

FAMILY COURT OF NOVA SCOTIA

Citation: *H.L. v. Z.L.*, 2018 NSFC 5

Date: 20180222

Docket: Pictou No. FPICMCA-104851

Registry: Pictou

Between:

H.L.

Applicant

v.

Z.L.

Respondent

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

Judge: The Honourable Judge Timothy G. Daley

Heard September 21, 2017 and November 8, 2017 in Pictou, Nova Scotia

Final Written Submissions: February 22, 2018

Counsel: Amber Snow, for the Applicant
Jay Matheson and Mallory Arnott, for the Respondent

Introduction

[1] This decision is about three children, J.L. (13 years), Ch.L. (10 years) and C.L. (6 years old) and what parenting arrangement is in their best interests. Specifically, their father, Z.L., seeks a joint custody, shared parenting arrangement with no supervision of his parenting time and their mother, H.L., seeks an order of sole custody, primary care to her and continued supervision of Z.L.'s parenting time.

[2] These parents began their relationship in 2003 and were married in July 2009. They separated and reconciled several times from 2015 until their final separation in April 2016.

[3] H.L. says that from October 2015 forward she noticed an increase in Z.L.'s drinking and hostility towards her. She describes incidents of family violence, harassing and insulting communications from Z.L. and a final incident of family violence during Easter 2017 that led to charges of uttering threats against Z.L. His parenting time with the children has been supervised since then.

[4] She says that all of this, along with further information from the Department of Community Services (the "Agency") and New Leaf, a counselling and support organization for men involved in domestic violence, leads her to the belief that she cannot co-parent the children with Z.L. in a shared parenting arrangement. She also believes that joint custody would be impossible due to the communication challenges. She says that parenting time for Z.L. needs to be supervised, at least for now.

[5] Z.L. says that he was fully involved in the care of the children throughout their lives until the incident during Easter of 2017. He says that since that incident, H.L. has prevented him from seeing the children and has been uncooperative in co-parenting them. He says the incident at Easter was a one-time event, he has no prior criminal record and he presents no risk to the children. He denies any alcohol problems and says that H.L. was the one to get angry, throw items at him, hit and scream at him and they both said hurtful things.

[6] He denies the allegations of domestic violence by him. Respecting the incident at Easter 2017, he says that, despite what happened and the charges that were laid, there is no reason why a shared parenting arrangement could not work and that it would be in the best interests of the children. He says that supervision

[7] of his parenting time is not necessary and should be discontinued immediately. He says that he has worked with the Agency and New Leaf, met with a psychologist and is quite capable of co-parenting his children.

The Evidence

H.L.

[8] H.L. says in September 2015 she began an education program at the Nova Scotia Community College (“NSCC”) in Dartmouth. She resided in Dartmouth Monday to Friday and returned on the weekends to the family home with Z.L. and the children.

[9] She said from October 2015 forward she observed an increase in Z.L.'s drinking and his hostility towards her. She says he often yelled and screamed at her, calling her inappropriate names, throwing things and punching holes in walls of the home.

[10] She said that in early October 2016, when she was home for the weekend, Z.L. told her he wanted to end the relationship. She then stayed with her parents when she was in Pictou County. The children remained with Z.L. in the family home during the school week and were with their mother on the weekends.

[11] Despite Z.L.'s wish to try reconciliation in November 2016, H.L. says she declined and they each started seeing other people. She says Z.L.'s negative behaviour increased in December 2016. He began to leave insulting messages on her phone and she believes he was depressed but would not take his medication as prescribed.

[12] H.L. says that while home from school during Christmas of 2016, the children lived with her as she did not feel it was safe for them to be with their father given his mental circumstance.

[13] She says that on December 23, 2016 Z.L. kicked her into the kitchen cupboard when she was crouching down. She then grabbed a chair and threw it at him in self-defense. The children were present for this incident. She then took the children and left the home.

[14] Respecting Z.L.'s mental health, H.L. said they had several discussions about this and he agreed she would take the children with her over the Christmas

break of 2016 because he stated that he did not feel capable of having the children until he felt better. She said at one point she convinced him to seek help at the Aberdeen Hospital but the mental health ward was closed and they sent him home, recommending that he have someone with him at all times. She says he received medication from his doctor.

[15] H.L. says that in late December 2016 into early January 2017 Z.L. began taking his medication regularly and she felt comfortable leaving the children in his care again.

[16] In January 2017, H.L. returned to school in Dartmouth and the children again remained with Z.L. from Monday to Friday and joined her at her parents on the weekends. She contacted the children each night during the week by FaceTime but Z.L. would not answer the phone if they were not getting along. She had the children during March Break of 2017.

[17] She says that the insulting and vulgar messages continued from Z.L. from January to April 2017. She says a further incident occurred in March 2017 when Z.L. threw a bottle of lotion at her, striking her. When she bent down to pick up the bottle, he pinned her on top of the dresser and put his hands around her throat while screaming at her. She says the children witnessed this. The RCMP were called though no charges were laid.

[18] H.L. describes an incident on New Year's Eve 2017 during which Z.L. questioned her about where she was the night before and when she failed to reply, he became angry and texted insulting and harmful slurs to her during that evening.

[19] H.L. says a final incident occurred during Easter at her parents' home. She says during an argument, Z.L. threatened to burn down her parent's home, saying he didn't care who was in it. At the time, H.L. was residing there with the children and her parents.

[20] Because of this incident, Victim Services and the Agency became involved. The Agency directed that Z.L.'s parenting time be supervised. Z.L. was charged with uttering threats and placed on an undertaking to have no contact with H.L. or the children. That undertaking was later varied, permitting him to have contact with the children.

[21] On May 28, 2017 Z.L. was charged with breaching his undertaking by texting and FaceTiming with H.L. She says he also attempted to have

unsupervised electronic contact with one of the children contrary to the direction of the Agency.

[22] The breach charge led to an order in the Provincial Court prohibiting Z.L. from having contact with the children except in accordance with an order of a court of competent jurisdiction.

[23] On June 5, 2017, the parents were before this court and an interim order was granted ordering sole custody and primary care of the children with H.L. and supervised parenting time for Z.L. supervised by his mother, K.L.

[24] After the Easter incident, H.L. and the children initially resided at Tearmann House, a local support organization for women. She began the process of finding and relocating to subsidized housing.

[25] It is H.L.'s plan to return to school in Dartmouth and to arrange after school care for the children, returning home each evening to be with them. She confirmed that, when her education is complete, she will look for a job in Pictou County but has no set location in mind. She is working with her school to try to find a connection in the community but she will also look at Truro and Antigonish for work. She is trying to find work in Pictou County to ensure parenting time for the father and connection with family.

[26] H.L. says that she continues to access services through Tearmann House and has participated in joint meetings between Tearmann House and New Leaf staff regarding the family.

[27] In her direct evidence at the hearing, H.L. confirmed that she began her education program again in Dartmouth in September. She has made arrangement for the children to spend between 6:30 AM and 7:30 AM at a friend's home and that friend drives them to school.

[28] In cross-examination, she was asked why she moved out of her parents' home and into Tearmann House in May 2017. She said her mother drinks and discusses inappropriate things around the children and she felt it was best to go to Tearmann House. The children attended counselling there and participated in various activities.

[29] She confirmed an offer was made by Z.L. for her to move with the children to the family home but she said she didn't feel safe going there.

[30] H.L. confirmed that she has a 3 ½ to 4 hour round-trip each day to and from Dartmouth, leaving at 6:30 a.m. and even earlier when the weather is bad. The children must be up at 5 a.m. and are brought to a friend's home to be taken to school.

[31] After school, the two younger children go to an afterschool program and J.L. goes to a friend's home.

[32] H.L. explained that she did not look to her parents to assist with child care before or after school based on their age, her mom's diabetic condition and, as described before, her mother's alcohol consumption.

[33] She did confirm that she checks in with K.L., Z.L.'s mother who provides supervision, about parenting time for the father and recently the feedback has been good.

[34] When asked about communication with Z.L., she said she currently refuses to communicate with him. She said she had received numerous texts each day before the incident at Easter and it was draining to her. She doesn't want to risk her mental health. She said they had an agreement only to speak about the children but Z.L. never abided by this. She is communicating through a third party.

R.P.

