IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: MacRae v. Hubley, 2010 NSSC 178

Date: 20100503
Docket: SFSNMEA-064723
Registry: Halifax

Between:

Laura MacRae

Applicant

v.

Mark Hubley

Respondent

Judge:	The Honourable Justice Leslie J. Dellapinna
Heard:	April 6, 7, 8 and 16, 2010, in Halifax, Nova Scotia
Counsel:	A. Cunningham counsel for Laura MacRae T. Sheppard counsel for Mark Hubley

By the Court:

[1] Laura MacRae ("the Applicant") and Mark Hubley ("the Respondent") lived in a common-law relationship from February 2005 until April 2009 during which time they had two children who are now three and almost two years of age. They have been unable to agree on the parenting arrangements with respect to their children.

[2] The Applicant applied pursuant to sections 18 and 11 of the ***Maintenance and Custody Act R.S.N.S. 1989, c. 160*** for an order for custody in relation to their children as well as an order for child maintenance pursuant to the *Child Maintenance Guidelines*. The Respondent has filed his own application pursuant to the ***Maintenance and Custody Act*** also seeking custody of the children.

BACKGROUND FACTS

[3] The Applicant was raised in Glace Bay, Cape Breton where she lived until she was approximately 18 years of age. She then moved to Halifax for approximately three years before returning home. She was living in Glace Bay when she met the Respondent in December of 2004. The Respondent was living in Halifax.

[4] The parties began dating in January of 2005 and by February 2005 the Applicant moved to Halifax in order to live with the Respondent. Later that year the parties decided to have a family. Their son, Landon, was born on August 19, 2006.

[5] After their son was born the Applicant stayed home to look after the child while the Respondent continued to work.

[6] In July 2007 the Applicant returned to work, full-time.

[7] While the parties were at their respective jobs the Respondent's mother took care of their son. That arrangement continued for approximately six months. In January 2008, while pregnant for the parties' second child, the Applicant left her employment. The parties' daughter, Emma, was born on May 15, 2008.

[8] Shortly before Emma was born, the parties purchased a home in the Tantallon area (in the same vicinity as the Respondent's parents' home).

[9] The parties both acknowledged that after their daughter's birth problems developed in their relationship. The Applicant says that the Respondent became critical of her appearance including her weight and how she dressed, what she ate and how she cared for their house. She said he also became jealous and controlling and complained about the number of times she wanted to visit with her family in Cape Breton. She also felt that he did not contribute sufficiently to the care of the children.

[10] The Respondent denies many of the Applicant's allegations. He claims that he was an involved parent, that he assisted with all of the household chores "and in fact did the majority of the chores" when he and the Applicant resided together. He said that he believes that the parties separated because they were "just not compatible and could not make each other truly happy".

[11] The parties' relationship was essentially over by December 2008 although they continued living in the same residence.

[12] In the first week of April, 2009 the Applicant moved from their home and moved to Glace Bay with the children. The Respondent testified that he urged the Applicant to stay in the family home with the children rather than relocate to Glace Bay. She was unwilling to do that.

[13] In Glace Bay the Applicant and the children moved into the home of the Applicant's parents where they continue living today. The Applicant, in her initial affidavit, said that she decided to return to Glace Bay because she "had no money or support in Halifax".

[14] Also in April 2009 the parties agreed to share the care of the children an equal amount of time. The Applicant said that the children were in her care for two weeks and then in the Respondent's care for two weeks. The Respondent said it was more like ten days with each parent.

[15] Less than a week after the Applicant moved from the parties' residence the Respondent met his current partner, Ms. Jollimore. They almost immediately began dating. Ms. Jollimore moved into the home of the Respondent in the first

week of July 2009. She has two children of her own, a daughter aged 14 and a son aged 12. They were staying with their father when Ms. Jollimore first moved in with the Respondent but they too began living with the Respondent by the third week of July.

[16] The Applicant also began dating soon after the parties separated. She is not presently in a serious relationship.

