FAMILY COURT OF NOVA SCOTIA
Citation: *A.J. v. K.M.*, 2017 NSFC 19

Date: 2017-07-10
Docket: Pictou No. FPICMCA98586
Registry: Pictou

Between:

A.J.

Applicant

v.

K.M.

Respondent

Editorial Note: **Identifying Information has been removed from this electronic version of the judgment.**

Judge: The Honourable Judge Timothy G. Daley

Heard February 1, 8 and 15, 2017 in Pictou, Nova Scotia

Final Written Submissions: March 9 and 31, 2017

Counsel: Ellen Burke, for the Applicant
Dianne Paquet for the Respondent

Introduction

[1] This decision is about a child, A.E.J., who is four years old and will soon be five. Her parents, K.M. and A.J., have separated and disagree on the most appropriate parenting arrangement for A.E.J. that will serve her best interests.

Positions of the Parties

[2] K.M. seeks an order of sole custody and permission to relocate A.E.J. with her to Ontario and parenting time with A.J. on a reasonable basis including time via videoconferencing, telephone and other electronic means and physical access whenever possible. She also seeks child support and spousal support.

[3] K.M. said that this parenting arrangement is in A.E.J.'s best interests because it will allow her to find employment, which she has been unable to do in Nova Scotia, and will bring A.E.J. closer to her extended family on her mother's side who will support them. K.M. said the move will appropriately address the risk of what she describes as the financial, emotional and physical abuse she suffered in her relationship with A.J. and his related alcohol abuse and thereby protect A.E.J. from the effects of that history.

[4] A.J. seeks an order of joint custody, that A.E.J. remain in the province of Nova Scotia and a continuation of the shared parenting arrangement that has been in place pursuant to an interim order of this court since K.M. and A.E.J. returned to Nova Scotia. In the alternative, he seeks an order that if K.M. leaves the province, he should be granted sole custody and primary care of A.E.J. and K.M. should have reasonable parenting time with her.

[5] A.J. said that his parenting arrangement would better address A.E.J.'s best interests by maintaining and reinforcing his strong relationship with her, her relationships with his extended family and thereby benefit by having maximum parenting time with him and K.M. He denies any allegations of alcohol issues or abuse, whether financial, emotional, verbal or physical, in his relationship with K.M. and maintains that he was and is a fully involved and committed parent. He said any relocation would severely impact his and his family’s relationship with A.E.J. and would not be in her best interests.

Matters Not in Dispute

[6] While the above summarizes what this case is about, it is also helpful to note what this case is not about. This is not a contest to determine who loves A.E.J. more or which side of the family holds greater affection for her. In fact, all the evidence before me clearly indicates that both of her parents love her deeply and want what is best for her. As well, A.E.J. is blessed with extended family on both sides who also love her deeply and support her as best they can. This fact cannot be lost in the maelstrom of emotion that surrounds this child on all sides.

History of Proceedings

[7] It is necessary to briefly review the history of the proceedings in this case because they are somewhat unusual. This matter came before this Court by way of an emergency application by A.J. on November 24, 2015. In a supporting affidavit filed on the same date, he explained that K.M. had taken A.E.J. with her to Ontario, originally telling him that it was for a vacation but later confirming that she intended to remain there with A.E.J. without his consent. He sought a declaration that Nova Scotia would be the jurisdiction to determine all matters concerning A.E.J., that he be granted sole custody and primary care of her in Nova Scotia with supervised access for K.M. and for the matter to be brought for further review.

[8] K.M. was personally served with the notice of application, supporting affidavit and was notified of the hearing date. She did not participate in the emergency hearing. Evidence was taken from A.J. and, in in my decision of *A.J. v. K.M.*, 2015 NSFC 19, I granted most of the relief sought by A.J. and ordered that A.E.J. be returned to Nova Scotia. That order was granted on December 3, 2015.

[9] K.M. file two applications in Ontario without notice to A.J., the first on October 9, 2015 and the second on October 16, 2015. She sought an order of sole custody and primary care of A.E.J. in Ontario. Among the concerns raised by her in her affidavit sworn in Ontario on October 16, 2015 was that A.J. might take A.E.J. from Ontario to British Columbia without her consent.

[10] Initially the Ontario application was granted on an *ex-parted* basis but, after my decision was released in Nova Scotia, further process ensued in Ontario. This included videoconference appearances by me with the Ontario judge, a settlement conference and ultimately a hearing in Ontario. That hearing resulted in the

original Ontario order being set aside and K.M. being ordered to return A.E.J. to Nova Scotia which she did in April 2016.

[11] At the next appearance before me, the parties agreed to an interim order of joint custody and shared parenting with A.E.J. spending four days with each parent on a rotating basis. That order and parenting arrangement remains in place at today.

[12] These proceedings are important for several reasons. First, it raises questions regarding the motives of K.M. in removing A.E.J. from the province under the circumstances she did. As set out in my decision, she provided almost no notice that she was taking A.E.J. for a vacation to Ontario and did so via email to A.J. when he understood they were simply heading to the local YMCA for the day. She then kept A.E.J. in Ontario for an extended period, beyond the time that she promised to return with her to Nova Scotia. She provided only intermittent contact between A.E.J. and A.J. while in Ontario.

[13] Second, while it was certainly her right to oppose the position of A.J., she chose not to participate in the hearing in Nova Scotia though she was provided with notice. Instead, she filed a separate application in Ontario which protracted the proceedings significantly and kept A.E.J. away from Nova Scotia for a considerable period.

[14] In this decision, I must consider the circumstances set out herein and in the prior decision in the matter. That said, I must do so in the context of K.M.'s position that A.J. was financially, emotionally, verbally and physically abusive to her and that she felt she had no choice but to take the steps she did in leaving Nova Scotia without his consent or without a court order. I will make further comment respecting this perspective in this decision.

History of the Parties

[15] K.M. and A.J. began their relationship in late December 2006 or early January 2007. Their parents knew each other for many years.

[16] When they began the relationship, A.J. lived in Calgary and was employed with Lector Industrial. K.M. was working and residing in Ottawa.

[17] This long-distance relationship continued until K.M. left her job, sold her vehicle and moved in with A.J. in Calgary. While there are differences in the

evidence as to the living and financial arrangements and the perception of the relationship held by each of the parties, there is common ground that they resided together in A.J.'s condominium in Calgary from sometime in 2007 until they decided to move to Nova Scotia in July 2014. In the meantime, while living in Calgary, A.E.J. was born in September 2012.

[18] While in Calgary, A.J. continue to work with Ledford, flying in and out to northern Alberta on a rotational basis. K.M. began working with the same company as well and held that position until A.E.J. was born in 2012. While working for Ledcor, K.M. also travelled to and from work sites.

[19] After A.E.J. was born, A.J. continued his work schedule and K.M. remained at home with A.E.J. K.M.'s mother, C.M., came to Calgary and stayed with the parents for 8 to 10 weeks to assist in A.E.J.'s care. Thereafter, A.J.'s mother, D.J., came to stay for some time to assist.

[20] The next significant event was the parent's decision to relocate to Nova Scotia in July 2014. While there is some disagreement between them as to how this decision was arrived at, they did relocate and moved in with A.J.'s parents, C.J. and F.J., in their home in Pictou County, Nova Scotia. A.J. continued to work with Ledcor in the west on a 14 day on/7 day off rotation schedule until he was laid off in December 2014. He secured employment locally in September 2015.

[21] Each of the parents describes a very different experience when they were living with the paternal grandparents. A.J. describes being fully involved as a parent during the time he was laid off from work in December 2014 until he began working again in September 2015. He said he continued to be an involved parent after September 2015.

[22] K.M. described A.J. as being far less involved than he maintains. Moreover, she described difficulties in living with his parents. She maintained that the paternal grandparents bickered, that C.J. interfered with her parenting of A.E.J., that A.J. was drinking and that she felt uncomfortable and unsupported in that environment.

[23] Ultimately, K.M. left in September 2015 with A.E.J. to go to Ontario as described earlier in this decision. She returned with A.E.J. in April 2016. The parties continued to live separately. A.J. lives with his parents and K.M. lives on her own.

Issues

[24] The issues for determination by me are as follows:

1. Should K.M. be permitted to permanently relocate A.E.J. to Ontario with her or should A.E.J. remain in Nova Scotia?

2. If relocation is permitted, what access arrangement for A.E.J. with A.J. would serve A.E.J.'s best interests?

3. If relocation is not permitted, what parenting arrangement in Nova Scotia, shared or primary care with one parent, would best serve A.E.J.'s best interests?

4. What amount of child maintenance, if any, should be paid by one party to the other?

5. Should spousal maintenance be paid by A.J. to K.M. and if so, in what amount and for what duration?

The Law

[25] To properly assess the evidence in this matter, it is important to review the applicable law, including the applicable legislation and case law.

Maintenance and Custody Act

[26] The governing legislation in this circumstance is the *Maintenance and Custody Act* 1989 RSNS c.160 as amended. The beginning point in any analysis under that Act is Section 18 (5) which directs that:

> In any proceeding under this act concerning the 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.

[27] Section 18 (8) further directs that:

> In making an order concerning the 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.

[28] In determining what I should consider in assessing what is in A.E.J.'s best interests, Section 18 (6) sets out some of the relevant considerations to be considered, though this list is not exhaustive. The relevant considerations under this subsection include the following:

> (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… willingness to support the development and maintenance of the child's relationship with the other parent…;
>
> (c) the history of care for the child…;
>
> (d) the plans proposed for the child's care and upbringing…;
> …
>
> (g) the nature, strength and stability of the relationship between the child and each parent…;
>
> (h) the nature, strength and stability of the relationship between the child and each… grandparent and other significant person in the child's life;
>
> (i) the ability of each parent… to communicate and cooperate on issues affecting the child

[29] As there are allegations by K.M. of family violence in her relationship with A.J., I must consider section 18(6)(j) as follows:

> (i) 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.