[35] R.P., H.L.'s father, provided evidence. He confirmed that H.L. and the children began staying in an upstairs apartment at the home of him and his wife, P.P., in December 2016 until January 4, 2017 when H.L. returned to school. He said that H.L. and the children spent Christmas at Z.L.'s residence to keep things as normal for the children as possible.

[36] After an altercation at that home in March 2017, he advised H.L. not to enter Z.L.'s residence anymore or go anywhere alone with Z.L. Despite this, H.L. did go for a drive alone with Z.L. in April 2017 and he checked in with her several times to see if she was okay.

[37] R.P. said that on Easter morning, April 16, 2017 Z.L. came to their home without notice. He arrived about 10:30 AM and brought gifts for the children. He played with the children downstairs for about 20 minutes. He then went upstairs with H.L. and the children for about half an hour.

[38] R.P. said that he invited Z.L. to stay for dinner and he agreed. After dinner Z.L. went outside and played with the children. Z.L. and C.L. came back inside and C.L. went to take a bath.

[39] R.P. said that Z.L. was sitting in the kitchen and asked H.L. to provide a list of names of men she was having a relationship with. He said he wanted to take that list to the police. R.P. told him it was not the time and place for such a discussion or argument. R.P. said that Z.L. told him that he didn't care and that he would punch R.P. through a window if he had to. R.P. said he never had an argument with Z.L. before this.

[40] R.P. said that Z.L.'s anger rapidly increased, he was insulting and insisted on receiving the list. P.P. came into the room and told Z.L. he would not insult her daughter in her house. Z.L. then became extremely angry and left the house.

[41] R.P. said that Z.L. returned approximately 10 minutes later. He was still angry. He continued talking about the list and started yelling about it. C.L. was then in the room, became upset and tried to talk to her father. R.P. said C.L. overheard this entire episode despite he and H.L. asking Z.L. to stop what he was doing because the children were present in the home.

[42] R.P. said that Z.L. then threatened to do things to H.L.'s car if he didn't get the list. Again, P.P. came into the kitchen and told him he needed to calm down and stop yelling. Z.L.'s anger increased, he pounded his fist on a table, he started yelling more and C.L. became more upset.

[43] R.P. said Z.L. then told P.P. that he would burn the house down and he didn't care who was in it. P.P. said she would call the police and called 911 but hung up because C.L. was crying, saying she didn't want her father to go to jail.

[44] R.P. said that H.L. took C.L. into the living room to comfort her. Knowing the police were coming, they prepared the children to go with their father for Easter supper with his mother so the children would not be present when the police arrived. By the time Z.L. left with the children he was not yelling anymore.

[45] On cross-examination, R.P. confirmed that H.L. and the children moved out of his and P.P.'s home in May 2017. He said this was due to the children being a lot of work and he was not surprised that it was due, in part, to his wife's alcohol consumption. He said he didn't drink when the children were present but has seen his wife intoxicated around the children.

[46] R.P. confirmed that when the police arrived, he did not provide a statement but he did consider the threat made by Z.L. to be a serious matter. He understood that H.L. and P.P. provided statements.

Z.L.

[47] Z.L. testified that he is a journeyman auto mechanic at a local dealership and owns the family home in the county.

[48] He says that after H.L. began her education in Dartmouth in 2016, she stayed in Dartmouth during the week and returned on the weekends during the school year. He says he was responsible for the care of the children during the week.

[49] He described a typical day including preparing meals, getting the children ready for and taking them to school, daycare, and afterschool programs, preparing dinner, doing homework and spending time with them before bed.

[50] When H.L. returned on the weekends they would share time as a family.

[51] He said that when the parties were separated, H.L. lived with her parents and had the children Friday evenings to Sunday evenings. He said this arrangement was in place most recently from October 2016 through to April 2017.

[52] When they were separated and H.L. was not in school, he said they agreed to have the children on a shared parenting basis using a two-to-three schedule.

[53] He confirmed the two uttering threats charges against him arising from the incident at the maternal grandparent's home on Easter 2017. He says he has no prior criminal record and that he never threatened violence against the children.

[54] He confirmed that he was voluntarily attending group counselling at New Leaf twice per week since April 2017.

[55] He explained that over the 2 1/2 years prior to the Easter incident, he was stressed, confused, hurt and angry, alleging that H.L. was unfaithful on repeated occasions. He said he was also mourning the death of his father who passed away in August 2016 after a long deterioration in his health. Finally, he witnessed his grandmother's Alzheimer's disease progression to the point that she was placed in a home.

[56] He flatly denies any alcohol problem, denies that he drinks excessively or that his drinking pattern has changed. He describes himself as a social drinker but does not use alcohol to cope with emotions. He admits to occasionally drinking around the children but never more than a beer or two.

[57] He does acknowledge inappropriately expressing frustration towards H.L. but says she would do the same to him. He describes H.L. as being angry with him, throwing objects, hitting him and screaming at him, sometimes when the children were present. He said sometimes the relationship was good and other times it was quite bad.

[58] Despite their initial separation, he says that there were attempts at reconciliation. He says that even after the final separation in October 2016, they were physically intimate on several occasions, the last time around March 2017. H.L. says the intimate contact ended earlier.

[59] He said that both he and H.L. were seeing other people after separation. He said that she was angry and frustrated with him for having dated other people.

[60] Z.L. said, with respect to the first alleged incident of family violence, H.L. threw the chair at him, not in self-defense, but in frustration. He said she was questioning him about who he was dating and she appeared to get angry and frustrated when he confirmed he was seeing someone. He does not deny pushing H.L. into the kitchen cupboards with his foot as she was "in my face" and behaving aggressively. He says H.L. got up, went to the dining room, grabbed a chair, brought it back in the kitchen, threw it at him and hit him with it. She then left with the children.

[61] Despite this, he says she and the children returned the next day on Christmas Eve and stayed that night, celebrating Christmas as a family. Z.L. described continuous attempts by the parties to normalize the family life of the children during this time.

[62] He agrees the children spent more time over Christmas of 2016 with their mother than him and most of the school spring break with their mother but says this was by agreement because of her absence due to school. He says H.L. raised no safety concerns about him during any time.

[63] With respect to the incident in March 2017, Z.L. says this was initiated by H.L. He was expecting H.L. to drop the children off before she left for Dartmouth

for the week. He was alone in the house, in his room and H.L. came into the bedroom and closed the door, sitting on the bed.

[64] She began to discuss contact she had with Canada Revenue Agency and that she would have to pay back money she received for the children because he was the primary caregiver. She was upset and began to insult the woman he was dating. They argued and raised their voices. He asked her to leave.

[65] H.L. took a bottle of lotion and threw it at him. He threw it back. He got up, held her arms and pinned her against the dresser and yelled at her to stop and told her to get out of the house again. She laughed. He did not know she had brought the children into the house or even that she had arrived before she came into the bedroom. The police were contacted but no charges were laid.

[66] H.L. denies telling Z.L. she had been contacted by Canada Revenue Agency. She said she discussed this with someone at H&R Block who advised that they both cannot claim the children, otherwise there would be a penalty. When she suggested they alternate years for such a claim, she said he became angry. She denies throwing anything.

[67] He denies that he discussed any of these or other adult matters with the children or with other adults with the children present. He alleges she has done so.

[68] He also described looking through a phone which had been H.L.'s but had been given to their daughter, C.L. He saw inappropriate messaging and photographs on the phone but was unsure if the child had seen these images. He deleted them and returned the phone to the child. H.L. says that she did not realize this and thought they had been deleted when she switched phones and did not do so knowingly.

[69] As to the Easter incident, Z.L. says that he went to the maternal grandparents' home on Easter Sunday. He says he did not arrive without notice but had discussed with H.L. that he would come to pick up the children sometime during the day and take them with him to his family's supper. He arrived around lunchtime. He was invited in by P.P. for lunch.

[70] Z.L. says he gave the children gifts and had lunch with the family. There were no issues at that time and after they ate, P.P. left the room for a nap. He said J.L. and Ch.L. were outside and he did not think C.L. was in or around the kitchen.

[71] He said he noticed H.L.'s phone was giving off audio text notifications, interrupting the conversation. He thought these notifications were from a man. He says he said something about feeling like burning houses and cars and said he was frustrated and confused because he thought H.L. wanted to reconcile.