[17] In the Applicant's opinion the shared custody arrangement proved not to be workable. On June 11, 2009 she phoned the Respondent and advised him that she would be applying to the Court for custody of the children. He says that she told him that if he did not consent to her having custody he would not see the children for approximately three months until a court hearing took place. The Applicant denies making such a threat.

[18] On June 17, 2009 the Applicant turned the children over to the Respondent. It was their mutual intention that he would have the children with him on Fathers' Day (the following Sunday), June 21, 2009.

[19] On June 20, 2009 the Respondent phoned the Applicant and told her that he would not be returning the children the following day. The Applicant subsequently learned that on June 17, 2009, after the Respondent returned with the children from Cape Breton, he left them in the care of his mother for the evening. His mother gave evidence that while bathing Landon (who was then two months short of his third birthday) she "noticed a bruise on his bottom". His mother claimed that out of concern for the child she attempted to call her family doctor but instead spoke with another doctor who was accepting her physician's emergency calls. She said that the doctor advised her to take the child to the Izaac Walton Killam Hospital to be examined. She then contacted the Respondent who in turn apparently told her to do what she thought was best. She took the child to the I.W.K..

[20] She said that she did not phone the Department of Community Services' Child Protection Services but someone from the hospital did. The Respondent testified that he was told by the Department's social worker not to return the children to the Applicant until the Department completed its investigation. Neither the Respondent nor his mother phoned the Applicant before or after taking Landon to the hospital to ask her how he may have been bruised. The Applicant claims that he was bruised on the playground on June 15, 2009.

[21] Eventually the Department of Community Services apparently determined that no abuse took place and they concluded their investigation. The Applicant took the children back to Glace Bay on July 17, 2009 after taking them from the Respondent's girlfriend in whose care they were at the time. (The Respondent had earlier left for work.) It had then been a month since the Applicant last saw the children.

[22] Because the Applicant was residing in Glace Bay she made her court application to the Supreme Court Family Division in Cape Breton. On July 3, 2009 the Honourable Justice Forgeron determined that the matter should be heard in Halifax because up to that point in time the children were more substantially connected to Halifax than they were to Glace Bay.

[23] An interim hearing took place in Halifax before the Honourable Justice Beryl MacDonald on July 30, 2009. Among other things Justice MacDonald ordered that the parties have joint custody of the children and that the Applicant would have interim primary care. The Respondent was granted specified parenting with the children every second weekend from Thursday until Sunday with the exchange of the children to take place at an agreed upon location in Antigonish, Nova Scotia. Both parties were also permitted daily telephone contact and/or webcam contact, if available, with the children while the children were in the care of the other party.

[24] Since the interim hearing the parties have been adhering, more or less, to the order of Justice MacDonald. When poor weather or illness made strict adherence to Justice MacDonald's order impractical the parties were able to agree on other arrangements. The parenting arrangement has not always run smoothly and their relationship has not improved with the passage of time. When they must communicate with each other they often argue. Their arguments have sometimes been laced with profanities, accusations and threats.

[25] The Applicant's family and friends have been supportive of her and the Respondent's family have been supportive of him. Unfortunately their families have not demonstrated much support for the opposing parent.

[26] The Respondent complained that the Applicant has been too restrictive when it comes to his time with the children. The interim order provides "There may be

other reasonable parenting time upon the mutual agreement of the parties". He said that he does not believe that the Applicant has lived up to the spirit of that provision. However, the Applicant did agree to the Respondent having the children with him during the Thanksgiving weekend and on Halloween in October 2009, from December 21 through to December 27, 2009, a week in March, 2010 and during the Easter weekend in April, 2010 even though those times were not specifically ordered by Justice MacDonald.

ISSUES

[27] The issues to be decided are: what is the most appropriate care arrangement with respect to the parties' two children and what child maintenance, if any, should be paid by one party to the other?