[30] Family violence is defined in Section 2(da) as follows:

> (da) "family violence, abuse or intimidation" means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against

> another member of that person's family in a single act or a series of acts forming a pattern of abuse, and includes
>
> (i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or
>
> (ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,
>
> A. engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,
>
> B. placing unreasonable restrictions on, or preventing the exercise of, a family member's financial or personal autonomy,
>
> C. stalking, or
>
> D. intentionally damaging property, but does not include acts of self-protection or protection of another person;

[31] There are other factors listed in this subsection, such as reference to cultural, linguistic, religious and spiritual upbringing, heritage and the views and preferences of the child, all of which I find inapplicable in this circumstance and I will not consider them.

Case Law

[32] The analysis of A.E.J.'s best interests, however, does not end with the factors set out under Section 18 of the Act. I must also look to what other courts have said in relation to the determination of a child's best interest. The leading decision in Nova Scotia respecting that analysis is *Foley v. Foley* 1993 CanLII 3400 (NSSC), a decision of Goodfellow J. I note that this decision predates amendments to the Act which set out the factors contained in section 18 (6) and I find that the so-called "Foley factors" have been largely subsumed by those amendments. That said, *Foley* supra remains a helpful analysis of the test of best interests. The following are a list of those factors which are relevant to this case:

> **15 …** In determining the best interests and welfare of a child the court must consider all the relevant factors. The diversity that flows from human nature is such that any attempt to compile an exhaustive list of factors that could be relevant is virtually impossible.

16 Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:

1. Statutory direction …;
2. Physical environment:
3. Discipline;
4. Role model;

…

8. Time availability of a parent for a child;

…

11. The emotional support to assist in a child developing self esteem and confidence;
12. The financial contribution to the welfare of a child.
13. The support of an extended family, uncles, aunts, grandparents, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. …;
15. The interim and long range plan for the welfare of the children.
16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
17. Any other relevant factors.

17 The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question.

With whom would the best interest and welfare of the child be most likely achieved?

18 The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.

19 Nevertheless, some of the factors generally do not carry too much, if any, weight. For example, number 12, the financial contribution to the child. In many cases one parent is the vital bread winner, without which the welfare of the child would be severely limited. However, in making this important financial contribution that parent may be required to work long hours or be absent for long periods, such as a member of the Merchant Navy, so that as important as the financial contribution is to the welfare of that child, there would not likely be any real appreciation of such until long after the maturity of the child makes the question of custody mute.

20 On the other hand, underlying many of the other relevant factors is the parent making herself or, himself available to the child. The act of being there is often crucial to the development and welfare of the child.

Mobility

[33] In this case, there is also the specific issue of mobility, that is, the mother's request to relocate A.E.J. with her to Ontario that requires consideration of the case law applicable to such matters. The leading decision on mobility is the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC). In paragraph 49 of that decision the court sets out the factors which must be considered when the parent has applied to relocate a child. Many of these factors, which I set out below, are very similar or identical to the provisions of Section 18 (6) of the Act though there are some that are unique to mobility decision such as this.

[34] The Supreme Court said at paragraph 49 the following:

> 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.
>
> 8. 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 interest of the child in all the circumstances, old as well as new?

Preliminary Mobility Issues

[35] Before moving on to the specifics of this matter, it is important to note that four preliminary issues arise out of the analysis in the *Gordon v Goertz* decision.

[36] The first preliminary issue is that *Gordon v Goertz* presumed that there is an existing order of custody in place and, as set out in the first factor listed at paragraph 14 of that decision, I must consider whether there has been a material change in circumstances. In this case, there is no existing order, therefore, I find that I must conduct the analysis based solely on the test of A.E.J.'s best interests.

[37] The second preliminary issue is the reference in *Gordon v Goertz* to the fact that there is no legal presumption in favour of the custodial parent although the custodial parent's views are entitled to great respect. On one hand, the court has clearly said that there is no presumption in favour of either party. On the other hand, the inclusion of the phrase, "the custodial parent's views are entitled to great respect," requires that where a custodial parent can be identified, I must consider carefully that parent's views respecting what is in the child's best interests. In doing so, I find I must be mindful that the custodial parent's views of the child's best interests may well be affected by that parent's view of his or her own personal interests.

[38] In this case, there is no existing order which identifies a custodial parent. There are interim orders but I find that these do not determine custody for the purposes of the *Gordon v. Goertz* analysis. As well, the unilateral decision of K.M. to relocate to Ontario with A.E.J. without the consent of A.J. does convey the status of custodial parent on her.

[39] Given that this is an original application respecting custody, I must also consider the interplay between the custody application and the mobility application in this matter. Put simply, should I consider the issue of custody before turning my mind to the issue of mobility, should the opposite apply or can I consider the issues together? This can have a significant impact on the analysis.

[40] There appears to be some disagreement in the cases on this issue. In the decision of *Bjornson v Creighton*, 2002 CanLII 45125, the Ontario Court of Appeal was dealing with an original application respecting custody combined with a mobility application. The court reviewed the factors set out in *Gordon* supra and indicated that the court must conduct the custodial analysis first, followed by the mobility analysis when it said:

> [19] In applying the guidelines provided by *Gordon* to the instant case, two matters require consideration. The first is that at the outset of the trial, the parents were "equally entitled to custody". As a result, for analysis purposes, the parents could not be divided into "custodial parent" and "access parent". The second is that the organization of his reasons is such that the trial judge appears to have decided the question of mobility first and the question of custody second. With respect, that strikes me as putting the cart before the horse.

[41] In the decision of *Blennerhassett v. MacGregor* 2013 NSCA 77, the Nova Scotia Court of Appeal held that there was no order in place, but where the parties had a *de facto* parenting arrangement with the mother having primary care of the child for several years, that *de facto* arrangement meant that the mother's views were to be treated as the views of the custodial parent under *Gordon v Goertz*. As the court noted:

> 37 I also agree that the judge is to greatly respect the views of the *de facto* custodial parent. But this is not because that parent enjoys a legal presumption. Rather, it is because, in the child-centered balance, "the importance of the child remaining with the parent to whose custody it has become accustomed" (McLachlin, J. - *Gordon v. Goertz*, para 50) carries weight. But the ultimate question remains - "What is in the child's best interest?", not "What does the custodial parent want?"

[42] In the decision of *Burgoyne v. Kenny*, 2009 NSCA 34 the Nova Scotia Court of Appeal was dealing with a similar circumstance of an original custody

application and a mobility application. In addressing the *Gordon v Goertz* mobility analysis, the court held as follows:

> 19 *Gordon v. Goertz*, supra involved an application to vary an existing custody order granted under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). … In dismissing a further appeal…, the Supreme Court of Canada observed that such an application requires a two-stage inquiry. The threshold issue is whether there has been a material change in the circumstances of the child since the last custody order was made …. If a material change is demonstrated the judge must enter into a consideration of the merits and make the order that best reflects the interests of the child in the new circumstances (*Gordon v. Goertz*, supra, para. 9).
>
> 20 Like the *Divorce Act*, the "*MCA*", s. 37(1) requires a material change in circumstances as a pre-condition to variation of an existing order. Obviously, in the case of an original custody order, as is sought here, it is not necessary to demonstrate a material change in circumstances because there is no prior order. (I make no comment on whether a material change must be established where, although there is no prior order, a custody agreement is in place.)
>
> 21 The factors relevant to the second stage of the inquiry, as enumerated in *Gordon v. Goertz*, supra, are nonetheless applicable to the determination of the children's best interests. (*D.P. v. R.B.*, 2007 PESCAD 25, P.E.I.J. No. 53 (Q.L.) (A.D.) at para. 41 and the cases cited therein).
>
> 22 Where there is no prior order or custody agreement, as is the case here, the parents are "equally entitled to custody" with neither being considered the "custodial" or "access" parent (*MCA*, s.18(4)). The interim orders, which permitted the children to reside with the mother in Quebec pending the custody hearing, do not bestow the status of custodial parent. Thus, to the extent that *Gordon v. Goertz* references, as relevant, the status, interests or wishes of the custodial parent, the factors must be modified.

[43] In the present case, this is a circumstance of a recent separation and proposed relocation of the mother with the child to Ontario. Thus, unlike *Blennerhassett*, there was no existing *de facto* custodial arrangement. I adopt the reasoning of the Court of Appeal in *Burgoyne* which suggests that where there is no existing custodial arrangement or an order, the court must enter upon an analysis which blends the factors set out in the *Act*, *Foley* and *Gordon v Goertz*. This blended analysis, which is essentially a structure for determining the best interests of the child, is the method I will employ in this case.

[44] In certain cases, there is merit in the view of the Ontario Court of Appeal in *Bjornson* in circumstances where, as in *Blennerhassett*, there has been established a *de facto* custodial arrangement. In that circumstance, determining the custodial parent would be important given that *Gordon v Goertz* confirms that "the custodial parent's views are entitled to great respect". Again, in the present case, there is no

custodial parent, both because the separation was immediately followed by the relocation and because there is no existing custodial order.