[72] He says he then asked her to list the people she had slept with. He said he wanted the list to contact the police and ask them to contact the men who might be interfering with reconciliation, telling them to stop contacting her.

[73] H.L. says that he didn't ask for the list, he demanded it repeatedly and aggressively.

[74] Z.L. says that before H.L. could respond to his request, R.P. told him he had to get over the fact that he and H.L. were not together. Z.L. said he was surprised by this as previously her parents had suggested they should reconcile. He said that he and R.P. raised their voices and P.P. entered the room and was also yelling.

[75] H.L. confirmed her father's evidence that before she could respond to the demand for the list, her father intervened as the children were in the house and that Z.L. threatened to punch in the window.

[76] He says he left the home, went to Tim Horton's for about 10 to 15 minutes to cool down, returned to the home and was sitting on the deep freezer facing the kitchen. He says H.L., R.P. and P.P. were present and he did not see C.L. in the kitchen. He again asked for the list of names. Things again escalated and everyone was yelling.

[77] H.L. says Z.L. was not sitting on the freezer when he returned but was sitting on the right side of the kitchen table. As he became angrier, C.L. was present and tried to speak with him. He didn't pay any attention to her but just kept going on about the list. H.L. and her father repeatedly asked him to stop because the children were present.

[78] Z.L. says that P.P. told him she would call the police and he recalls telling her "go ahead, I feel like burning the house down with you in it", meaning P.P. After P.P. called 911 and hung up, he noticed C.L. was present and upset about her grandmother calling the police. C.L. said she was afraid that her father would get in trouble. He said he didn't notice her there until that point. P.P. said he should leave and he did so, taking the children to a family dinner.

[79] Respecting the criminal charges, he confirmed he pled guilty to one count of uttering threats against H.L. and P.P. and a second count of breach of an undertaking. He was given a conditional discharge with a probation order requiring the payment of the victim surcharge fine of \$200. His probation order requires him to stay away from the person, home and place of work or education of H.L. and have no contact or communication with her, directly or indirectly, even if invited to do so except through a lawyer, in accordance with an order of a court of competent jurisdiction for access to the children or through a third party, K.L., for access to the children.

[80] He was further required to attend for a mental health assessment and counselling as directed by his probation officer, attend for anger management, violence intervention prevention assessment and counselling and any other assessment as directed. He was ordered to participate in any assessment counselling program and other related conditions. This probation order and the related fine order were dated September 26, 2017.

[81] With respect to services, Z.L. says that he has attended New Leaf almost every Monday and Wednesday since April 2017 and attached reports from New Leaf Director Kathy Grant and counsellor Sterling Smith to his affidavit. Ms. Grant provided evidence in this matter, as discussed below.

[82] During the Agency's involvement, Z.L. said that he spoke with them four times. He was told by Melissa Bowman of the Agency on April 18, 2017 that he cannot see his children because of the undertaking prohibiting contact and that he should engage with New Leaf immediately, which he did.

[83] He attached to his affidavit a copy of a letter to his counsel from the Agency dated May 5, 2017 indicating that if the undertaking were modified by Provincial Court, the Agency recommended supervised access. No services were recommended.

[84] This request for supervision was reinforced by a conversation on May 8, 2017 between Z.L. and Melissa Bowman of the Agency. She noted that although the undertaking had been changed to allow contact with the children, the Agency was recommending supervision by his sister or mother.

[85] He says he met with Melissa Bowman on July 5, 2017 and asked again why supervision was required. She suggested that he lacked insight into the situation and that he was not taking responsibility for his actions. She was concerned for the

children's well-being. He says she provided no examples or suggestions of how he might improve. He was told that attending New Leaf would not be enough to satisfy the Agency that he was not a risk to the children. She suggested that he would have to find some other services, such as a psychologist or therapist.

[86] Z.L. says that after the undertaking was varied to allow contact with his children on May 8, 2017, H.L. initially resisted such contact. He says the limited parenting time he had in May 2017 was supervised.

[87] He does say that on one occasion in May 2017 he and the children were driving four wheelers around in an open field next to his sister's home. He says that he and J.L. were always in eyesight of everyone present. He said there may be an indication of 30 seconds or less when they might drop into a dip in the field and would not be visible. He says that neither he nor his son spoke or stopped riding the bike during that time. He denies any opportunity for inappropriate communication without supervision.

[88] Since this Court amended the interim order permitting increased parenting time for Z.L. in June 2017, he says he has exercised that time virtually every Thursday, Friday, Saturday and Sunday. He says these visits were appropriately supervised. He describes appropriate activities and says nothing adverse occurred.

[89] Z.L. expresses concern regarding the plan of H.L. to primarily care for the children. He says she will rely heavily on her parents and that her mother's drinking and their smoking are concerns. He describes an incident from February 2017 involving inappropriate behaviour by P.P. when the children were at her home. He also expressed concerns about the grandparent's health.

[90] In cross-examination, he confirmed that despite the stated concerns about the maternal grandparents and the children's care under the plan of H.L., he agreed that he and H.L. had the maternal grandparents care for the children when they travelled to Toronto and Cuba and on other occasions.

[91] Finally, Z.L. expresses concern about H.L.'s plan because her education continues to take her away during the week. He feels that a joint custodial and shared parenting arrangement is in the children's best interests.

K.L.

[92] K.L. is the mother of Z.L. She describes her pride in her son and his work ethic. She said that he's been through a lot the last few years, including the loss of

his father after battling a serious illness for seven years. She said they were very close and this was difficult on him.

[93] Added to this was the breakdown of his marriage. She said she helped as much as she could and that Z.L. stepped up and took care of the children during the week when H.L. was in Dartmouth for her education.

[94] She said that she has no concerns about the children when they are with her son. They appear to be happy, well fed, well clothed and sheltered. She says her family is close and spends a lot of time with her son and her grandchildren.

[95] She confirms she has been providing supervision for Z.L.'s parenting time since May 2017. This has been difficult for her, her son and the children.

[96] She denies the allegation that Z.L. had unsupervised time with the children on May 27, 2017. Her evidence echoes that of Z.L. She went inside for a moment and her husband was watching Z.L. and the children. She says at no time was he left and supervised.

[97] She says that Z.L. and the children have been doing well during parenting time. She says he is affectionate and the children are usually a bit upset that they can't stay longer. She says her son is age-appropriate with the children and does not discuss any court proceedings or his relationship with their mother. He responds appropriately to any questions they raise and redirects them. She has no concerns about his parenting of them.

A.B.

[98] A.B., Z.L.'s sister, provided evidence. She describes her family as close and that she and her husband have three children of similar ages to her brother's children. She describes her brother as generous and willing to lend a helping hand. He's a hard worker, an outdoorsman and a loving father. She has no concerns about leaving her children in his care unsupervised.

[99] She is aware of the charges and convictions against her brother and says this is not characteristic of him and she's never seen him act like that.

[100] She says that he appears stressed the last while, describing the loss of their father, the placement of their grandmother in a nursing home due to Alzheimer's disease, and the breakdown of his relationship.

[101] Despite him being stressed and a little quieter, he appears to her no different than usual. She says she's observed Z.L. and his children about 10 to 12 times since Easter of 2017 and describes appropriate activities and interactions. She has never observed any inappropriate communication or interactions between him and the children.

[102] Respecting the latest incident of May 27, 2017, she echoes all the other evidence that he was alone with the child very briefly while on the ATV's but was generally fully supervised that day.

Melissa Bowman

[103] Melissa Bowman, an intake social worker with the Agency, provided evidence. She became involved with this family in April 2017 because of a referral by the RCMP where domestic violence was alleged. This was the incident in which H.L. alleged that Z.L. threw a lotion bottle at her.

[104] Respecting the Easter 2017 incident, a referral was made by the police after the 911 hang up call. The police informed her that charges had been laid based on the allegation of the threats by Z.L. to burn down the house and everyone in it and to blow up H.L.'s car.

[105] She described her interview with H.L. What she was told was consistent with what H.L. told this Court.

[106] H.L. also told her of the prior domestic violence incident in March 2017. H.L. said they were arguing and Z.L. grabbed her by the throat. Melissa Bowman said that H.L. described Z.L.'s mental health as deteriorating and being on "eggshells". They discussed the safety plan and she felt that H.L. had insight into the risks presented.