THE APPLICANT'S POSITION

[28] It is the Applicant's intention to continue to live in Glace Bay. Although she lived in Halifax for three years beginning in her late teens, she has no family in Halifax and very few friends. Her only connection to the Halifax area (and Tantallon specifically) is the Respondent.

[29] Her parents provide her with a great deal of support and most of her friends and some of her extended family members live in Cape Breton.

[30] Although she at one time appeared to have a very good relationship with the Respondent's family, that no longer is the case.

[31] She has enrolled the parties' son in pre-school three days a week and their daughter in the toddler program in a daycare centre in Glace Bay. She has also secured a position as a substitute teacher in the daycare that their daughter attends and, when their son is not in pre-school, she often has both children with her at the daycare. She has plans to take courses in Early Childhood Education and says that eventually she would like to become a teacher's aid.

[32] She doesn't intend to continue living in her parents' home indefinitely. She's applied for public housing and is currently on a waiting list. If housing

becomes available it is her intention to move with the children to her own residence but remain in Glace Bay.

[33] She proposes that the parties continue to share joint custody of the children and that she continue to have primary care. She has asked that the Court grant her "final say" concerning major decisions that affect the children. She proposes that the Respondent have parenting time with the children on alternate weekends (from Thursday to Sunday as is presently the case) as well as extra time around Christmas, the Easter weekend, the summer and, when the children are in school, during their March Breaks.

[34] The Applicant also seeks child maintenance in accordance with the *Child Maintenance Guidelines*.

THE RESPONDENT'S POSITION

[35] The Respondent intends to continue living with his girlfriend and her children in his home in Tantallon. His girlfriend is not currently employed but is looking for full-time work.

[36] The Respondent is employed on a permanent part-time basis as a forklift operator. He generally works ten hour shifts four days a week (Monday, Tuesday, Wednesday and Friday) but has been taking every second Friday off since the interim hearing in order to have more time with the children. He never works on the weekend. Being a part-time employee he does not get any vacation.

[37] He has applied for a permanent full-time position and is optimistic that his application will be accepted. If he is successful in obtaining a full-time position he said there are three possible shifts. He could be required to work the "back shift" from 10:00 a.m. to 7:00 p.m., the "day shift" from 7:00 a.m. to 5:30 p.m. or the "evening shift" from 5:30 p.m. to 1:00 a.m.. As a full-time employee he would be entitled to two weeks vacation each year. As is presently the case he would not work Saturdays.

[38] It is his belief that his employer will continue to be flexible with his schedule so that he can maximize his time with the children.

[39] It was his evidence that if the children were placed in his primary care he would enrol them in a daycare or have them cared for by his parents and occasionally by Ms. Jollimore. During cross-examination he said that Ms. Jollimore generally takes care of her children and, although she is of some assistance to him, he is the one who has been primarily responsible for the care of his children when they are with him.

[40] He proposes that the parties continue to share joint decision making authority over the children. If the Applicant was prepared to relocate to the Tantallon area he proposes that they share the parenting of the children on an equal basis. If she is not prepared to move from Cape Breton then he seeks primary care of the children and proposes that the Applicant have the care of the children every second weekend from Thursday to Sunday (similar to the parenting time that he currently has under the Interim Order) plus additional block parenting time during the summer months and an equal sharing of holidays and the March Break. He acknowledged that parenting time for the party who does not have primary care will become more problematic when the children begin attending school.

LEGISLATION

[41] The most relevant portions of the ***Maintenance and Custody Act*** are as follows:

> 9. Upon application, a court may make an order, including an interim order, requiring a parent or guardian to pay maintenance for a dependent child.
>
> 10. (1) When determining the amount of maintenance to be paid for a dependent child, or a child of unmarried parents pursuant to Section 11, the court shall do so in accordance with the *Guidelines*.
>
> (2) The court may make an order pursuant to subsection (1), including an interim order, for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as the court thinks fit and just.
>
> (3) A court may award an amount that is different from the amount that would be determined in accordance with the *Guidelines* if the court is satisfied that

(a) special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses or common-law partners, or the division or transfer of their property, directly or indirectly benefit a child, or special provisions have otherwise been made for the benefit of a child; and

(b) the application of the *Guidelines* would result in an amount of child maintenance that is inequitable given those special provisions.