[45] The third preliminary issue is the direction in *Gordon v Goertz* that I should consider the custodial parent's reasons for moving only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child. On first reading, this appears to restrict my consideration of any evidence brought forward by K.M. as to why she wishes to move as a factor in considering A.E.J.'s best interests. The Supreme Court, however, did leave the door open for me to consider such reasons in exceptional cases.

[46] For example, there is case law to support consideration of the economic impact of the parent's decision to move with the child in assessing that child's best interests. In other words, while I should not consider the mother's reason for moving, I find it reasonable and necessary that I should consider what the likely economic impact will be on A.E.J. if I approve her relocation to Ontario. I find support for this analysis in the decision of *Woodhouse and Woodhouse* [1996] 0.J. No. 1975.

[47] The fourth preliminary issue is that though the *Gordon v Goertz* decision contemplates two options available to the court on the unique circumstances of that decision, there are in fact three options available to any court in mobility cases. On the facts in *Gordon v Goertz* the court had the option of permitting the relocation of the child with the mother to Australia or, given that the mother was already residing in Australia and would remain no matter what, the court had the second option of a change in custody and primary care with the child remaining with the father in Canada.

[48] As noted by Jollimore J. of the Nova Scotia Supreme Court Family Division in the decision of *Kanasevich v. Robinson* 2014 NSSC 96 there is a third option available to the court whereby I could order that the *status quo* remain in place and that the child therefore remain in the county in the care of her mother. Jollimore J. reviewed the decision of *Woodhouse and Woodhouse* supra in support of that proposition. I find that this is a common sense third option so long as the parent in question makes it clear that he or she would remain with the child if the child is not permitted to move. In this case, the mother has made it clear that she will remain in Pictou County if the child is ordered to remain here and will not relocate without A.E.J..

Credibility

[49] It has been suggested by counsel the credibility is unusually important in this case. While I agree that credibility is a factor that must be carefully considered and weighed in analyzing the evidence, I do not find that it is more relevant to this case than in most others.

[50] In this case, there are very different views of history and circumstances of the relationship between these parents as reflected in each parent's evidence and that of their extended family members. That said, and as this decision will make clear, many of those differences do not require specific findings of credibility but merely required acknowledgement that there is a difference of perception among the witnesses based on the same general set of facts and circumstances. While I will make certain specific findings of credibility, overall I can say that it is clear to me that almost all the evidence in the matter was given by parties or witnesses who genuinely believed what they said. It is the interpretation of what they observed and testified to that differs among them. This is not unusual in cases such as this and it will be my responsibility to sort through the evidence to make the determination as to what evidence I accept or reject and how that evidence informs my decision regarding A.E.J.'s best interests.

[51] The leading decision respecting assessment of credibility in civil matters is that of *Baker-Warren v. Denault* 2009 NSSC 5 in which Justice Forgeron provided the following helpful comments:

> 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. v. Gagnon 2006 SCC 17, 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. R.E.M. 2008 SCC 51, 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: Re: Novak Estate, 2008 NSSC 283 (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;
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: Faryna v. Chorney [1952] 2 D.L.R. 354;
> g) Was there an internal consistency and logical flow to the evidence;
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?
>
> 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 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in Re: Novak Estate, *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., [1996] 2 S.C.R. 291 at 93 and R. v. J.H., [2005] O.J. No. 39, *supra*).

[52] It is within this legal framework that I must review and analyze the evidence and in making my decision, consider all the evidence and all the factors that are relevant to these parties and to A.E.J.

Should K.M. be permitted to permanently relocate A.E.J. to Ontario with her or should A.E.J. remain in Nova Scotia?

The Evidence

[53] K.M. argues that she should be permitted to permanently relocate A.E.J. to Ontario with her for several reasons.

Financial Abuse

[54] She alleged that A.J. was financially abusive in their relationship. A great deal of evidence was adduced respecting her financial arrangements with A.J., particularly after they began living together in Calgary. She said she arrived with just under $700 to her name. A.J. was away working when she arrived at his

condominium which was empty except for a bed, table and chairs and a few kitchen staples. She described managing for the next 20 days with no help from him. She said that when he finished his shift with Ledcor he did not come to Calgary to be with her but rather travelled to Nova Scotia to see his family and she was not invited.

[55] She said when she began working with Ledcor in February 2008, A.J. began requiring her to make financial contribution to him. She gave him access to her bank accounts and he offered to help her invest her money to get out of debt and to make better financial choices. For example, she contributed $500 per month in cash to living expenses which eventually increased to $750 per month.

[56] In one of her affidavits she set out a summary of all the monies that were paid to A.J. from March 2008 through to August 31, 2015 and said this amounted to over $150,000. She accepts that $12,860 of this amount provided by her to A.J. were “legitimate and accepted” sums used to pay credit card and loan payments. Other monies included what she described as a "mortgage contribution" of $44,000 and checks written to A.J. totaling over $52,000.

[57] Of concern to her was her investment account that was managed by A.J. and which suffered a loss of more than $11,000. She said that he maintained he was competent to manage her investments yet she said that it was his fault that she lost the sum described.

[58] She said that A.J. demanded that she provide him with the Child Tax Benefit and Universal Child Care Benefit received for A.E.J. and this money was paid into an RESP for A.E.J.

[59] At one point in her affidavit she said, "I wish I had the capacity then to have stopped A.J. from wasting my money that I worked very hard to save." Essentially, she suggested throughout her evidence that she was powerless to resist his demands, that he wasted her money and that she paid excessive amounts to him that were improper and unreasonable.

[60] She said A.J. demanded an accounting of all the money that she spent, that he had access to all her banking records and trading authority on her investment

account and that he did not share with her what he did with her money nor did he disclose his own financial circumstances.

[61] To these allegations, A.J. denied them all and said K.M. consented to his access to her accounts and to him handling the finances. He says all payments were for legitimate expenses. He said she agreed to allow him to invest money for her without objection. He denied any coercion or pressure by him.

[62] K.M. described these allegations of financial abuse in the context of the second reason she said that she should be allowed to relocate with A.E.J. to Ontario, that of domestic violence.

Family Violence and Alcohol Abuse

[63] She said that in 2010 A.J. was angry with her respecting an issue at work. They were alone in the work camp and she saw A.J.'s face change to a hostile expression while they were arguing. She said he would not leave her alone. He was yelling in her face. She pushed him onto his bed to try to get some personal space after they had been arguing for over 20 minutes. She said she went to her room and he followed her there. She said he walked up to her and without hesitation grabbed her throat and squeezed it hard with one hand. She said she was terrified and he threatened to harm her worse if she ever pushed him again. She described him as being quite quiet when he made threats and said her throat was sore for weeks after. She did not report the incident in part because A.J. was so apologetic and seemed to be genuinely sorry for what he had done.

[64] In the same year, she described another incident of violence. She said she was working on the same jobsite with A.J. and they were arguing as they were flying from the jobsite. She said that A.J. punched her in the leg, demanding that she started to listen to his work instructions. This punch left a large bruise on her leg and it took a couple weeks to heal. From that point on she concluded that she was not safe around A.J. when he became angry.

[65] On another occasion, she said he grabbed her by the arm to hold her still while he finished what he had to say to her. She felt she had no choice but to stand still and allow him to continue to speak.

[66] K.M. also described a pattern of emotional and verbal abuse against her by A.J. She said A.J. insulted her, called her names and displayed anger towards her. She described receiving telephone calls from him, berating her for her spending habits.

[67] K.M. also described an incident in July 2015 when she said A.J. had a nasty argument with his mother and yelled foul language at her. She said this took place in front of A.E.J. Both D.J. and A.J. deny this allegation.

[68] She said that in January 2014 she was told her grandfather was dying and A.J. refuse to believe her. At the time, they were visiting the home of A.J.'s sister, H.E., who mediated a resolution between them and she was able to travel with A.E.J. to see her grandfather before he died. She described this as one of the worst days of her relationship and of her life.

[69] To these various allegations, A.J. absolutely denies any physical violence or emotional or verbal abuse towards K.M.

[70] His sister, H.E., testified in this matter and confirms that when K.M.'s grandfather was dying in January 2014, she did sit with both parents to try to work out an arrangement. She said that A.J. was concerned about A.E.J. travelling with her mother in such a circumstance but that she assisted in resolving the dispute.

[71] I note the evidence from K.G., A.J.'s maternal aunt, who testified that she was able to observe K.M. and A.J. in their parenting of A.E.J. during her visits at the home of her sister in Nova Scotia. She echoes much of the evidence of D.J. and F.J. that A.J. was a loving and involved father reach she said she never saw him drink to excess, was unaware that K.M. was unhappy in the relationship and that she felt betrayed by K.M.'s actions in taking A.E.J. to Ontario as she did.

[72] K.M. also said that after A.E.J.'s birth, and while they remained in Calgary, her mother and A.J.'s mother visited. She described A.J.'s mother, D.J., as being very interfering with her parenting of A.E.J. She also testified that she was primarily responsible for A.E.J.'s care while they were in Calgary, in part because she was not working after A.E.J.'s birth while A.J. continued to work.

[73] D.J. testified that she did travel to Calgary to be with the parents and A.E.J. after A.E.J.'s birth and believed that she was being supportive and helpful to K.M. The were some disagreements about issues such as A.E.J. sleeping in a swing versus a crib but it was her evidence that things went well and it was her observation that the parents were happy as a family. She said that she was proud of her son for being a hands-on parent with A.E.J.