[107] Melissa Bowman said she met with Z.L. on April 18, 2017 at her office. He acknowledged making the threat and said that he didn't mean it. She was concerned that he was not taking responsibility, saying H.L. pushed his buttons and blaming the maternal grandmother for calling the police.

[108] Respecting the allegation of March 31, 2017, he denied this but did admit that he pushed H.L. out of the house and the children were present.

[109] Melissa Bowman said that Z.L. agreed to attend New Leaf but said he had no time to attend for counselling through family services.

[110] On May 1, 2017, she spoke to H.L. and told her that if the no contact provision was removed by the Provincial Court, that Z.L.'s mother should supervise his parenting time. H.L. told her that Z.L. was still angry and still posting negative comments on social media.

[111] Melissa Bowman said she spoke to New Leaf on May 2, 2017 and they expressed concerns that the father was attending regularly but lacked insight and seemed disconnected from the process. On May 3, 2017, she received a document from Lori Miller of Tearmann House describing Z.L. as being at a high risk for violence. She confirmed with Lori Miller that H.L. was attending for counselling with her.

[112] During the remainder of her contact with the parents, Melissa Bowman was concerned that the father lacked insight into the effect his behaviours could and would have on the children and the risk that those behaviours would pose to them. This was based on her own observations and conversations with Z.L. and her conversations with staff at New Leaf. She said that she recommended again that Z.L. attend counselling with a psychologist or social worker, perhaps through mental health, but did not believe he ever attended for such counselling or therapy. She continued to recommend supervision until progress was shown.

[113] Given that there was a sole custody order in place through the Family Court, she said the Agency's file was closed since July 11, 2017. At that time, there was a lack of progress by the father.

[114] When asked the Agency's position in the matter, she said it was unchanged. She said to her knowledge there was no counselling undertaken by Z.L. to address any underlying mental health issues and supervision is recommended for now. She was concerned about the risk of further incidents.

[115] In cross-examination, she was asked about the document provided by Lori Miller of Tearmann House. She understood something about the assessment tool used in the assessment reflected in the document which she took as credible. She understands that Lori Miller is qualified to complete this assessment though she didn't see the data behind it. She understood the questions would be answered only by the mother and not cross-checked with the father.

[116] When asked whether the guilty plea by Z.L. demonstrated him taking responsibility, Melissa Bowman said she would be looking for more. His failure to attend for any counselling or treatment was of concern. She said while he admitted

to the offense, he did not acknowledge the impact on the children that his behaviours might have. He did attend at New Leaf but they were reporting a lack of insight.

[117] She also noted that Z.L. told her that the children were not present at the Easter incident, yet other information indicated that their daughter, C.L., was present and hysterical at one point. She also noted that for the March 31, 2017 incident, the children were also in the home.

[118] When asked why the Agency, considering its concerns, had not made an application for some form of protection order, Melissa Bowman said that the Agency must take the least intrusive approach and was satisfied that the mother is not a risk, is a protecting parent, the matter is before the Family Court and the risks have been mitigated.

Kathy Grant

[119] Kathy Grant, Director of New Leaf, provided evidence in this matter. She confirmed she has been director for one year and served as counsellor and co-facilitator for 17 years prior. New Leaf is a service providing support and counselling to men involved in domestic violence circumstances.

[120] Kathy Grant confirmed she has been working with a Z.L. since April 19, 2017 and he had excellent attendance. He usually attended twice per week, though only required to attend once per week. She described him as a willing participant.

[121] Unfortunately, Kathy Grant described him as appearing "stuck" and said she spoke with him since April 2017 indicating she was looking for progression. Normally she would expect a participant to start with details around the incidents giving rise to his involvement with New Leaf but later to step back and develop insight into his role and responsibility in those incidents.

[122] She said that Z.L. was not progressing, was focused on the details of the incidents and after she spoke to him, he continued to struggle.

[123] She also described him as being somewhat disconnected, discussing one thing and then jumping to something else as if the group discussion underway was not really happening.

[124] She described his use of the talking stick. The talking stick is a sacred object to First Nations peoples, including Kathy Grant, and is used in groups such

as the sessions at New Leaf. The person holding the stick has the right to speak and the others must listen and not interrupt. She said that Z.L. appreciated its use and asked to use it.

[125] Kathy Grant described an incident in September of 2017 that caused her concern. Z.L. was holding the talking stick and was speaking quite angrily. Kathy Grant challenged him on some of the statements he made and she felt neither was hearing the other. They took a break.

[126] When they returned, they were still in the circle and Z.L. was seated to her right. Z.L. had the stick and continued speaking, saying he was not being heard. He was sitting on the edge of the couch and she was sitting on a chair next to him. She described him as not being respectful of the stick and that he held it as if it was a weapon. He was tapping his hand with the stick and speaking directly to and looking directly at her. She was not speaking to him. She felt that he was making clear to her that he was angry at her and she felt intimidated and threatened by his behaviour by the way he was speaking to her, what he was describing and his tapping of the stick on his hand. She felt he was using the sacred object inappropriately.

[127] Kathy Grant said this was the first time that she ever felt threatened by a client. She waited and wondered if he would throw the stick or hit her, but the protocol is not to speak until the speaker is finished. When he finished, he handed the stick to her, sat back and relaxed.

[128] She described this episode as tense and she tried to defuse the mood. The stick was passed and when it came to Z.L. again, he held it respectfully.

[129] At the next group session, the following Monday, Kathy Grant asked Z.L. about the incident. She told him how she felt about it and he asked her why she didn't say something that night. She told him something like that had never occurred before, that this was a sacred object, he misused it and that when she discussed this with him, there was no reaction from him. When she talked about the inappropriate use of the stick, he did look down and said that he was sorry though she was not sure what he was sorry for.

[130] She was so sufficiently concerned about this behaviour that she reported this incident to her Board of Directors. Since he had no prior criminal history, the decision about whether he would be removed from the group would be determined by his reaction when confronted about the behaviour. If he laughed off or

diminished this circumstance he might have to be removed. After her conversation with him, he was not removed.

[131] Z.L. provided his evidence about Kathy Grant's description of his behaviour during that session. He said that at no time was he a threat to her. He said he tapped his hand with the talking stick while thinking and ultimately handed it back to Kathy Grant. He was only told the next week that his behaviour was threatening and he apologized.

[132] When asked if the services were appropriate for Z.L.'s needs, Kathy Grant confirmed that he had been to over 26 meetings and she had spent hours trying to figure out how to get him "unstuck". Generally, men attend the program for a minimum of six months, at least once per week. She was worried about the risk of another bad choice and that this may not be a sufficient service for him.

[133] When asked in cross examination what she meant by "stuck", Kathy Grant said most men were reeling when they first come to the program, usually because of a big incident and they're struggling. Over time, and through the process, they hear the experiences of others and begin to progress. Normally, the story told evolves over time but the one told by Z.L. never changed. He was never able to stand back and see the big picture of what had occurred and his role in it. He described everything as "stupid", "ridiculous", that he wants his family back and wants things back to normal.

[134] Kathy Grant said she expects frustration from the client and that time is required for change to take place. But she reinforced that she saw no signs of any insight and that this was concerning. She was worried about his statements about reconciliation and going back to normal as not being healthy.

[135] She said he was refusing to take responsibility for anything that had occurred and resisted hearing that things were not going to go back to where they were. He said he believed people were preventing H.L. from coming home. He said to Kathy Grant in September 2017 "it's all just stupid".

[136] When asked about his guilty plea as an acceptance of responsibility, she acknowledged this but was still worried about Z.L. She is not sure what he was capable of. She would encourage counselling for him.

The Law

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

[138] The governing legislation in this circumstance is the *Parenting and Support 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 custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

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

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

[140] In determining what I should consider in assessing what is in the children'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 having regard to the child's physical, emotional, social and educational needs;
- (d) the plans proposed for the child's care and upbringing having regard to the child's physical, emotional, social and educational needs;
...
- (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... or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child....

[141] In this matter, there are allegations of family violence and as a result, I must consider section 18(6)(j) as follows:

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

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

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.

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

“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

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;

[143] 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.

[144] The analysis of these children’s best interests, however, does not end with the factors set out under Section 18(6) 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 the *Act* and 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 is 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;
- ...
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.

