responsible for child care. One of these weeks will be a camp.

8. Neither parent will remove a (the) child(ren) from school (for vacation or convenience) without the written agreement of the other.
9. Neither party will enroll the children in extra-curricular activities without the consent of the other. The parties indicated that extra-curriculars had not been much of a problem. They agreed their cost would be shared 50/50.
10. Parenting through the Christmas period “hasn’t been a problem”. The Order will provide that parenting through the Christmas period will be as agreed by the parties.
11. The parties recognize the importance of appropriate supervision at Geneva’s age and stage of life.

The Issues

[14] The issues requiring resolution by the Court involve parenting and child support.

[15] The parenting issues outstanding are (a) the parenting schedule and (b) issues related to clauses 3 and 4 of the Interim Order.

- (a) What will the parenting schedule be on a week to week basis?

[16] The current schedule gives Mr. Blois five overnights in a 14-day rotation. The overnights are not all consecutive. Ms. Giles asks that the current regime be maintained. Mr. Blois asks that the schedule be a weekly rotation, 50:50 parenting.

[17] The Application is heard pursuant to the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, as amended. That Act provides, in part

18 (2) The court may, on the application of a parent or guardian or with leave of the court, a grandparent, other member of the child’s family or another person make an order

(a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or

(b) respecting access and visiting privileges of a parent or guardian or authorized person.

...

(4) Subject to this Act, the father and mother of a child are joint guardians and are equally entitled to the care and custody of the child unless otherwise

...

(b) ordered by a court of competent jurisdiction.

(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including

(a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;

(e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;

(g) the nature, strength and stability of the relationship between the child and each parent or guardian;

(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child; and

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

(7) When determining the impact of any family violence, abuse or intimidation, the court shall consider

- (a) the nature of the family violence, abuse or intimidation;
- (b) how recently the family violence, abuse or intimidation occurred;
- (c) the frequency of the family violence, abuse or intimidation;
- (d) the harm caused to the child by the family violence, abuse or intimidation;
- (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and
- (f) all other matters the court considers relevant.

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

[18] I have had limited evidence or submissions with respect to some of these factors (e.g. s.18(6)(e) and (f)).

[19] Domestic violence has impacted this family. It included the damage to property incident at the time of separation. Ms. Giles was physically impacted by Mr. Blois' actions at separation. It was a serious event that undoubtedly had and has emotional ramifications for Ms. Giles. That said, the parties entered a consent 50:50 parenting arrangement within months of separation. That broke down. The current arrangement was ordered. Since then the parties' communication, while not trouble-free, has evolved to the point that they cooperatively concluded that child care would be provided by Mr. Blois at his home. They have also agreed to a number of other issues, including the choice and cost of extracurricular activities and child care.

[20] I conclude that Mr. Blois' appreciation of appropriate communication has improved significantly. The children appear to have healthy, safe relationships with both parents. Both parents have re-partnered with individuals who appear (from the evidence available to me) supportive, appropriate, and attached to the children. Any risk family violence presented appears to have past. That said, the Order should, in my view, reduce the transitions, the backs and forths, of these children as much as possible.

[21] I have considered the factors outlined in s. 18 of the *Maintenance and Custody Act* and the evidence before me. I conclude that a parenting schedule of six days with Mr. Blois, eight with Ms. Giles is consistent with these factors, is in the best interests of the children. The children will be in his care from Friday after school until Thursday morning.

[22] The current Order involves block and mid-week parenting time for Mr. Blois. There are multiple transitions over a 14-day cycle. The new Order reduces that to one (apart from after-school transitions).

[23] The block schedule is, in a word, simpler and should involve less week to week adjustment for both parents and the children.

[24] The Order will provide that where there are disputed parenting issues, Ms. Giles will be the "decider". This is not shared parenting in the sense that the couple are expected to agree or work out everything. They have demonstrated an ability to work out many issues that vex other parents in this court – extracurriculars, their cost, Christmas, child care. They have had some issues that have given them trouble that are now resolved (summer camps). The Order, however, will allow Ms. Giles to resolve any impasse.

[25] I am satisfied that the 6:8 schedule, combined with other provisions, appropriately considers the factors outlined in s. 18 (including but not limited to subsections 5, 6, 7, 8). I am satisfied that Mr. Blois and Ms. Giles have demonstrated the ability to communicate and resolve issues. They have not been perfect. I am satisfied that the order I am making is in the children's best interests.

(b) The second parenting issue lies in the shadows of the Interim Order.

[26] The Interim Order provided, in part:

3. Should Bain Frederic Blois be unavailable for his parenting time with the children, he shall advise Cynthia Lee Giles, in writing, of this well in advance of this absence, being as soon as he becomes aware of his impending absence. Bain Fredric Blois shall advise Cynthia Lee Giles, in writing, of his intended regular travel schedule as to his periods away from his home six months in advance of such travel.

4. Should Bain Frederic Blois be unable to personally care for the children during his parenting times with them, the children will be immediately returned to the care of Cynthia Lee Giles.