[74] The evidence of A.M., K.M.'s sister, was also helpful. She testified that she visited A.J. and K.M. at their residence in Calgary for six weeks during the winter of 2013. She said that K.M. provided most of the care for A.E.J. and did all the housework and cooking. She did confirm that A.J. looked after A.E.J. for two to three hours on one occasion while they were out shopping but even then, they received a call from A.J. asking where A.E.J.'s clean clothes were kept. She said A.J. only held A.E.J. occasionally and usually spent his spare time in the garage smoking and drinking beer. She was unable to say how much he drank.

[75] She testified that there was one incident when she saw A.J. become angry. They were all in the car and A.J. was driving. He was describing his father's decision to buy a different vehicle than the one A.J. had recommended to him. A.J. became very angry and was so infuriated that he was red in the face, swearing about his father not listening to him. This made A.M. uncomfortable and somewhat fearful.

[76] Respecting the incident involving the death of their grandfather, A.M. testified that she received a call from A.J. questioning how poor the grandfather's health really was and whether this was just a plan for K.M. to visit Ontario. She confirmed her grandfather's condition and the trip took place.

[77] T.M., K.M.'s father, provided evidence as well. He is a retired Anglican priest and has known A.J.'sS parents for decades. A.J.'s father, F.J., and T.M. were both military chaplains and they and their wives formed a strong friendship during their time in the military.

[78] In his evidence, he expressed concern respecting the relationship between K.M. and A.J. and his observations of A.J. For example, he noted that during a visit to the cottage in the summer of 2008, he observed that A.J. consumed an unusual amount of beer, drinking every evening and some afternoons. He testified

that after they left, he cleared 72 empty beer bottles from the cottage, a number he had never seen before.

[79] He observed that A.J. became more relaxed and engaged when drinking and did not observe any negative behaviors related to alcohol consumption during that visit.

[80] During the two visits to Ontario in 2009, T.M. again observed that A.J. consumed significant amounts of beer though did not have direct knowledge of how much. Again, they cleaned up many empty beer bottles. He admitted in cross-examination that he could not say if some beer was consumed by K.M. or others.

[81] It was his evidence that on a Saturday A.J. was fidgety and anxious to purchase beer as it would not be for sale the following day. A.J. was driving and sped up, talking more quickly until he could purchase the beer for the weekend.

[82] He also recalled K.M. coming to the house on foot seeking alcohol for A.J. who had run out of beer. He observed that K.M. was quiet and embarrassed by the request.

[83] Respecting A.J.'s temper, T.M. testified that in the summer of 2009 they were visiting the J. family in Nova Scotia and he observed A.J. becoming extremely angry with his father. F.J. had purchased some lobster with A.J.'s money and A.J. was of the view that his father had not made a good deal. He described A.J. as enraged with his father because the lobsters were not the correct size. He said A.J. was very red-faced, leaned forward and yelled at his father, his fists clenched. T.M. described that it was very difficult to observe such rage being exhibited towards the father. He felt it was insulting to F.J. but neither F.J. nor D.J. did anything to address A.J.'s behavior.

[84] T.M. testified that A.J. stormed out of the room and returned about an hour later as if nothing had happened. He described this is the most difficult of the arguments he witnessed but that F.J., A.J. and D.J. regularly sniped at each other and argued daily.

[85] There were two further visits in 2010 and on both occasions T.M. said that he paid more attention to A.J.'s alcohol consumption. He noted that A.J. generally

commenced drinking beer around noon each day and continued well into the evening. T.M. was not in A.J.'s company all day but was there during the day at different times. He said that A.J. drank a lot and again he and his wife removed many beer bottles after those visits.

[86] He also testified that he noticed during the visit in the summer of 2010 that K.M. began to seek A.J.'s opinion before answering for herself. He described her as being more somber, rarely laughing and was not engaging in conversations as freely.

[87] T.M. did note visits in the fall of 2010 and 2011 which were uneventful.

[88] After A.E.J.'s birth in 2012, T.M. said that K.M., A.J. and A.E.J. visited them in July 2013 and he noticed a marked difference in K.M.'s demeanour when in the presence of A.J. as compared to when he was not present. He was concerned for the health of the relationship, even more so than he had been the previous years. He noted that K.M.'s attention was on the care of A.E.J., was consistent, child focused and she was the parent responding to most of A.E.J.'s needs. He did not observe A.J. being particularly involved in care of A.E.J., including changing diapers or feeding her.

[89] T.M. testified that he again observed A.J. at the cottage that summer continuing his habit of drinking regularly and when no one else was drinking. He described him having a beer in his hands always and even when carrying or holding A.E.J.

[90] T.M. testified that during a visit by K.M. and A.E.J. in the summer of 2014, he told K.M. that he could not give his blessing to the marriage between her and A.J. until he was certain that A.J. had received counselling for alcohol abuse, anger management and they received couples therapy. K.M. did not disagree. He did not have this conversation with A.J. or anyone in his family.

[91] During this time and into 2015 K.M. was discussing with her father that she felt trapped in the relationship and in the J's home.

[92] Notwithstanding the concerns raised by K.M. and others respecting A.J., there is nothing in the text communication between K.M. and A.J. or anyone else

in her family before the court which suggests that he was abusive, controlling or otherwise inappropriate towards K.M. To the contrary, given what he was facing after A.E.J. was taken from the province without his knowledge or consent, the tone and content of this communication appears to be relatively measured and appropriate in the circumstance.

[93] During the time that K.M. took A.E.J. to Ontario without the consent of A.J., T.M. described her efforts to keep contact between A.E.J. and her father but testified that where they were living they had a poor internet connection and any FaceTime access had to be done at a location near the home.

[94] A.J. denied that he has a problem with alcohol and says he has never been intoxicated around their daughter. He said he does enjoy a beer from time to time on social occasions.

[95] A.J. also admitted that approximately 12 years prior he was convicted of driving while impaired, lost his license for one year and received a fine. He said he has not lost his license since then.

[96] The evidence of A.J.'s mother, D.J., was that she had observed both K.M. and A.J. enjoying a drink from time to time. She said nothing further about any alcohol consumption by her son.

[97] Of interest was the evidence of A.J.'s father, F.J. He is a retired chaplain with the Canadian Armed Forces who fulfilled that role for approximately 26 years. He testified that during the time that K.M. and A.J. lived with them, he did not witness any arguments that were out of the ordinary though he said they did disagree from time to time. He said most of their discussions focused on finances and purchasing a home in the county. Other discussions were around K.M. wishing to visit family in Ontario and A.J.'s concern about the cost.

[98] His evidence was that he had never seen A.J. lose his temper or be physical in any way with K.M. He said that he never observed or been made aware of any abuse suffered by K.M. while living in their home.

[99] Respecting alcohol, he testified that he had never known K.M. or A.J. to have any issues with alcohol and only observed them having social drinks in a

responsible fashion. He said he never observed his son to be intoxicated in their home or otherwise.

[100] He said that he and A.J. sometimes disagreed about F.J.'s management of his diabetes but any arguments were respectful and never took place in front of A.E.J. They resolved such issues within minutes and moved on.

[101] In cross-examination F.J. maintained that when they were living at the home, A.J. did most of the care of A.E.J. until about noon and thereafter K.M. took full charge of the baby.

[102] Respecting alcohol, F.J. struggled in his cross-examination testimony. He said that A.J. sat in his vehicle making telephone calls during the evening for an hour or more. He believed that he was speaking to friends regarding possible employment and ultimately found a job.

[103] He described being concerned that A.J. was drinking beer in the car and he smelled it on him when he came into the home occasionally. He did go out on at least one occasion thinking his son was drinking, but he was not.

[104] He initially denied speaking to anyone, including his wife, about being concerned with A.J. being an alcoholic or drinking to excess. He did, however, say that he was concerned for some time about this but now he no longer is. He then admitted that he believed, in retrospect, he may have discussed this concern with his wife and admitted there were times that he wished that his son would drink less. He was also aware that his son was drinking at the home of his friend and his brother. He did admit to picking up A.J. from time to time.

[105] His evidence was that, since A.E.J. had been in a shared parenting arrangement since May 2016, A.J. was not drinking when in care of A.E.J.

[106] It is my belief that F.J. was struggling with his concern regarding A.J.'s consumption of alcohol. His testimony, while not evasive, was certainly difficult for him to articulate and appeared to be the evidence of a father who was struggling to deny his concern regarding his son's alcohol consumption.

[107] K.M. provided in one of her affidavits a summary of the text exchanges between her and A.J. detailing his requests to be picked up at various locations. She says each of these requests was made because A.J. had been drinking and was unable to drive. Her evidence was that there were over 40 occasions between January 16, 2015 and September 4, 2015 that such requests were made. A.J. did not contest this evidence.

[108] Also of relevance was a text sent by A.J. to K.M. on December 11, 2015. At that time, K.M. was residing in Ontario with A.E.J. at the home of her parents. It was A.J.'s evidence that he did not know where A.E.J. or K.M. were.

[109] In the text, A.J. inquires, "who drives the red Dodge pickup??" K.M. says that this suggests that not only did A.J. know where she was with A.E.J. at that time but he was in fact close by. She said that when she received the text message, she was at her parents' home, her sister was visiting and it was her red Dodge pickup truck was parked outside. To her knowledge, A.J. had never seen that vehicle before. She testified that the only way A.J. would know about the truck was if he was watching her parents' home. This evidence was offered to suggest that A.J. was being untruthful in his evidence respecting his knowledge of the whereabouts of A.E.J. and her mother and, by this text, was attempting to intimidate K.M.