[145] Since Z.L. is requesting that I order a shared parenting arrangement, it is relevant to consider the jurisprudence on the issue as a guide. A helpful decision in this analysis is that of *Murphy v. Hancock*, 2011 NSSC 197 and I adopt the reasoning of A.C.J. O'Neill in that decision when he wrote

[49] Jurisprudence on the issue of whether shared parenting should be ordered is very fact specific. I agree with the comments of Justice Wright in *Hackett v. Hackett* [2009] N.S.J. 178, at paragraph 13:

13. It is all well and good to look at other cases to see how these principles have been applied, but the outcome in other cases is really of little guidance. Every case must be decided on a fact specific basis and nowhere is this to be more emphasized than in custody/access/parenting plan cases. To state the obvious, no two family situations are ever the same.

[50] Within the assessment of the best interests of a child when shared parenting is proposed a number of factors frequently prove important. They are refinements to the best interests analysis discussed earlier. The factors are the following:

1. The proximity of the two proposed homes to each other is an important factor to consider. This is relevant to assessing how shared parenting will impact on all aspects of a child's life, including what school the child will attend, what recreational or social relationships

will be disrupted or preserved and how available each parent will be to the other should shared parenting be ordered;

2. The availability of each parent to the child on a daily basis and the availability of step-parents is an important consideration. A court should also consider the availability of members of the respective extended families and whether a shared parenting arrangement impacts negatively or positively on a child's relationship with the extended family;

3. The motivation and capability of each parent to realize their parenting opportunity for the best interests of the child;

4. Whether a reduction in transitions between households can be achieved by a shared parenting arrangement. This is particularly important when transitions frequently give rise to conflict between the parents;

5. Whether mid-week parenting time or contact with the other parent can be structured without disrupting the child. This contact might be after school or after supper time, for example, the objective being the elimination of extended periods without contact between the child (ren) and a parent;

6. The opportunity, if any, that shared parenting provides for each parent to be involved in decisions pertaining to the health, educational and recreational needs of the child; the level of interest each parent has in participating in decision making in these areas is relevant to this assessment;

7. The responsibility that shared parenting imposes on each parent to share the parenting burden and to be involved in decisions pertaining to the health, educational and recreational activities of the child and an assessment of each parent's willingness to assume their share of that responsibility after entrusted with it;

8. The employment and career benefits that may accrue to each parent as a result of a shared parenting arrangement and a more equal sharing of the parental responsibilities;

9. Whether improvements in the standard of living in either or both households may accrue as a consequence of a shared parenting arrangement;

10. The willingness and availability of parents to access professional advice on the issue of successful shared parenting;

11. The extent to which primary care by a parent and more limited access time by the other parent will give rise to conflict in the parenting arrangement. The “elephant in the room” in many custody disputes has three aspects (a) the child support consequences that flow from a shared parenting arrangement or the alternative and (b) the manner in which a primary care parent can use his/her position to have power and control of parenting and (c) whether a parent will abuse the parenting opportunity by doing so. Shared parenting is often not ordered because the parties are too conflictual, notwithstanding that the conflict may result from a power imbalance in the parents’ relationship flowing from the parenting arrangement in place. Courts must be cognizant of this dynamic;

12. An assessment of the parenting styles. That assessment should address/answer the questions posed by Justice MacDonald in *C.(J.R.) V. C.(S.J.)* 2010 NSSC 85, at paragraph 12:

- What does the parent know about child development and is there evidence indicating what is suggested to be "known" has been or will be put into practice?
- Is there a good temperamental match between the child and the parent? A freewheeling, risk taking child may not thrive well in the primary care of a fearful, restrictive parent.
- Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline?
- Does the child respond to the parent's attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?
- Is the parent emphatic [empathetic ?] toward the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?
- Can the parent examine the proposed parenting plan through the child's eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?
- Has the parent made changes in his or her life or behaviour to meet the child's needs, or is he or she prepared to do so for the welfare of the child?

Analysis and Decision

[146] For the reasons set out below, I find that the parenting arrangement that would serve the best interests of the children is one of sole custody and primary care to H.L. and unsupervised parenting time to Z.L. according to a specified schedule. The following is a summary of the evidence, the law and the reasons for my decision along with the details of the order.

[147] I find it helpful to begin the analysis with a review of the factors that are relevant to a determination of the children's best interests under the *Act*. I note that the paramount consideration is the children's best interests. I further note that I am to give effect to the principle of maximum contact with each parent. But I also note that this principle is subject to that contact being consistent with the best interests of children including a consideration of the impact of any family violence, abuse or intimidation.

History of Care of the Children

[148] The evidence respecting the history of care of these children is focused on the time from September 2015 forward. There is little evidence of the parenting of these children prior to that date which prevents any comment on parenting prior to this time.

[149] In September 2015 H.L. began an education program at an NSCC in Dartmouth. From then until the separation in April 2016, the evidence regarding the parenting arrangements is that during the work week, H.L. attended classes at NSCC in Dartmouth and resided in that area. On the weekends, she returned to the family home with Z.L. and the children. She said that she remained in contact with the children during the school week but they were residing in the family home with Z.L.

[150] This evidence was echoed by Z.L. who said that during the school week he was responsible for care of the children while H.L. was in Dartmouth. He described what he did in terms of care of the children, their activities and school and he confirmed that H.L. returned each weekend. During the weekends, H.L. was in the home, and the parties parented the children together.

[151] After they separated in April 2016, this parenting arrangement continued with the children residing in the family home with Z.L. during the school week and H.L. attending classes in Dartmouth, returning on the weekends. When she did so,

she took the children into her care at her parents' home and later at her own residence.

[152] H.L. says that during the Christmas school break of 2016, the children lived with her as she did not feel it was safe for them to reside with their father given his mental status. She describes an incident of violence that occurred at that time which I will deal with later in this decision.

[153] In the new year of 2017, the old parenting arrangement resumed because, H.L. says, she was comfortable that Z.L. was taking his medication and was safe to care for the children.

[154] When H.L. was not in school, the parties shared time with the children.

[155] Though Z.L. disagrees with some of the detail, I find it sufficient to note that the parenting arrangement was as described from at least September 2015 until separation and the unfortunate incident during Easter 2017 which gave rise to criminal charges against Z.L.

[156] I find that each parent has contributed to the care of the children. Neither parent has suggested otherwise for the time prior to September 2015. Since then, Z.L. had care of the children for most of the week and H.L. resumed parenting with him upon her return on the weekends. Neither suggest the other was uninvolved except for some concerns raised by H.L. around Christmas of 2016.

[157] Since Easter of 2017, the parenting arrangement has changed as a result of the criminal charges laid against Z.L. and the order of this court placing the children in the care of H.L. and providing for supervised parenting time for Z.L.

The Children's Physical, Emotional, Social and Educational Needs Including the Need for Stability and Safety

The Impact of Any Family Violence, Abuse or Intimidation, Regardless of Whether the Children Have Been Directly Exposed

[158] Respecting the children's physical, emotional, social and educational needs, including their need for stability and safety, I find that there is nothing in the evidence to suggest any of the children have a unique or pre-existing educational, social or emotional challenge. They appear, by the evidence, to be well-functioning and loving children. There is no evidence that they are struggling or

acting out in school. They do not have any learning disabilities or challenges or any physical or mental health challenges that have been identified.

[159] That said, there is significant evidence before the court gives rise to concern regarding their needs, and in particular, the need for stability and safety. This factor intersects with several others under the *Act* including section 18 (6)(j) which requires consideration of the impact of family violence, abuse or intimidation.

[160] In her evidence, H.L. describes an escalating series of incidents that led to the threats made by Z.L. on Easter of 2017. First, she said that she observed an increase in Z.L.'s drinking and hostility towards her from October 2015 forward. He yelled and screamed at her, used inappropriate names, threw things and punched holes in walls of the home.

[161] Z.L. denied any alcohol problems or that he drinks excessively. He said that it was H.L. who threw things at him, hit him and screamed at him but admitted that he expressed his frustration inappropriately towards her.

[162] Second, she said that his behaviour worsened after December 2016 when he began leaving insulting messages on her phone. She was concerned about his mental health and whether he was taking his prescribed medication. This led to the decision to take the children with her to her parents' home during Christmas of 2016.

[163] Third, she described an incident on December 23, 2016 in which Z.L. pushed her into a kitchen cupboard when she was crouched down. She admitted to throwing a chair in self-defense and said that the children were present. She took the children and left the home.