(4) Where the court awards, pursuant to subsection (3), an amount that is different from the amount that would be determined in accordance with the *Guidelines*, the court shall record its reasons for doing so.

(5) Notwithstanding subsection (1), a court may award an amount that is different from the amount that would be determined in accordance with the *Guidelines* on the consent of both spouses or common-law partners or parents if satisfied that reasonable arrangements have been made for the maintenance of the child to whom the order relates.

(6) For the purpose of subsection (5), in determining whether reasonable arrangements have been made for the maintenance of a child, the court shall have regard to the *Guidelines*, but the court shall not consider the arrangements to be unreasonable solely because the amount of maintenance agreed to is not the same as the amount that would otherwise have been determined in accordance with the *Guidelines*.

...

18. (1) In this Section and Section 19, "parent" includes the father of a child of unmarried parents unless the child has been adopted.

(2) The court may, on the application of a parent or guardian or other person with leave of the court, 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

(a) provided by the *Guardianship Act*; or

(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 apply the principle that the welfare of the child is the paramount consideration.** (emphasis added)

CASE LAW

[42] Counsel referred me to a number of decisions including the Supreme Court of Canada decision of **Gordon vs. Goertz**, [1996] S.C.J. No. 52 which contains the accepted test to be applied in a so-called mobility case. MacLachlin, J. (as she then was) said, beginning at paragraph 49:

> 49. The law can be summarized as follows:
>
> 1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
>
> 2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
>
> 3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
>
> 4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
>
> 5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
>
> 6. The focus is on the best interests of the child, not the interests and rights of the parents.
>
> 7. More particularly the judge should consider, inter alia:
>
> (a) the existing custody arrangement and relationship between the child and the custodial parent;

> (b) the existing access arrangement and the relationship between the child and the access parent;
>
> (c) the desirability of maximizing contact between the child and both parents;
>
> (d) the views of the child;
>
> (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>
> (f) disruption to the child of a change in custody;
>
> (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
>
> 50. In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[43] **Gordon** (*supra*), contemplated an application to vary an existing custody order. There is no previous order (other than the interim order) in this case and therefore it is not necessary for either of the parties to demonstrate a material change in circumstance. The Court is to determine what is in the best interests of the children having regard to the existing relevant circumstances. There is no legal presumption in favour of either parent.

[44] **Gordon** (*supra*) lists a number of factors that are to be considered. The focus of the inquiry is on the children. The current custody and access arrangement is to be considered and if and how the children would be disrupted by an alteration to that arrangement. The Court is also to consider the desirability of maximizing the contact between the children and both of their parents.

[45] In some cases the Court should consider the views of the children. Given the young age of both children in this case it is impossible and pointless to try to ascertain their views.

[46] As for the Applicant's reason for relocating to Cape Breton, I find that it is relevant to the extent that she moved in order to return to what she considered to be her home and, more important than that, to be near her parents and extended family and friends who provide her with a support system that she does not have in Tantallon. I am also satisfied that her decision to move to Glace Bay was not in any way motivated by a desire to separate the children from their father.

[47] Ultimately the decision comes down to deciding what is in the best interest of the parties' children.

[48] In **Young v. Young**, [1993] 4 S.C.R. 3, the Supreme Court of Canada while discussing section 16 of the **Divorce Act** elaborated on the "best interests" test. At paragraph 17, the Court stated:

> " ... the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful. Rather, it has been left to the judge to decide what is in the "best interests of the child", by reference to the "condition, means, needs and other circumstances" of the child. Nevertheless, the judicial task is not one of pure discretion. By embodying the "best interests" test in legislation and by setting out general factors to be considered, Parliament has established a legal test, albeit a flexible one. Like all legal tests, it is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do."