[110] Also of relevance is the evidence of A.J. in cross-examination regarding his parenting time after K.M. moved with A.E.J. to Ontario and before she returned with A.E.J. to Nova Scotia. He testified that he continued to work at Ledcor and travelled to and from Alberta for that employment. During that time, and on his time off, he testified that he travelled to British Columbia one or two times to see his family there and on one occasion to Ontario to see a lawyer.

[111] When asked why he had only requested three visits with A.E.J. given that he was travelling back and forth from Nova Scotia to Alberta and had taken at least one occasion to go to British Columbia to see his family, his testimony was that he couldn't recall if he called or texted for visits or not. He also testified that he had asked plenty of times in September 2015 for access and it took a lot of effort to set up the visits. He also testified that he wanted more visits but had flight difficulties from time to time.

[112] Later in his cross-examination he admitted he had visited British Columbia at least once and had gone to Calgary one or two times during his time off. K.M. suggests that A.J. was not as interested in parenting time with his daughter as he might otherwise say and instead spent time in Calgary and British Columbia rather than pursuing visits in Ontario.

[113] A.J. was asked in cross examination regarding the evidence of K.M. respecting any requests for access made by him while she and A.E.J. were in Ontario. K.M. set out in her affidavit a chart summarizing all the communication between them during that time and he offered no evidence to contest the summary. He did say that there was other communication but parenting time was denied. He offered no proof of that communication.

[114] The summary provided by K.M. confirmed some telephone conversations between A.E.J. and her father, various videos and photographs sent and the few access visits that took place. It also sets out the time between A.J.'s shifts at work during which he would have been available for access time. K.M. maintains that this evidence shows how little effort was made by A.J. to exercise access time with his daughter. A.J. says that doing so was extremely difficult and had to be negotiated between counsel, limiting the opportunity.

[115] I acknowledge the evidence that he did have text communication with K.M. and others in the family requesting time with A.E.J. which was at times ignored or rejected.

[116] There was a great deal of ink expended in various affidavits discussing the time when K.M. and A.J. lived with his parents in Nova Scotia. In particular, there is a great deal of evidence of the behaviors of D.J. and her daughter, H.E., and whether they were supportive of or interfering with the parenting of A.E.J. by K.M. I accept that each of them, D.J. and H.E., believed that they were providing assistance, support and advice to K.M. in good faith. I also accept that K.M. received these suggestions, comments and assistance without much resistance but did perceive those behaviors and comments as interfering with her parenting and marginalizing her views as a parent. Given the evidence of K.M.'s state of mind, it is not surprising that she did perceive the efforts in the way that she did but I also find, as noted earlier, this effort was made in good faith. I therefore do not find this evidence to be particularly relevant in determining the best interests of A.E.J.

[117] With respect to K.M., there were concerns arising from her evidence. For example, she failed to disclose a bank account which was identified in cross-examination as containing at least $9,841.94. As well, she described another bank account listed in her Statement of Property as having a "fluctuating and usually nominal balance" yet on cross-examination it was established that it had an opening balance in December 2013 of over $25,000 and appeared to have a balance of between $20,000 and $30,000 at times.

[118] There are also issues surrounding her behavior in taking A.E.J. to Ontario in 2015 without the consent of A.J. These are canvassed elsewhere in this decision. The way she carried out that removal of A.E.J. from Nova Scotia leaves the court with concerns respecting her decision-making and motives though I do acknowledge her experience of family violence no doubt played a part in her decisions.

[119] I am also mindful of the evidence that her family participated in this removal of A.E.J. from Nova Scotia knowing that it was likely against the wishes of A.J. This was evident in the evidence of T.M. confirming that the extended family was prepared to participate in this process without bringing an application in Nova Scotia or even providing appropriate notice to A.J. prior to leaving the province.

[120] Respecting evidence of why a relocation to Ontario is in the best interests of A.E.J., K.M. said several things. She noted that since April 2016 when the shared parenting arrangement was put in place "… there have been disturbing comments out of A.E.J.'s mouth and I divert her as much as I can when she makes statements that are odd or age inappropriate." She said that A.E.J. will thrive in whatever environment is created for her so long as it is safe and secure, "but my experience in the J. family home was one of strife, sniping, insulting behavior about and to each other and a general sense of uneasiness. If that atmosphere is continuing then that will affect A.E.J."

[121] K.M. went on to express concern about the behavior she began observing in A.E.J. She described her as becoming angry at the slightest hiccup, she did not respond favorably to being told "no", that she would expect a bribe to behave or would be persistent in poor behavior until the adult relented. She described being regularly undermined in her parenting by A.J., D.J. and sometimes F.J.

[122] She also said that this relocation was part of her effort to model good parenting behavior for A.E.J. Given A.J.'s reduced income, the move would allow her to find employment to improve A.E.J.'s life

Mobility Analysis and Decision

[123] In assessing all the evidence before me from the various witnesses, I will now set out my findings with respect to the application for mobility.

[124] In assessing this evidence, I am mindful that each witness had an interest in the litigation through their relationship with one of the parents and thereby had a motive to deceive. I am mindful that even if there was no intent to deceive, each witness may have an unconscious inclination to perceive or describe events in a manner that favours their preferred outcome. I am also mindful of my obligation to seek out corroboration where possible and to carefully assess this evidence for internal and external consistencies.

[125] Respecting the allegation of financial abuse, I do not find that K.M. has established this on the evidence. While she may honestly believe that she was subjected to financial abuse, it was her evidence that she permitted A.J. to have access to her accounts and control of her investment account. Moreover, I do not find that she established that A.J. abused that access or took any funds that were improper other than the fact that he appears to have been responsible for the loss of $11,000 in investments on behalf of K.M. While I certainly appreciate that the victim of abuse is often unable to control their environment, and while I do accept that K.M. gave up control of her finances to A.J. in part due to his controlling nature, I cannot find that she has made out that he was financially abusive.

[126] I find that K.M. has proven, on a balance of probabilities, that there existed family violence within the relationship between herself and A.J. I found her evidence respecting the allegations of physical violence to be straightforward and persuasive.

[127] In part I arrive at this conclusion based upon my further finding that K.M. has proven on a balance of probabilities that A.J. exhibits an extreme temper. This was part of her evidence but also part of the evidence of T.M., C.M. and A.M. The

descriptions of A.J. explosive temper in the car while discussing his father's decision to purchase a different vehicle and in the home when A.J. was critical of F.J.' decision to buy lobsters as well as the evidence of A.J. using foul language in an argument with his mother was straightforward, persuasive and compelling. I accept their evidence respecting what they witnessed and do not accept the evidence of A.J. or his parents when they say that he did not exhibit such a temper. It may be that A.J. behavior is now so common within the family that his parents have come to accept it without notice. Even if that is true, I find that his temper is severe when he perceives that he is not being respected and that this was part of the cause of the violence towards K.M. on the two occasions in their relationship.

[128] I also find that K.M. has proven on a balance of probabilities that A.J. was emotionally and verbally abusive towards her during their relationship and accept her evidence respecting the various examples of this. I do not find A.J. denial to be persuasive nor do I accept the evidence of his parents on this issue.

[129] I do find that K.M. has proven on a balance of probabilities that A.J. has a significant alcohol problem. I find her evidence, and the evidence of T.M. and C.M. on this issue to be straightforward and persuasive. I also note the evidence adopted by A.J. respecting the over 40 occasions when he required drives home over a fairly short period of time and the evidence of his father, F.J., who confirmed his own concerns regarding his son's alcohol consumption. While there is no evidence before me that A.J.'s alcohol problem caused any direct harm to A.E.J., this problem, when combined with the issue of domestic violence, attempts to control K.M. throughout their relationship and K.M.'s testimony regarding concerns she has for A.E.J.'s behavior arising from these circumstances caused me concern.

[130] In making these findings I am mindful that the physical violence occurred years ago and, now that they are separated, the other abusing behavior has been mitigated. I am also mindful that there is little evidence of the effect of this family violence on A.E.J. I do find it would affect her when she witnesses some verbal abuse and would indirectly affect her due to the impact it had on K.M. I also find that, while this history may affect A.J.'s ability to provide for A.E.J., an appropriate order can address this concern. Finally, I am satisfied that the parties can effectively communicate concerning A.E.J.'s best interests under an appropriate order.

[131] I also take into careful consideration the reality that if I permit A.E.J. to relocate with her mother to Ontario, it will significantly impact A.E.J.'s relationship with her father and his family, including A.E.J.'s paternal grandparents. I do find that A.E.J. has a meaningful relationship with A.J. and a meaningful relationship with D.J. and F.J. There is very little evidence before me that during the time that the shared parenting arrangement has been in place that any concerns have arisen. I take into careful consideration the importance of maintaining A.E.J.'s relationship with her father, paternal grandparents and extended family in Nova Scotia.

[132] I also take into careful consideration the importance of maintaining A.E.J.'s relationship with K.M., her parents and extended family in Ontario. I find that, though A.E.J. has not spent as much time with her maternal grandparents and extended family, I do find that A.E.J. does have a meaningful relationship with them which must be considered in any parenting arrangement order.

[133] I find that, throughout A.E.J.'s life, K.M. has been her primary caregiver. This was obviously the case when A.J. was travelling and away for work. I also accept that this was also the case when A.J. was present in the home with A.E.J. I accept the evidence of K.M. on this issue and do not accept the evidence of A.J. that he was as involved father as he claims. That said, he certainly had a meaningful role in parenting A.E.J. and this must be supported in any order.

[134] I further consider that K.M. has been unable to obtain employment in Nova Scotia. Her initial plan in moving to Ontario was to work at a tea room but unfortunately that business has closed. That said, it is her evidence that a motivation for relocation to Ontario is to find suitable employment so that she can provide an appropriate life for A.E.J. I accept that as being part of her motivation and I further find it is relevant in considering an appropriate parenting arrangement for A.E.J.