[164] Z.L. said that H.L. threw the chair at him, not in self-defense but in frustration. He admitted pushing her into a kitchen cupboard with his foot but says it was because she was "in his face" and was aggressive. While he doesn't say so, I accept that the children were present for this.

[165] Fourth, H.L. says that after returning to school in January 2017, Z.L.'s insulting messages continued. She described another incident of violence in March 2017 when Z.L. threw a bottle of lotion at her, striking her. He then pinned her to the top of the dresser, put his hands around her throat, and was screaming at her. She says the children witnessed this.

[166] Z.L. said that it was H.L. who came into the home and into his bedroom and confronted him. They disagree on the purpose of the visit and what was discussed but he said that H.L. threw a bottle of lotion at him and he threw it back. He said he got up, held H.L.'s arms against the dresser, yelled at her to stop and told her to get out of the house. He was unaware that the children were in the home. Both say the police were contacted but no charges were laid.

[167] Fifth, H.L. described the final incident at her parents' home during Easter. While there is some variation in the evidence between H.L. and her father, R.P., with respect to this incident, I find that their evidence is largely consistent.

[168] H.L. said that Z.L. came to her parents' home and delivered some presents to the children. He stayed for lunch and spent time with the children.

[169] While there, the evidence is common among H.L., R.P. and Z.L. that he was seeking a list of names of men with whom H.L. had been intimate with. Z.L. said the purpose of requesting the list was to contact the police and have them warn these men off so that he could seek reconciliation with H.L.

[170] All agree that Z.L. became more upset as the conversation continued and he was asked to leave. When the confrontation began, none of the children were present, though they were in the home.

[171] R.P. provided the most detailed evidence regarding this incident. He confirmed that Z.L. was seeking a list of men's names. Z.L. threatened to punch R.P. through a window. Z.L. was getting angrier, was insulting and continued to insist on receiving the list. He finally left the home.

[172] All agree Z.L. returned approximately 10 or so minutes later. R.P. said that Z.L. was still angry, continued to insist on receiving the list and started yelling. R.P. said that C.L. was in the room by then, she became upset and tried to talk to her father. Both R.P. and H.L. asked Z.L. to stop what he was doing because the children were present in the home.

[173] Z.L. has a different version of this event, saying that he was seeking the list referred to and admits that he did raise his voice as did R.P. and P.P. He says he left the home.

[174] On his return, he says he did not see C.L. in the kitchen. He admits he again asked for the list. He says things escalated and everyone was yelling.

[175] The evidence is that Z.L. then threatened that he would burn the house down with everyone in it. While each witness described the language used slightly differently, it is clear that Z.L. made this threat and was charged with two counts of uttering threats.

[176] It is also clear that, though he didn't notice that C.L. was present, she was present, was quite upset and spoke to her father.

[176] In assessing this and other incidents described, credibility is an issue. In assessing the credibility of the witnesses in this matter, I refer to the decision 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*).

[177] In assessing the credibility of the evidence of H.L., R.P. and Z.L. respecting the various incidents of violence described, I find that the evidence of H.L. and R.P. is more credible than that of Z.L.

[178] In giving his evidence, I found Z.L. attempted to minimize his actions and behaviours. I did not find him to be credible when he, for example, testified that it was H.L. who was the aggressor when the bottle of lotion was thrown and when he pushed her into the cabinet and she threw a chair. I find it far more likely, and consistent with the pattern of and escalation of behaviours by Z.L., as well as the preponderance of all of the evidence before me, that it was Z.L. who was the aggressor in each of these incidents.

[179] In making this finding, I am certainly live to the fact that each of the three witnesses has an interest in misleading the Court and will see those incidents through from their own perspective.

[180] Despite this caution, I found the evidence of R.P. to be particularly credible. He was a forthright, clear witness. He acknowledged, for example, the issues his wife faces respecting drinking and inappropriate behaviour. He did not attempt to minimize or exaggerate the evidence and gave that evidence in a forthright and direct manner.

[181] Overall, where the evidence of Z.L. differs from that of H.L. and R.P. respecting incidents of family violence, I accept the evidence of H.L. and R.P. throughout.

[182] I also find that in each of the incidents reviewed, Z.L. committed acts of family violence. When he pushed H.L. into the cupboard in the presence of the children, threw a bottle at her and held her against the dresser with his hand around her throat, continuously sent her insulting and demeaning messages and made the

threat at Easter in the presence of C.L. and while the children were in the home, he committed family violence, abuse or intimidation under the *Act*. It amounted to a series of escalating events forming a pattern of abuse.

[183] I find that in the case of each physical incident, they were deliberate and purposeful violent incidents. In the case of the insulting and demeaning messaging, I find this to be deliberate and purposeful intimidation and abuse. I find all these incidents were an attempt to cause a psychological or emotional abuse and therefore amount to family violence.

[184] I must also consider the impact of these various acts of family violence, abuse or intimidation. For some, the children were present. In the case of the incident where H.L. was pushed into the cupboard, all three children witnessed this. In the Easter incident, at least C.L. witnessed the threat and behaviours of her father and the other children were present in the home.

[185] It is important to note that the *Act* does not require the children witness the family violence. This is a clear recognition that such behaviour can have an indirect but adverse impact on children. The fact that H.L. experienced these events and then went on to care for the children would no doubt have an impact on her and the children in the form of her stress and their attempts to cope with these incidents, both individually and cumulatively.

[186] To put it another way, children are like tuning forks, acutely affected by events in their lives. They are very sensitive to any behaviours of the adults around them and on whom they depend for their care. I find that it would be inevitable that even if H.L. attempted to isolate the children from things such as the insulting and demeaning communication and the incident in the bedroom when she was held to the dresser, it is probable that the children would feel the indirect effect of her stress and upset.

[187] Moreover, it cannot be overstated that the incidents actually witnessed by the children would have an adverse impact on them. It is never acceptable for children to witness family violence because it will almost inevitably have a deep and abiding impact on them. Such behaviours will almost always cause the children to feel insecure, unsafe and unsettled. A single incident may be one they can overcome. But a repeated pattern of family violence, such as is present here, will almost always have a prolonged adverse impact on children that will take some time to heal.

[188] I also consider the ability of Z.L. to care for the needs of the children and the appropriateness of any arrangement that would require cooperation between these parents. This consideration is informed not only by the evidence of the parties but by the evidence of Melissa Bowman and Kathy Grant.

[189] Melissa Bowman, an intake social worker with the Agency, made clear throughout her evidence that she maintained a concern that Z.L. had not gained any insight into the effects his behaviours could have on the children and the risks those behaviours would pose to them. She came to this view not only through interactions with Z.L. but also her conversations with Kathy Grant of New Leaf. She said it was the view of the Agency that supervision of Z.L.'s parenting time was still required until he gained some insight.

[190] In reviewing this evidence, I do not consider her evidence of a document provided by Lori Miller of Tearrman House providing an assessment of risk for Z.L. I find that I do not have sufficient evidence respecting this assessment to give it any weight.

[191] I have also carefully considered the evidence of Kathy Grant, Director of New Leaf. She said that Z.L. appeared to be "stuck", focusing on the details of the incidents which gave rise to his involvement with New Leaf and was not able to move beyond this. He could not gain any perspective or insight into his role in and responsibility for those incidents. From her perspective, Z.L. was simply not progressing. This was contrary to her experience with most clients who initially focus on the incidents and then, over time, through group sessions, gain perspective and insight allowing them to progress and change the behaviours.

[192] I found this evidence to be particularly significant given that Kathy Grant has been doing this work with New Leaf for 17 years as a facilitator and one year as director.

[193] Kathy Grant also said that that Z.L. was refusing to take responsibility for what had occurred, that he resisted hearing that things were not going back to the way they were and that he continued to express a belief that people were preventing H.L. from coming home to him. This, I find, is concerning and strongly suggests that Z.L. is indeed "stuck" in his thinking.

[194] I also considered her evidence regarding Z.L.'s use of the talking stick. Without repeating it here, Kathy Grant told the court that this was the only time in all the years she's done this work that she felt threatened by a client. Given the number of clients that would have progressed through that program over 18 years,

this is quite striking. While Z.L. said that he had no intent to threaten and was simply thinking as he tapped the talking stick on his hand, I accept that Kathy Grant did feel threatened and had reason to feel that way.