[27] These provisions give context to some of the problems this couple have had:

- Ms. Giles was very concerned at one point that Mr. Blois had left Geneva with Ms. Aisthorpe at a neighbour's home during a swimming pool party (in apparent violation of clause 4 of the Interim Order). I do not believe this sort of literal application of clause 4 of the Interim Order was or is in either the children's or the parties' interests. I note that the pre- and after-school care at Mr. Blois' home would appear to inevitably involve Ms. Aisthorpe in the absence of Mr. Blois. This would seem to suggest or demonstrate that these "clause 4 concerns" are either less an issue now, or were somewhat selectively raised by Ms. Giles.
- Mr. Blois travels some with his work – sometimes at the last minute. Ms. Giles has been frustrated at times by his last minute changes in plans. That said, she acknowledges that his work triggers this, and that the Order expects that he contact her and that the children go to her if/when he travels. Last minute adjustments, then, are inevitable under clauses 3 and 4 of the Interim Order.

[28] These clauses are not now assisting these parents and will not be incorporated in the new Order.

[29] The current situation involves the following factors:

- Occasional last minute travel by Mr. Blois, some travel by Ms. Giles.
- Both parents have re-partnered and within their own households are to some extent effectively co-parenting these children with their new partners.
- Ms. Giles somewhat inconsistently complains of last minute changes, but wants to parent anytime Mr. Blois is not present. This desire is reasonable to a point.

[30] I conclude that it is in the best interests of these children (and the parties) that these clauses 3 and 4 of the Interim Order be replaced by the expectation that:

1. Each parent notify the other if they are absent overnight during their own parenting time (i.e. during the two-week rotation).
2. If a parent is absent for more than one overnight during their parenting time, the other parent will be given the option of taking the children for that time.

[31] I note that the previous Order provided that Mr. Blois have an extended weekend and mid-week overnights. It may be that sort of schedule would be more difficult to plan work-related travel around than the block period he will now have. Time will tell. That said, if there are repeated last minute travel demands on him, the new clause will place less last minute demand on Ms. Giles, and less last minute dislocation on the children.

[32] There are also child support issues:

(a) What is Mr. Blois' income?

[33] Mr. Blois has a small business that buys, sells, and installs fish plant equipment. It crosses provincial and international borders and involves complex logistics and accounting.

[34] I conclude that the business plan outlined by Mr. Blois for the motor home purchased by the business is reasonable. It will haul equipment and house workers.

[35] I conclude that \$700.00 per month rent paid by the business to Ms. Aisthorpe (whose home houses it) is reasonable.

[36] I conclude the \$30,000.00 wage attributable to Ms. Aisthorpe's work for the business is reasonable. I note that she has not drawn the money from the business.

[37] Ms. Aisthorpe has supported Mr. Blois and his family in different ways. She purchased the parties' former matrimonial home. Ms. Aisthorpe has, it appears, expended tens of thousands of dollars supporting Mr. Blois, his business and, indirectly, the children before the Court. Mr. Blois lives in her house. His business operates from it. He parents the parties' children in it.

[38] Ms. Giles' counsel suggests that his income is \$150,000.00 per year. Ms. Giles' counsel acknowledges the amount is somewhat "cherry picked".

[39] Mr. Blois drew \$68,000.00 from the business in 2013. Demonstrable personal expenses paid for through the business add, at most, another \$10,000.00 to \$15,000.00 to this sum.

[40] I conclude Mr. Blois' income for child support purposes is \$85,000.00. I do so considering his past income and the factors outlined in the following paragraphs of Ms. Giles' Affidavit of March 17, 2014:

59. The Respondent's reported income on line 150 of his 2011 tax return was \$113,185.79.

...

67. The Respondent himself, not including what he paid his common law partner, took out \$68,576.00 from the company in 2013.

68. The Respondent often takes his common law partner on any business trips that he previously did on his own. All of their meals while travelling, including every cup of coffee at Tim Hortons, are run through the business.

69. The Respondent uses both his cell phone and vehicle for business and personal use. However, it appears that all of their vehicle and cell phone expenses are being run through the company. Both Giles and Geneva have a cell phone on his business account as does his step daughter.

I have considered sections 18 and 19 of the *Federal Child Support Guidelines* which provide:

18. (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

(a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or

(b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

(2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or

management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

...

(d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

(e) the spouse's property is not reasonably utilized to generate income;

...

(g) the spouse unreasonably deducts expenses from income;

(h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax;

[41] Mr. Blois' income is, however, uncertain. His business is growing. The Order will provide that the parties exchange T-4 slips for the previous year by March 1 of each year, commencing March 1, 2015. Mr. Blois shall provide Ms. Giles with disclosure of Ms. Aisthorpe's income from the business the previous year at the same time. Mr. Blois shall also provide Ms. Giles with the tax returns for the previous year for himself and the business (and all attachments) by June 1 of each year, commencing June 1, 2015. Similarly, Ms. Giles will provide him with her personal tax returns by June 1 of each year.

(b) What should be the amount of child support?