[135] I have concerns respecting the plan for shared parenting in Nova Scotia. A.J. testified that he plans to remain in the home of his parents for now. I do not believe that that is sustainable in the long run and he testified that he will be looking to obtain his own home with A.E.J. if shared parenting is granted. I am concerned about this proposal based on my findings respecting his parenting, temper, alcohol use and controlling behavior.

[136] Even if he were to remain in his parents' home, I have concerns respecting his behavior with his parents. They admit to bickering. The evidence of A.J.'s temper and treatment of his father and mother as well as his drinking behaviors has been set out above. I do not believe that either of them has insight into how such an environment may affect A.E.J. and that presents a risk to her.

[137] On the other hand, I likewise have concerns regarding the lack of detail in K.M.'s plan for A.E.J. in Ontario. As noted, her employment plan has fallen through but she still has plans to seek employment in Ontario. She has plans to reside with her parents and ultimately to find her own accommodation. She said that she would support and encourage the relationship between A.J. and A.E.J. despite the distance involved.

[138] She has not presented any information respecting, a family physician or dentist for A.E.J. or any information on her education plan. Childcare is not clearly dealt with. Put simply, there is very little detail of what she has in mind for A.E.J. other than to move with her to live with her parents.

[139] Moreover, the rationale provided by K.M. as to why this in is A.E.J.'s best interest is thin. She wants to get her and A.E.J. away from A.J. due to his behaviors. She has concerns respecting A.E.J. spending time with him and his parents. She wants to provide for A.E.J.

[140] Yet, she has no job waiting for her. Many of her concerns can be dealt with by a careful parenting order rather than a move to another province. She has admitted that she has not sought employment in Pictou County yet claims she is facing poverty here.

[141] In balancing the various interests and factors in this matter, I am not satisfied that permitting A.E.J. to relocate with K.M. to Ontario is in A.E.J.'s best interests. The detrimental impact on A.E.J.'s significant relationship with her father and paternal grandparents outweighs any advantages to her in relocating. The risks identified can be managed with an appropriate order.

[142] As a result, I deny that portion of K.M.'s application to permit the relocation of A.E.J. to Ontario with her.

If relocation is not permitted, what parenting arrangement in Nova Scotia, shared or primary care with one parent, would best serve A.E.J.'s best interests?

[143] While I set out later in this decision the particulars of the order, at this stage I will outline the parenting arrangements for A.E.J.

[144] The parents will parent A.E.J. in a joint custody arrangement. There is no reason that the parents cannot meaningfully consult on major issues concerning A.E.J. I am mindful of my findings concerning family violence but I believe that, with the end of litigation, the parents should be able to communicate effectively and in a child-focused manner for the sake of A.E.J. Each parent will have direct access to all caregivers and information concerning A.E.J. Both will be entitled to attend all appointments and events for A.E.J. and will keep each informed of all such matters.

[145] To assist in this, I will order that the parties register for and use Our Family Wizard for purposes of scheduling and communication and to share information, such as report cards and medical information.

[146] K.M. will have primary care of A.E.J. and A.J. will have reasonable access including every second weekend, one overnight during the week between weekend access and additional time in the summer, during school spring break and during the Christmas school break.

What amount of child maintenance, if any, should be paid by one party to the other?

[147] As K.M. will have primary care of A.E.J., A.J. shall pay child maintenance according to the Provincial Child Maintenance Guidelines and in accordance with the Nova Scotia Table.

Imputation of Income

[148] A.J.'s income is at issue. In his updated statement of income sworn October 20, 2016, A.J. said he has an annual income of $51,613.56, this includes income from his work with [*] and from the consulting agreement he has with Canadian Tire through his brother-in-law, B.E.

[149] His income for the preceding three years was as follows:

2015 - $81,583.98 (which included RRSP income of $18,842.50)
2014 - $86,968.06 (of which $2000 was RRSP income)
2013 - $97,200.85

[150] The bulk of A.J.'s income for the taxation years 2013 through to and including 2015 consisted of employment income with Ledcor and employment insurance benefits. There was, as noted above, some RRSP income as well. Thus, his income over those years average in the range of $74,000 (if RRSP income is excluded) to $97,000.

[151] K.M. argues that A.J. should have income imputed to him in the range of what he earned when working for Ledcor. She is therefore seeking income imputed to him pursuant to section 19 of the Provincial Child Maintenance Guidelines which reads as follows:

> 19 (1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:
>
> (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child to whom the order relates or any child under the age of majority or by the reasonable educational or health needs of the parent;…

[152] Based on this section I find I must apply a three-part test as follows:

1. Is A.J. intentionally unemployed or underemployed?

2. If he is intentionally unemployed or underemployed, is this required by the needs of a child to whom the order relates or any child under the age of majority?

3. If not, what amount of income should be imputed to him?

[153] A helpful summary respecting the analysis to be undertaken in applying this test is that of Forgeron J. in the decision of *Parsons v. Parsons*, 2012 NSSC 239 when she wrote:

> [32] Section 19 of the Guidelines provides the court with the discretion to impute income in specified circumstances. The following principles are distilled from case law:

a) The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reasons and justice, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: *Coadic v. Coadic* 2005 NSSC 291 (CANLII).

b) The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: *Staples v. Callender*,2010 NSCA 49 (CANLII).

c) The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor asserts that his/her income has been reduced or his/her income earning capacity is compromised by ill health: *MacDonald v. MacDonald*, 2010 NSCA 34 (CANLII); *MacGillivary v. Ross*, 2008 NSSC 339 (CANLII).

d) The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances: *Smith v. Helppi* 2011 NSCA 65 (CANLII); *Van Gool v. Van Gool*, (1998), 1998 CANLII 5650 (BC CA), 113 B.C.A.C. 200; *Hanson v. Hanson*, 1999 CANLII 6307 (BC SC), [1999] B.C.J. No. 2532 (S.C.); *Saunders-Roberts v. Roberts*, 2002 NWTSC 11 (CANLII); and *Duffy v. Duffy*, 2009 NLCA 48 (CANLII).

e) A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity. A party cannot avoid support obligations by a self-induced reduction in income: *Duffy v. Duffy*, *supra*; and *Marshall v. Marshall*, 2008 NSSC 11 (CANLII).

[33] In *Smith v. Helppi* 2011 NSCA 65 (CANLII), “Oland J.A.” confirmed the factors to be balanced when assessing income earning capacity at para. 16, wherein she quotes from the decision of Wilson J. in *Gould v. Julian* 2010 NSSC 123 (CANLII). “Oland J.A.” states as follows:

16. Mr. Smith argues that the judge erred in imputing income as he did. What a judge is to consider in doing so was summarized in *Gould v. Julian*,2010 NSSC 123 (CANLII), 2010 NSSC 123 (N.S.S.C.), where Wilson J. stated:

Factors which should be considered when assessing a parent's capacity to earn an income were succinctly stated by Madam Justice Martinson of the British Columbia Supreme Court, in *Hanson v. Hanson*, 1999 CANLII 6307 (BC SC), [1999] B.C.J. No. 2532, as follows:

1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable

> to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor". ...
>
> 2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.
>
> 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
>
> 4. Persistence in unremunerative employment may entitle the court to impute income.
>
> 5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> 6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.
>
> ...
>
> 33. In Nova Scotia, the test to be applied in determining whether a person is intentionally under-employed or unemployed is reasonableness, which does not require proof of a specific intention to undermine or avoid child maintenance obligations.

[154] To consider imputation, K.M. bears the burden of proof, on a balance of probabilities, to establish that A.J. is underemployed. Essentially her argument is that A.J. could be employed again at the higher income level in Western Canada either working for Ledcor or another employer doing essentially the same work he was.

[155] A.J.'s evidence was that he last worked for Ledcor from September 2015 to April 2016 as a night shift lead hand and later as a night shift foreman. He said that he took a leave of absence due to these legal issues in April 2016 and was informed thereafter that his job had been eliminated.

[156] His record of employment indicated he was laid off in July 2016 and it was his evidence that his leave of absence was from April to July 2016. His

understanding, he testified, was that the night shift that he had been working had been eliminated by the employer.

[157] He further testified that he had not sought any further work through Ledcor or any other company out west. He wished to work in Nova Scotia so he could live here to spend time with A.E.J. after the separation.

[158] The evidence was that he had obtained full-time employment through a friend, S.S., as well as a consulting contract through his brother-in-law with a Canadian Tire store in British Columbia. This generated a combined income of $51,613.56 as noted above.

[159] There is no question that A.J. earns a lower income than he did prior to taking his leave of absence from Ledcor. As well, there is no dispute that he is currently employed and has two sources of income.

[160] The fundamental question to be answered is whether A.J.'s choice of employment and income was reasonable at the time and remains reasonable in the context of the new parenting arrangement ordered?

[161] Respecting his decision to take a leave of absence from Ledcor, I find that to be a reasonable choice. He was faced with a crisis regarding the whereabouts of his child, seeking her return to Nova Scotia and was involved in the litigation both in this province and in Ontario to accomplish that goal.

[162] When A.E.J. was returned to Nova Scotia, this court put in place an order of shared parenting on a four-day rotation. I find that it was reasonable at that time for A.J. to have stopped looking for work out west and to continue working in Nova Scotia and on contract with Canadian Tire so that he could be present to meet the needs of his daughter. His decisions regarding employment were reasonable given the circumstances he faced at that time and to the date of this decision. To have continued working with Ledcor would have meant being absent from the province and A.E.J. for significant periods of time. If so, the shared parenting arrangement would have been impractical. I can see nothing unreasonable about his decision even though it meant a reduction in income.