[195] As a result of all this evidence, I am left with a significant concern respecting Z.L.'s ability to appropriately address his children's physical, emotional social and educational needs including their need for stability and safety. These are young children ranging in age from 6 to 13 years old. They are highly dependent on their parents in all respects. I have significant concern that Z.L. will be unable to break his pattern of negative thinking respecting H.L., his belief that they could and should reconcile and that he will continue to be critical of her. Whether there was criticism of H.L. in the presence of the children or not, I find that they will be at some risk of feeling the impact of that thinking and behaviour, both now and in the future.

[196] Moreover, the evidence is clear that Z.L. was unable to isolate the children from the physically violent incidents prior to Easter and the threat of violence made at Easter. For some of the incidents, one or more of the children were present. The fact that Z.L. was unaware that C.L. had come into the room where he was making his threat at Easter causes me great concern that when he becomes emotionally escalated, he cannot take the children into account.

[197] Also of concern is the reason for his escalation at Easter. The fact that he would request a list of people with whom H.L. was intimate and justify this request by saying he was going to take a list to the police seems at best disingenuous and at worst very concerning. If he believed that the police would step in and that it was reasonable for H.L. to provide that list, this strongly suggests to me that he has lost perspective.

[198] On the other hand, I find it far more likely that he had no intent of taking such a list to the police but made a request to intimidate and embarrass H.L. in front of her parents. This would be consistent with the pattern of verbal and physical abuse he is engaged in prior. Whatever the motivation, his behaviour was totally unacceptable.

The Nature, Strength and Stability of the Relationship Between the Children and Each Parent

[199] As noted earlier, there is little evidence of the family's history prior to 2015. Since then, there is evidence that the father and the mother have each had a significant relationship with each of the children.

[200] Z.L. parented the children during the week when H.L. was in Dartmouth for her education. They both parented the children on the weekends when she returned home until their separation. Since separation, and until the criminal charges laid arising from the incident at Easter 2017, they parented the children in a shared parenting arrangement, spending equal time with them.

[201] I accept that each of these parents love the children deeply and wants what is best for them. I accept that each of them has had significant involvement in the children's lives up until Easter 2017. I further accept that each of them wishes to have a continuing and deep relationship with their children despite the separation and the intervening events that bring them before this Court.

[202] My concern is the stability of the relationship between Z.L. and the children. That is largely driven by the evidence discussed above respecting his behaviours towards their mother, sometimes in the children's presence, and whether he has been able to progress beyond the incident of Easter 2017.

[203] In addressing this, I am mindful of the evidence of his mother, K.L. and his sister, A.B. K.L. has provided supervision for Z.L. and described him being entirely appropriate, loving and supportive of the children. She saw nothing of concern and I accept her evidence. I found her to be a straightforward and trustworthy witness and accept her description of her observation of Z.L. as a parent.

[204] Similarly, I accept the evidence of A.B. who, likewise, described Z.L. as a loving and appropriate parent. She has no concerns respecting his parenting and would trust him with her own children.

[205] I note that there was an allegation of unsupervised parenting time for a brief time when Z.L. and one of the children may have been out of sight on the ATVs. I am not concerned respecting this evidence. There's nothing to suggest that Z.L. took advantage of that moment to inappropriately act or communicate with the child and I do accept that he has been appropriately supervised at all times.

[206] Respecting H.L., there is no evidence to suggest that she is any risk to the children. Though there were incidents of family violence that the children witnessed, I have already accepted her evidence that these were initiated and carried out by Z.L. and I find that there was little she could do to isolate the children in those moments.

[207] Moreover, there is no evidence before me that H.L. has herself been inappropriate with the children, that she is inappropriately communicating with them or, in fact, that she has ever shared any of the communication from Z.L. with the children. I find that she has a strong and supportive relationship with each of the children.

The Nature, Strength and Stability of the Relationship Between the Children and each Grandparent

[208] The children have a relationship with the maternal grandparents and their paternal grandmother which is important. The children spent a great deal of time in the home of R.P. and P.P. when H.L. lived there on weekends after separation. It appears that R.P. and his wife were supportive of their daughter and grandchildren throughout that time and continue to be so. I find that R.P. has a strong and meaningful relationship with them.

[209] As to P.P., she did not testify but it was the evidence of R.P., Z.L. and H.L. that she experiences difficulties with alcohol consumption, will drink and, from time to time, act inappropriately in front of the children. This does not mean she does not love the children and they love her. It does mean, however, that this Court must be aware of this concern. Fortunately, this is mitigated by the fact that H.L. does not reside with her parents any longer and the children are therefore not exposed to this behavior on a regular basis.

[210] I further accept that the children have a strong relationship with their paternal grandmother, K.L. and the paternal aunt, A.B., as well as the extended family on their father's side. Each of A.B. and K.L. describe their interaction with Z.L. and the children and I accept that it is appropriate, loving and supportive. It is an important relationship to the children and should be maintained.

The Ability of Each Parent to Communicate and Cooperate on Issues Affecting the Children

[211] This is a factor of some concern. I have accepted the evidence of H.L. that Z.L. had been insulting, demeaning and inappropriate in his communication with her since separation and that this escalated to the incident of Easter of 2017. I further accept the evidence of Kathy Grant and Melissa Bowman that Z.L. is “stuck” and has made no progress towards gaining insight into his responsibility for these circumstances. Without this insight, there seems little opportunity for Z.L. to move forward and to change his behaviour toward H.L. and their separation.

[212] On the other hand, I acknowledge the evidence that, since supervised parenting time was put in place, Z.L. has been appropriate in his behaviour towards the children. I am concerned, however, that once the court process ends, there is a significant risk that Z.L. will revert back to the same behaviours that led to this hearing. I am concerned that he will be unable to communicate and cooperate with H.L. on issues affecting the children and I find there is high probability that he will revert to his prior pattern and will be unable to cooperate appropriately.

The Plans Proposed for the Children's Care and Upbringing

[213] Z.L. says that it is in the children's best interests that he and H.L. have a joint custody and a shared parenting arrangement and that the children should spend equal time with each parent. H.L. believes that the appropriate arrangement would be one of sole custody and primary care of the children with her and scheduled parenting time, which should be fully supervised, for Z.L. with the children.

[214] The issue of joint versus sole custody, that is which parents will make decisions concerning the children's best interests, is an important issue for determination by the Court. While in an ideal circumstance, joint custody is preferred, it may also be appropriate in circumstances where conflict and challenges exist.

[215] The ability to co-parent children in a joint custodial arrangement implies that there must be at least a minimum level of communication that is appropriate and child-focused. As well, it is equally important that each parent feel comfortable to express their views without fear of intimidation or threat. Neither parent should feel pressured to follow the lead or bow to the will of the other but rather they should be able to discuss matters rationally and calmly and arrive at a joint

decision. If they fail to arrive at a joint decision, they always have recourse to the courts.

[216] As well, arriving at decisions jointly and each parent having equal authority in such decision-making will generally reinforce each parent's relationship with the children and signal the importance of each of the parents in their lives.

[217] Even if communication is not optimum, which is often the case at the early stages of a separation and may continue to be the case throughout the parents lives, joint custody can work effectively for the children. Responsibility for certain classes of activities or issues may be assigned to one parent or the other and a strict regime of information sharing, preferably in writing, can facilitate communication and decision-making.

[218] The first parent, for example, might book all the health appointments and notify the other. That second parent could attend the appointments and participate in decision-making. The second parent might be responsible for organizing all extracurricular activities and provide similar notice to the first parent, permitting each to participate in the activity and in the decision about whether the activity is appropriate for the child.

[219] Through an order that requires business-like communication and limits discussion of anything other than the children and issues concerning their well-being, joint custody in high conflict separation is possible. Tools, such as a software like Our Family Wizard, the use of a written journal or other techniques can mitigate the adverse effects of hostility or animosity between the parties.

[220] It is also important to be mindful that some parents will deliberately obstruct or limit communications in order to create a circumstance where sole custody may be indicated. The court must always be mindful to avoid empowering a parent to obstruct or otherwise create ineffective communication for the purpose of obtaining an order of sole custody.

[221] On the other hand, not all circumstances can sustain joint custody. Where there is high conflict, a poor history of communication, family violence and intimidation and other indicators of dysfunction, joint custody will often be impossible. The Court should never order sole custody as a matter of convenience to one or both parties. The Court should do so where the evidence is clear that joint custody will not work effectively and will be contrary to the best interests of the children.