[49] While **Young** (*supra*) was considering the best interests test in the context of the **Divorce Act**, the same test can be applied to the **Maintenance and Custody Act**.

[50] Counsel also referred me to **Foley v. Foley**, [1993] N.S.J. 347 in which Goodfellow, J. enumerated a number of considerations to be considered when trying to determine the children's best interests.

ANALYSIS

[51] In determining what parenting arrangement would be in the best interests of the parties' children I have considered the guiding principles in **Gordon vs. Goertz** (*supra*) and all of the factors listed in **Foley** (*supra*). I have considered too the comments of Ms. Coleen Shepherd made in her Assessment Report dated March 15, 2010. I have also reviewed the evidence presented by the parties and the submissions of counsel. I have concluded that both of the parties love their children and both are capable of meeting the needs of their children.

[52] Unfortunately, after the parties separated and more particularly since June of 2009 when the Applicant made it known to the Respondent that she intended to apply to the Court for custody, the parties became distrustful of each other. Not unexpectedly much of the trial evidence presented by the parties emphasized the shortcomings of the other. Ultimately though, the Applicant acknowledged that she believes the children are "fine" when they are with their father and the Respondent, similarly, credited the Applicant for being a good mother. The Respondent also said that notwithstanding the events of June and July 2009 he never thought that the Applicant was abusive to the children.

[53] It comes down to the Court deciding which of two capable parents should have primary care of their children after considering their respective plans. It is not within the Court's jurisdiction to order the Applicant to return to Halifax. She has made her decision where she wants to live and it is for the Court to determine what parenting arrangement would be best for the children taking that decision into account.

[54] The Applicant's choice to relocate to Glace Bay is understandable. After her separation from the Respondent she sought the comfort of familiar surroundings and the physical and emotional support that she receives from her parents, extended family and friends.

[55] It is equally understandable for the Respondent to be saddened and even angered by the Applicant's decision to live in Cape Breton. If the Applicant is granted primary care of the children it means that they will live a five hour drive from his home (in good weather) and his contact with the children will, by necessity, be restricted - particularly when the children begin attending school.

[56] It is impossible in cases such as this to arrive at a decision that will make everybody happy. Ms. Sheperd said at page 9 of her report:

> "As a general rule, children are usually happiest if they are able to spend a significant period of time with the non custodial parent. It is usually recommended that very young children have very frequent but relatively short visits with the noncustodial parent and that, by the age of three years, predictability and frequency are important factors. However, in this situation, the distance between parental homes makes frequent visits very difficult."

[57] And, at page 13:

> "The reality, however, is that Landon and Emma will most likely have a primary residence while, hopefully, spending as much time as possible with the other parent and benefiting from the love, concern and parenting skills each have to offer."

[58] Ms. Shepherd recommended more liberal time each month for the non-custodial parent than is currently being enjoyed by the Respondent but made no recommendation for how parenting time would be shared once the children start school. Landon will begin primary in September 2011.

[59] I have concluded - as did the parties - that so long as the Applicant continues to reside in Glace Bay and the Respondent in Tantallon that a shared parenting arrangement is not a practical long-term solution. Instead I have come to the conclusion that it is in the best interests of the children that they remain residing primarily with the Applicant. From the time of their birth to the time of the parties' separation in April of 2009 and since the interim hearing in July 2009 the children have been in her primary care. Prior to their separation it was the Applicant who stayed home with the children the majority of the time. She, more than the Respondent, was available to care for the children subsequent to the birth of their daughter.

[60] Since the Applicant moved to Glace Bay she has continued to care for the children the majority of the time and they seem to be doing well.

[61] In April 2009 when the Applicant and the children moved to Glace Bay the children were two years eight months of age and approximately one years old. At those ages their attachments were likely to their family members more than to their community and therefore moving them from Tantallon would have been less disruptive than might have been the case if they were older.