[163] Now that this court has determined that A.E.J. will remain in Nova Scotia in the primary care of K.M., the question remains as to whether A.J. is still reasonably employed. He was certainly capable of earning higher income prior to his layoff with Ledcor. That said, there is no evidence before me that Ledcor or any other employer out west would have similar employment available to him. I find it would be an unreasonable to impute higher income to him given that this decision has just been rendered and he has had no reasonable opportunity to consider his options considering the change in the parenting arrangement ordered.

[164] That said, it is incumbent on him to make all reasonable efforts to be fully employed including efforts to see if he can bring himself back within the range of income enjoyed prior to his leave of absence and layoff with Ledcor. It will therefore be open to K.M. to make an application at a later point to seek imputation of income to A.J. should she believe that he is not taking all reasonable steps to be fully employed.

[165] I therefore am not prepared to impute an income higher than the amount currently earned by A.J. for the purposes of child maintenance. Therefore, A.J. shall pay child support to K.M. for A.E.J. in the amount of $433 per month.

Retroactive Child Support

[166] K.M. seeks an order of child support retroactive to October 1, 2015, the first of the month following their separation.

[167] A.J. notes that he has been making payments to or on behalf of K.M. both before and since her return to Nova Scotia including $350 per month on the loan for the motor vehicle she is driving, $100 per month for motor vehicle insurance, $10 per month for vehicle registration, approximately $100 per month for K.M.'s cell phone and $300 in child maintenance. Further, he pays for A.E.J. daycare costs of approximately $224 per month.

[168] The leading decision respecting retroactive child support is *D.B.S. v. S.R.G.*, 2006 SCC 37 in which the Supreme Court of Canada set out the factors to be considered in such an application. I have reviewed that decision and I am satisfied that, given the third-party payments made by A.J. on behalf of K.M. and the child

maintenance he has paid since her return to the province, he will not be required to pay any retroactive amount of child maintenance in this circumstance.

[169] In doing so, I find that there was some unreasonable delay on the part of K.M. in advancing a claim for child maintenance entirely due to her action in removing A.E.J. from Nova Scotia without the knowledge or consent of A.J. and her failure to make an application for child maintenance in Nova Scotia at that time.

[170] Respecting blameworthy conduct, I find there is nothing in the evidence to suggest that A.J. is blameworthy on this issue. It is K.M. who engaged in blameworthy behavior in removing A.E.J. from Nova Scotia as she did and litigating the matter further in Ontario which increased expenses for both parties to no avail.

[171] I further find there is no hardship to A.E.J. if such a retroactive award is not made. She has had the indirect benefit of the third-party payments made by A.J. as well as the child maintenance that he is paying.

[172] Finally, I find that any retroactive award would cause hardship to A.J. given that he is already making the payments referred to herein. Therefore, the new amount of child maintenance of $433 per month shall commence on August 1, 2017.

Should spousal maintenance be paid by A.J. to K.M. and if so, in what amount and for what duration?

[173] K.M. seeks spousal maintenance in the range of $2,000 to $2,600 per month for a minimum of three years to a maximum of fourteen years.

[174] She does suggest that, with the consent of the parties, she would agree to any loan amount on the motor vehicle she has possession of could be set off against such spousal support. That will be left for the parties to discuss and if agreed, an order can reflect that arrangement.

[175] A.J. does not contest entitlement to spousal maintenance. He suggests spousal maintenance in the range of $699 per month for between 3 1/2 years and seven years. Both parties refer to the Spousal Support Advisory Guidelines (SSAG) which I will apply in this case.

[176] It remains necessary to determine on what basis spousal maintenance entitlement is founded before determining the quantum or amount. To do so I must consider the applicable legislation, which in this case is the *Maintenance and Custody Act*. Section 3 of the *Act* empowers me to make an order of spousal maintenance and I may make that order definite or indefinite or until a specified event occurs.

[177] Section 4 of that same *Act* sets out the factors which I must consider in determining an appropriate quantum, entitlement and duration of spousal maintenance. The factors, among the ones set out in Section 4 that apply to this case, because there are others which are inapplicable in this circumstance include:

> (a) the division of function of the parties in their relationship;
> (b) the custodial arrangements made with respect to the children of the relationship;
> (c) the obligations of each spouse or common-law partner towards any children;
> (d) the contribution of a spouse or common-law partner to the education or career potential of the other;
> (e) the reasonable needs of the spouse or common-law partner with the right to maintenance;
> (f) the reasonable needs of the spouse or common-law partner obliged to pay the maintenance;
> (g) the separate property of each spouse or common-law partner;
> (h) the ability to pay of the spouse or common-law partner who is obliged to pay maintenance, having regard to that spouse or common-law partner's obligation to pay child maintenance in accordance with the *Guidelines*, which is the circumstance we have here;
> (i) the ability of the spouse or common law partner with the right to maintenance to contribute to his own maintenance.

[178] Section 5 of the *Act* requires that a maintained spouse or common-law partner (I will use the term "spouse" when referring to common-law partner) has an obligation to assume responsibility for his or her own maintenance unless, considering the ages of the spouses, the duration of the relationship, the needs of the maintained spouse and the origin of those needs, it would be unreasonable to require the maintained spouse to assume responsibility for his or her maintenance and it would be reasonable to require the other spouse to continue to bear this responsibility.

[179] While that is the structure of the *Act*, there are well-known, leading decisions from the Supreme Court of Canada which have set out the applicable

principles as well. The two very well-trodden cases are *Moge v. Moge* [1992] 3 S.C.R. 813 and *Bracklow v. Bracklow* [1999] 1 S.C.R. 420.

[180] To briefly summarize the principles which arise from these decisions, the court found that there are three grounds on which spousal maintenance can be founded. They are contractual, compensatory and non-compensatory.

[181] I will first rule out the contractual ground, which deals with circumstances where there is an existing marriage contract or cohabitation agreement or other agreement which may set out limits, rights and obligations respecting spousal maintenance, is simply not applicable in this case.

[182] Compensatory spousal maintenance may be payable in circumstances where one spouse has contributed significantly to the relationship by way of unpaid work, often founded in child care and rearing or in care of the home and housekeeping. It may also be found where one spouse has compromised a career, education or other financial opportunities in maintenance of the other spouse's career or the family in general. There are other circumstances in which compensatory spousal maintenance may apply but those are some of the more common ones.

[183] In the former circumstance, it may be that a mother stayed home to raise children and thereby gave up career opportunity, income, seniority and other benefits. This could apply to a father as well. In the case of a mother doing so, she may also be the primary responsible parent respecting the unpaid work in the home in support of the children, the spouse or both, and will often be responsible for organizing the family's life so that the other spouse may focus on career, thereby generating income, advancing career opportunities, developing pension entitlement and generally improving the family’s financial circumstance.

[184] As well, where spouses relocate to advance the career of one, the other spouse may well be compromised by having to restart employment or failing to find a full or satisfactory employment circumstance. When the marriage ends, the spouse for whom the moves were made to benefit a career advancement or increased income and security of the family is left with the benefit and the other spouse who may have compromised with lower income, lower career prospects, reduced pension entitlement, and increased financial vulnerability is left in a vulnerable circumstance.

[185] In the case of compensatory maintenance, need is not the primary focus of the analysis. The entitlement arises over the course of many years of unpaid

contribution to the family, sacrifice in terms of career and other factors which create an entitlement based not upon current circumstance necessarily but based upon past sacrifice and support within the family.

[186] In contrast, in the case of non-compensatory maintenance, this is often based on need. It may arise, for example, where a spouse is disabled and unable to improve their financial circumstances and might be left in a financially difficult situation after a separation or where there is an otherwise healthy spouse that has limited means to increase income and has significant and material financial need that cannot be satisfied other than through a spousal maintenance award.

[187] In the case of non-compensatory maintenance awards, the analysis of the needs of the spouse seeking the maintenance is often more detailed and material but in either event both in compensatory and non-compensatory circumstances the need and ability to pay do play into the analysis.

[188] As to duration, it is more common that compensatory awards are awarded for lengthier periods, often indefinite, whereas non-compensatory awards may more often be limited in time though not necessarily so.

[189] In this case, entitlement is agreed but there is little said as to which grounds entitlement is based. There is common ground that the relationship began in late December 2006 or early January 2007 and ended in September 2015, a total period of approximately 8 1/2 years.

[190] I find, on review of the evidence, that K.M. moved to Calgary to live with A.J. early in the relationship. When she moved, she had significant debt which was paid out over time during the relationship.

[191] Just prior to moving to Calgary, K.M. was employed as a floral designer in Ottawa and was living with her sister. She described not making much money but that she was self-sufficient.

[192] When she moved to Calgary, she became financially dependent on A.J. until she obtained employment with Ledcor. As described earlier in this decision, she gave over to A.J. control of her finances and all funds flowed through him to pay the family's expenses.

[193] After the birth of A.E.J. in the fall of 2012, K.M. remained at home to care for her. As I found earlier, she was the primary care provider for A.E.J. though A.J.

did contribute to her care. As well, I find that K.M. was the primary homemaker for the family.

[194] After separation, K.M. has remained unemployed and remains financially dependent on A.J., social assistance and the assistance of her extended family. While she certainly has a responsibility to find employment and income, on review of her Statements of Expenses and Income, I am satisfied that she requires spousal maintenance.