[42] The only reference to "shared parenting" in the legislation relevant to this proceeding is in s. 9 of the *Child Support Guidelines*. That section provides:

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account

(a) the amounts set out in the applicable tables for each of the spouses;

(b) the increased costs of shared custody arrangements; and

(c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[43] Does Mr. Blois' parenting time cross the 40% threshold?

[44] Mr. Blois will have the children 6 of 14 nights on a regular basis – 42.8% of the time, 43%. His pre- and after-school care increases this. He crosses the 40% threshold.

[45] I acknowledge that there is a certain arbitrariness to this, but I will notionally treat this daily provision of pre- and after-school care (during Ms. Giles' parenting time) as adding the equivalent of 4% to his care, making his care 47%. In a 56-day cycle, 47% would be roughly 26 nights; 40% would be roughly 22 nights.

[46] If we considered this a 56 (4 x 14) day cycle, he would have 24 overnights under the Order and the equivalent of another two overnights notionally arising from the child care. We have the equivalent of 26 overnights.

[47] Mr. Blois' income is \$85,000.00. The Nova Scotia Federal Child Support Table amount for two children for this income is \$1,165.00.

[48] Ms. Giles' income is \$96,000.00 (her Affidavit of March 17, 2014). Her Nova Scotia Federal Child Support Table amount for two children is \$1,301.00.

[49] S. 9 of the *Federal Child Support Guidelines* was recently considered by the Nova Scotia Court of Appeal in Woodford v. MacDonald, 2014 NSCA 31 where that Court considered the Supreme Court of Canada's Contino v. Contino. These decisions outline the appropriate analysis.

[50] The starting point is a simple set off of the Table Amounts for each parent's income:

Ms. Giles' income:	\$96,000.00	Table Amount:	\$1,301.00
Mr. Blois' income:	\$85,000.00	Table Amount:	<u>1,165.00</u>
		Difference:	\$ 136.00

[51] The second consideration, s. 9(b) of the *Federal Child Support Guidelines* is "the increased costs of the shared parenting arrangements". Here I have little or no evidence to indicate there is an increased cost to the shared parenting arrangement. There is probably little or no such cost. After all, this situation is simply moving from a parenting arrangement where Mr. Blois parented:

5/14 nights plus pre- and after-school care (35.7% plus an amount for child care during Ms. Giles' parenting time) to

6/14 nights plus pre- and after-school care (42.8% plus an amount for child care during Ms. Giles' parenting time).

[52] It might be well argued that Mr. Blois approached or attained the 40% threshold when the parties of their own accord agreed that pre- and after-school care would be at his home. This adjustment from paid childcare to that provided at the Blois home in fact decreased the parenting cost to both parties.

[53] I conclude here that there are no identifiable increased costs of shared parenting (as defined by the *Federal Child Support Guidelines*).

[54] Section 9(c) requires the Court to "take into account the condition, means, needs and other circumstances of each parent and of any child..."

[55] I have the incomes of both parents. Both have re-partnered with individuals who appear generous. I have little information concerning Mr. Bourque's (Ms. Giles' partner) income and means, but know that moving in with him into his home has allowed Ms. Giles to allow her parents to live in her home rent free. Like Ms. Aisthorpe, he appears to be generous in his support of this family.

[56] Ms. Giles and Mr. Blois have and will continue to share the cost of extra-curricular expenses.

[57] There has been little or no evidence of or reference to the matrimonial debt assumed by Mr. Blois, which was referred to in clause 11 of the Separation Agreement and the suggestion (then) that it "qualifies as an undue hardship claim".

[58] The starting point under s. 9 is the set-off. This would have Ms. Giles pay Mr. Blois \$136.00 per month in child support (based on their current incomes).

[59] Ms. Giles is concerned that Mr. Blois will miss some parenting time due to travel. This does not appear to be a frivolous concern. He asserts that he will not. What if she is right? What if that missed time drops him below the 40% threshold?

[60] If Mr. Blois in a 56-day (4 week) cycle is absent more than three overnights, he would be notionally dropping below the 40% threshold (the equivalent of 26 overnights minus four = 22; $22/56 = 39.2$). In that instance, I would conclude he should pay the table amount of support for one of those two "months". If he is absent more than four nights, he would pay the table amount of child support for both months. I am treating 56 days as roughly the equivalent of two months.

[61] I will order that Ms. Giles not actually pay Mr. Blois the \$136.00 per month set off the amount. Instead, Mr. Blois will have a credit each month in this amount against the eventuality that he is required to pay child support.

[62] Our Court of Appeal in Woodford v. MacDonald made it clear that a trial judge could adjourn and order that more information be filed where the Court has evidence that inadequately addresses the considerations outlined in s. 9(c) of the *Federal Child Support Guidelines*. I have concluded that here – such a course would not serve the interests of the parties nor the children. They do not need more court. That said, either party may initiate a review of the terms of this Order in the future.

[63] I apologize to the parties. The law in this area is complicated. Their circumstances are somewhat dynamic. The Order I am making is far from perfect. I am attempting with it to try to craft something that is capable of being responsive to concerns they both have. It, like all Orders, is subject to review.

Williams, J.

Halifax, NS