[62] The children now appear to have settled well in Glace Bay. Their mother is with them much of the time and when she isn't their maternal grand-parents have flexible enough schedules to be available to care for them. Other family members and friends may also be available for additional support from time to time.

[63] In addition to attending pre-school and daycare their mother has enrolled them in activities that children of their age frequently enjoy.

[64] To take the children from their mother and place them in the primary care of their father at this time would likely cause them considerable disruption. In addition to the disruption caused by being separated from their mother much of the time, by necessity they would be frequently cared for by people other than Respondent because of his employment schedule. They would also not be moving back to the same home environment that they were used to prior to the parties' separation. Their home is now occupied by Ms. Jollimore and her two children.

[65] The Respondent points out that the Applicant intends to move from her parents' home and also, eventually, work somewhere other than their daughter's daycare so the children's lives will be disrupted in any event. While that may be true those changes will likely be gradual and not all at once. If she moves the children will continue to be cared for primarily by their mother. If she decides to take courses or change jobs that will likely be later, after the children have settled in their new home.

[66] I believe that the Applicant will continue to foster a good relationship between the children and their father. In spite of the animosity that has existed between the parties over the past year the Applicant did agree to the Respondent having the children with him for additional time in October 2009, over Christmas 2009, an extra week in March of this year as well as the Easter weekend. It is the Court's hope that with the uncertainty of these proceedings behind the parties there will be fewer reasons for them to be combative and they will work more cooperatively to jointly raise their children.

[67] The parties should not interpret the Court's decision as a criticism of the Respondent's parenting abilities. There is simply insufficient reason to disrupt the current parenting arrangement which is working for the children.

CONCLUSION

[68] In conclusion, the following is ordered:

1. The parties will continue to share joint custody of the children.

2. The Applicant will have primary care of the children.

3. Neither party will make any major developmental decision which could significantly affect the children's education, religious upbringing, health or medical care without first consulting the other party. Notwithstanding the foregoing, the Applicant will have the decision making authority over the schools the children are to attend - assuming that schools will be in the school district of the Applicant's home. It is also recommended that the children's family physician and dentist be chosen by the Applicant and be located in Glace Bay and that the Respondent take the children to another doctor or dentist only in the event of an emergency or in circumstances that require immediate medical attention.

4. The parties will both be entitled to receive information relating to the children such as school report cards, medical reports, information regarding the children's recreational activities and the like.

5. The parties will share with each other any information they receive concerning the children's health, education, recreational activities and the like and will make reasonable efforts to keep the other informed of matters relating to the children. In addition, the parties will pass on to the other party as soon as reasonably possible any invitations, notices, or report cards or other information which she or he receives relating to the children.

6. Subject to paragraphs 10, 11, 12 and 13 below, up to an including August, 2011 the Respondent will have parenting time with the children every second weekend from Thursday at approximately 11:00 a.m. until the following Sunday at approximately 3:30 p.m.. In the event that the Respondent's regularly scheduled weekend with the children falls on a holiday weekend where the Monday is a holiday,

the Respondent's parenting time with the children will be extended to 3:30 p.m. on Monday.

7. The parties have for the past several months been meeting in Lower South River near Antigonish to exchange the children. The parties will continue to exchange the children at an agreed upon location in Lower South River, Nova Scotia.

8. Commencing in September, 2011 and subject to paragraphs 10, 11, 12 and 13 below, the Respondent's parenting time referred to in paragraph 6 above shall be varied such that it will commence on Friday after school and continue until the following Sunday at approximately 3:30 p.m., to be extended by the extra day should the following Monday be a holiday. The exact commencement time of such access (i.e. when the Applicant meets with the Respondent in Lower South River) will be such that it will allow the Applicant a reasonable amount of time to pick up the children from school and drive them to Lower South River.