[195] I therefore find that K.M. is entitled to spousal support on both compensatory and non-compensatory grounds.

[196] Respecting incomes, I have already found that A.J. has an annual income of $51,613.56 for the purpose of child maintenance which will also apply to spousal maintenance. K.M. says in her Statement of Income sworn October 17, 2016 that she has income through social assistance of $525 per month or $6300 per year. She also has a Canada Child Benefit of $292.70 per month and the GST credit of $64.29 per month. These will not be included in her income for determination of spousal maintenance.

[197] As noted, I will apply the SSAG to this circumstance. The recommended range under the SSAG is $786 to $1,050 per month. Considering the financial position of K.M., her limited work history and work opportunities, her responsibility to provide primary care for A.E.J. and that she is entitled to spousal maintenance on both compensatory and non-compensatory grounds, I find that monthly spousal support of $1,050 is appropriate.

[198] As to duration, the SSAG suggest a range of between 4.25 to 13 years. Given the current circumstances of the parties, particularly that K.M. is unemployed and will no doubt seek work now that this matter is settled and the fact that A.J. can review his employment and income circumstance, I find it is appropriate not to set a term for the support. Therefore, spousal support will be payable for an indefinite term subject to review on proof of a material change in circumstance.

[199] As to retroactivity of spousal maintenance, I decline to award same for the reasons set out herein respect retroactive child maintenance. Therefore, spousal maintenance shall commence on August 1, 2017.

Order

[200] There will be an order of joint custody.

[201] Each parent shall be entitled to speak with, and obtain information from, any third-party source concerning A.E.J. including, but not limited to, doctors, dentists, therapists, schools, teachers, hospitals or childcare providers. Each party shall keep each keep the other informed of any major issues concerning the health, education or general well-being of A.E.J. and they shall meaningfully consult on all major decisions concerning such issues. Each parent is permitted to authorize any emergency medical care for A.E.J. while she is in that parent's care and shall immediately inform the other parent of the emergency circumstance and any decisions made. Each parent may attend any appointments, special events or concerts for A.E.J.

[202] K.M. shall have primary care of A.E.J. and A.J. shall have reasonable access at reasonable times upon reasonable notice with A.E.J. including, but not limited to, the following:

[203] Every second weekend from the Friday until Sunday during the school year. A.J. shall pick A.E.J. up at school on Friday afternoon and shall return her to K.M. at her residence or other mutually agreed to location on Sunday at 5 PM.

[204] A.J.'s weekend access shall be expanded to include any school in-service days or statutory holidays such that his access shall commence on Thursday afternoon and extend to Monday at 5 PM as the case may be.

[205] Every second Wednesday following his weekend access to Thursday. A.J. shall pick A.E.J. up at school on Wednesday afternoon and shall return her to school on Thursday morning.

[206] The following special access time shall apply and shall override any access time for A.J. set out herein as follows:

[207] Christmas School Break - One parent shall have A.E.J. from the end of the last day of school at the start of the Christmas school break until 2 PM on Christmas Day and the other parent shall have A.E.J. from 2 PM on Christmas Day until that parent returns her to school on the first day of school following the Christmas school break. K.M. shall have A.E.J. with her for the first half of the

Christmas school break in odd numbered years and A.J. shall have A.E.J. with him for the first half of the Christmas school break in even numbered years.

[208] School Spring Break - Unless otherwise agreed between the parties, they shall share the school spring break with A.E.J. equally between them. If A.J.'s normal access weekend access falls at the beginning of the school spring break, he shall have A.E.J. with him until Wednesday of that week at 5 PM and K.M. shall have A.E.J. with her for the balance of the week until she returns to school the following Monday morning. This schedule shall be reversed if A.J. has A.E.J. with him for his access weekend at the end of the school spring break.

[209] School Summer Break – Unless otherwise agreed between the parties, commencing in the 2018 A.J. shall have A.E.J. with him for three weeks during the summer school break. Of these three weeks, a maximum of two weeks may be consecutive and one week non-consecutive. Such weeks shall commence and end on Sunday at 5 PM unless otherwise agreed. A.J. shall notify K.M. in writing on or before March 31st of each year which weeks he wishes to have A.E.J. in the summer and he shall have those weeks. If he fails to provide such notice as required, K.M. shall choose such weeks for him. K.M. shall have A.E.J. with her for at least five days prior to the commencement of school at the end of the summer school break. For greater clarity, the weekend and mid-week access for A.J. shall be suspended during the summer school break and shall recommence on the first weekend following the beginning of school. For the summer of 2017, A.J. shall have A.E.J. with him for the last full week in July and the third full week in August.

[210] Easter - A.E.J. shall share the Easter weekend with each parent. One parent will have her from the end of school on the Thursday before the Easter weekend until Easter Saturday at 5 PM and the other parent will have her from Easter Saturday at 5 PM until she returns to school on Tuesday morning. K.M. shall have A.E.J. with her for the first part of the Easter weekend in odd numbered years and A.J. shall have her with him for the first part of the Easter weekend in even numbered years.

[211] Father's Day and Mother's Day – K.M. shall have A.E.J. with her on Mother's Day from 9 AM to 5 PM and A.J. shall have A.E.J. with him on Father's Day from 9 AM to 5 PM.

[212] Birthdays- Unless otherwise agreed between the parties, there shall be no special access time for A.E.J.'s birthday or either of the parents' birthdays and they

will otherwise celebrate these occasions when A.E.J. is with them during their normal parenting time.

[213] A.J. shall not consume or be under the influence of alcohol for 24 hours prior to or during his access time with A.E.J.

[214] Each parent shall obtain and maintain A.E.J. on any medical and dental plan available to them through any current or subsequent employer and the parties shall share any such premium costs attributable to A.E.J. in proportion to their incomes.

[215] A.J. shall name or maintain K.M. as beneficiary on any life insurance policy he has in his name or obtains at a future date privately or through any employer and shall ensure that the face amount of the policy is at least $200,000 to secure child maintenance and spousal maintenance.

[216] The parties shall consult in advance with respect to any extracurricular activities either of them proposes to register A.E.J. for and if they agree on the activity, including its cost, they will share in in the cost of that activity in proportion to their incomes.

[217] If A.E.J. requires childcare pursuant to section 7 of the Provincial Child Maintenance Guidelines, the parties shall share the net after-tax costs in proportion to their incomes.

[218] Each parent shall be entitled to travel with A.E.J. within Canada for the purposes of vacation subject to providing the other parent with notice of such travel at least 14 days in advance along with a general itinerary for the trip including departure and return dates and contact information including a cell phone number where A.E.J. can be reached.

[219] Either parent may travel with A.E.J. outside of Canada for vacation subject to providing at least 30 days' notice in writing to the other parent along with a general itinerary for the trip including departure and return dates and contact information including a cell phone number were A.E.J. can be reached. Either parent, upon providing notice to the other, may arrange to obtain a passport for A.E.J. Either parent may also obtain picture identification for the A.E.J. as is required by airline authorities. The passports and picture identifications shall be held by K.M. and shall be made available to the parent traveling with A.E.J. from time to time.

[220] The non-travelling parent shall provide the traveling parent with a letter confirming the parents have joint custody of A.E.J. but that the traveling parent is traveling with A.E.J. with the knowledge and consent of the other.

[221] Should policy regarding travel outside of Canada change in the future, the parents shall modify the terms of travel such that the traveling parent shall receive the cooperation of the other parent as may be necessary to carry out traveling plans.

[222] A.J. shall immediately have K.M. added as a joint owner to any Registered Education Savings Plan (RESP) account for the benefit of A.E.J.

[223] Each party shall forthwith disclose to the other details, including account numbers, bank location and balances, of any accounts held by them or any third party for the benefit of A.E.J.

[224] A.J. shall pay child maintenance to K.M. for the benefit of A.E.J. in the amount of $433 per month, based on an annual income of $51,613, commencing on August 1st, 2017 and continuing the first day of each month thereafter.

[225] A.J. shall pay spousal maintenance to K.M. in the amount of $1,050 per month commencing on August 1st, 2017 and continuing the first day of each month thereafter. This spousal maintenance shall be paid for an indefinite term and subject to review upon proof of a material change in circumstance.

[226] Each party will provide to the other a complete copy of his or her tax return, including all attachments, whether filed with Canada Revenue Agency or not, and Notices of Assessment or Reassessment from Canada Revenue Agency on or before June 1 of each year.

[227] Each party will disclose immediately to the other party any change in their employment status or income including details of that change. Such notice shall be provided in writing and may include a text or email as the means of communication.

[228] Each party is absolutely prohibited from making any negative or derogatory comments respecting the other party or the other party's family while in care of A.E.J. Each party shall ensure that no other person makes any such negative or derogatory comments about the other party or that other party's family while that parent has care of A.E.J. This includes an obligation to ensure that third party

immediately ceases making such comments and, if that person will not comply, to ensure that person is removed from the area were A.E.J. is present or to remove A.E.J. from that area.

[229] All communication between the parties shall be in a child focused, polite and business-like manner.

[230] Each of the parties shall, within 10 days, purchase a subscription and commence using Our Family Wizard and shall use this service as the primary means of communication, notifications, scheduling and exchange of information respecting A.E.J. until otherwise agreed to by the parties or further order of a court of competent jurisdiction.

[231] If the parties agree, an Administrative Recalculation Order shall be issued.

[232] Counsel for A.J. shall draw the order and have it to the court for issuance within two weeks.

[233] If the parties wish to be heard on costs, counsel shall provide written submission within two weeks.

Daley, JFC