9. In the event that the Respondent is unable to exercise parenting time with the children as provided by paragraphs 6 and 8 above due to illness or poor road conditions resulting from bad weather, the Respondent will have replacement parenting time with the children on a weekend as soon as possible thereafter - and preferably the following weekend unless the following weekend falls on a special event time referred to in the paragraphs that follow - after which the parties will return to the regular alternating weekend schedule.

10. The Respondent will have parenting time with the children a minimum of five consecutive days and nights between December 17, 2010 and December 31, 2010 which days will not include Christmas Eve or Christmas Day unless specifically agreed by the Applicant. Commencing in December 2011 and continuing each year therefore the parties will share equally the time with the children over their son's (and later their daughter's) Christmas vacation from school which parenting time will alternate Christmas Eve and Christmas Day itself with the Respondent having the children on Christmas Eve and Christmas Day in 2011 and every odd numbered year thereafter and

the Applicant having the children with her during Christmas Eve and Christmas Day in 2012 and every even numbered year thereafter unless the parties specifically agree otherwise.

11. The Respondent will have parenting time with the children one week in March in every odd numbered year which week, once the children start school, will coincide with the children's March Break from school. Such parenting time will not alter the alternating weekend arrangements referred to in paragraphs 6 and 8 above unless the parties agree otherwise.

12. During the months of July and August the parties will share parenting time with the children equally. If the parties are unable to agree on an arrangement that both find acceptable, such parenting time will be shared on a week on week off rotational basis with the parties exchanging the children each Thursday at approximately 11:00 a.m..

13. The parties will alternate the care of the children during the Thanksgiving and Easter weekends with the Respondent having the children with him during the Thanksgiving weekend in 2010 and every even numbered year thereafter and the Applicant having parenting time with the children during the Thanksgiving weekend in 2011 and every odd numbered year thereafter. The Applicant will have parenting time with the children during the Easter weekend in 2011 and every odd numbered year thereafter and the Respondent will have parenting time with the children during the Easter weekend in 2012 and every even numbered year thereafter.

14. Both parties are entitled to attend any function and meeting relating to the children that parents are normally entitled to attend such as school related events, medical and dental appointments, recreational activities, concerts and the like.

15. Both parties will have reasonable telephone contact, e-mail contact (if available), webcam contact (if available) and/or instant messaging contact (if available) with the children while the children are in the care of the other party.

> 16. Neither party will remove the children from the province of Nova Scotia for any reason without first advising the other party of their intention to do so and at the same time providing the other party with contact information where they can be reached in the event of an emergency.
>
> 17. Neither party will remove the children from the province of Nova Scotia with the intention of relocation without the express written consent of the other party or the consent of a Court of competent jurisdiction in this province.
>
> 18. The parties will promptly inform the other of any changes in her or his contact information such as home mailing address, home phone number, work address, work phone numbers, e-mail address or any other means of contact.

[69] With respect to child maintenance, unless the Respondent is successful in obtaining a permanent full-time position his income this year is not likely to be dramatically different than it was in 2009. In 2009 his total employment income was $24,275.90. He paid union dues of $481.00 leaving an income for child maintenance purposes of $23,794.90. I therefore order that the Respondent pay to the Applicant for the support of the two children pursuant to the Nova Scotia *Child Maintenance Guidelines* (using the Nova Scotia table) the sum of $351.00 per month commencing on the 1st day of May, 2010 and continuing on the first day of each month thereafter until otherwise ordered. The Court's order will include the usual provisions requiring that such payments be paid through the office of the Director of Maintenance Enforcement and a requirement that the Respondent provide to the Applicant a copy of his income tax return together with copies of all income information slips and a copy of his Notice of Assessment or Reassessment as the case may be received from Canada Revenue Agency no later than June 1 of each year commencing June 1, 2010.

[70] I am prepared to hear further submissions on costs if the parties are unable to agree on that issue. I direct that counsel for the Applicant prepare the order.

J.