[222] In this case, I find that joint custody is not in the children's best interests and it will be necessary to order sole custody in favour of H.L. The history of Z.L.'s escalation of emotion, poor communication, family violence and intimidation since 2016 strongly suggests that sole custody is necessary.

[223] This, combined with the evidence that Z.L. is "stuck" in his perception of the circumstances giving rise to the separation and has not obtained any insight into his role and responsibility for the events heightens this court's concern regarding the ability of Z.L. to communicate effectively, respectfully and in the children's best interests regarding issues that affect them. For this reason, I find that sole custody in favour of H.L. is necessary.

[224] Respecting the issue shared custody, which I shall refer to as shared parenting, there is some history of this after separation and during the times that H.L. was not in school. The parties enjoyed a shared parenting arrangement for some months.

[225] That said, shared parenting generally implies an ability to communicate effectively given the significant and equal time that the children spend in each parent's care. Considering the factors set out in *Murphy* supra by A.C.J. O'Neill, I first acknowledge that there is proximity of the two homes which would allow children to go back and forth reasonably well without interfering with their school or social activities.

[226] There is some challenge around shared parenting given the parties respective availability. H.L. has an education to complete and will be travelling back and forth to Dartmouth, requiring the necessity of some childcare in her absence. This would apply even if there were shared parenting arrangements. Fortunately, she has the support of her parents and has a plan for childcare in her absence during the week.

[227] I find that though a shared parenting arrangement would not negatively impact the children's relationship with their extended families, it would likewise not affect those relationships to have an order of primary care with the mother and parenting time with the father which would include additional time during the summer school break.

[228] I have already expressed at different points in this decision my concern about the motivation and capability of Z.L. to parent the children in a manner that addresses their best interests. I leave my comments at that.

[229] Certainly, transitions between homes could be reduced by a shared arrangement. That said, there is no evidence before me that there has been a problem with transitions to date notwithstanding the conflict between the parents. The use of transitions after and before school can further mitigate this issue.

[230] I find that it is important to consider maintaining significant contact with each parent and this can be done without putting in place a shared parenting plan. The use of weekend and midweek parenting time for Z.L. is quite reasonable and possible, eliminating extended periods without contact.

[231] Respecting whether a shared parenting arrangement would provide an opportunity for each parent to participate in major decisions concerning the children, I have already made significant comments respecting this earlier in the discussion of sole versus joint custody.

[232] Respecting the opportunity for employment career benefits in a shared parenting arrangement, there is no doubt that if it were put in place, H.L. would be relieved of parenting responsibility during the week the children would spend with Z.L. This, it seems reasonable to assume, would remove some of the stress of her travels to and from Dartmouth to simplify her parenting and educational arrangements.

[233] That said, I have significant concerns respecting other issues that counter any advantage that might be gained by an arrangement of shared parenting.

[234] There is no evidence that a shared parenting arrangement would improve the standard of living of either or both households. As well, there is no evidence that the parties have engaged in professional advice on the issue of shared parenting.

[235] Respecting the impact of a primary care versus shared parenting

[236] arrangement on conflict between the parties, there is no doubt that conflict already exists and predates this hearing. The concerns, or “elephant in the room” raised by A.C.J. O'Neill properly notes the financial aspect of child support that is variable depending on whether there is a shared custody or primary care arrangement. Neither party argued that this is a significant concern, but finances are also important in family dynamics, particularly when they are separated.

[237] As well, there is potential concern of abuse by the primary care parent in exercising power and control of parenting. While one can never know until some

time has passed, having heard the evidence of H.L. and Z.L., I am satisfied that H.L. is not likely to abuse her position as a primary care parent if granted. Despite the many conflicts and challenges she has faced with Z.L., she has not denied parenting time to him. For example, even after the threat was made on Easter of 2017, the children went with their father for a meal with his family. Similarly, after earlier confrontations, the parenting arrangement continued unabated without interference by H.L.

[238] Finally, with respect to the parenting styles of these parents, there is little evidence at a granular level of how each parent deals with each individual child. What is clear is that neither parent has suggested that the other has a history of inappropriate or abusive parenting. Indeed, they co-parented these children for many years, even after separation, and sometimes in a shared parenting arrangements during the summer.

[239] The concern, as is replete throughout this decision, is whether Z.L. has the insight to understand the risk that his behaviours pose for the children and, absent that insight, the further risk that he will repeat these behaviours to the detriment of the children.

[240] For all of those reasons, I find that a shared parenting arrangement would not be in the children's best interest. I find that an order of primary care to H.L. and parenting time to Z.L. is most appropriate in this circumstance.

Supervised Parenting Time for Z.L.

[241] The final parenting issue is whether it is necessary and in the children's best interest to continue the supervision of the parenting time of Z.L. I have no hesitation saying that supervision was necessary at least from the point where Z.L. made the threats at Easter of 2017. He was clearly behaving in a manner that is inappropriate and posed a risk to the children.

[242] The question now is whether the supervision which has been in place since then is still required to ensure the best interests of the children.

[243] On one hand, the evidence from Melissa Bowman and Kathy Grant is that Z.L. is still a significant risk to the children because he is "stuck" and has not progressed in obtaining any insight. His inappropriate use of the talking stick and Kathy Grant's evidence that she felt threatened supports this.

[244] On the other hand, since supervision has been in place, there is no indication that Z.L. has behaved inappropriately around or towards his children. He has been supervised for many months with no adverse impact on the children.

[245] It is also important to note that each of the incidents which gave rise to this hearing consisted of behaviour by Z.L. toward H.L., not directly towards the children. There is no evidence that he has ever been violent or directly abusive toward the children. It is certainly clear that, at times, the children have been present for certain incidents of family violence and, as I found earlier, they would have been indirectly affected by the other incidents and abusive communication by Z.L. towards H.L.

[246] It is always difficult for Court to predict how a parent might behave in the future. In this case, we have two past periods to examine as the best predictor of the risk Z.L. may pose to his children. The first is the time from 2015 until the criminal charges at Easter of 2017. The second timeframe is from Easter of 2017 until today.

[247] From the first timeframe, there are many risks identified. They have been well canvassed in this decision.

[248] From the second timeframe, there remains the concerns of Melissa Bowman and Kathy Grant regarding Z.L.'s lack of progress and insight. On the other hand, there is no evidence to suggest that Z.L. has been inappropriate with or in the presence of the children.

[249] Supervision of parenting time should only be imposed in extraordinary circumstances. It fundamentally interferes with the relationship between the parent and child and will normally undermine the parental relationship so long as it is in place. Courts should be reluctant to impose such supervision except in the clearest of cases. As well, Courts should be reluctant to continue supervision unless there is clear evidence of an ongoing or prospective risk to the children. In my view, that risk must be present or imminent and the evidence of that risk must be clear.

[250] I acknowledge Z.L. may never achieve insight but that does not disqualify him from parenting his children. So long as he does not visit upon them any of his views, behaviours or inappropriate communications, he will be able to play a significant role in his children's lives.

[251] I am satisfied that it is now appropriate to remove the requirement for supervision of Z.L.'s parenting time with his children. I do so with the caution to him that he must not fall back into the behaviours that led him to this hearing. He is responsible for his actions, both past and future, and should he lapse into that destructive behaviour, it may well lead to an order of supervision again.

Child Support

[252] Under an interim order of this court dated June 28, 2017, Z.L. was ordered to pay child support for three children in the amount of \$966 per month to H.L. based on an annual income of \$52,344.00. His Statement of Income in this matter confirms that income and I find there is no reason to vary this amount of support.

Order

[253] There will be an order of sole custody for all three children in favour of H.L. She will have primary care and residence of the children.

[254] H.L. shall keep Z.L. informed of all major matters involving the health, education and general well-being of the children. Z.L. will be entitled to obtain information respecting the children from any third-party service provider including, but not limited to, doctors, teachers, schools, dentists, childcare provider or therapists. He may attend appointments, either with H.L. with her consent or separately, but he will have no decision-making authority respecting these matters.

[255] Z.L. shall be entitled to authorize emergency medical care for any of the children while they are in his care and must notify H.L. immediately and without delay of the emergency and the care he authorized. From that point forward, H.L. shall have sole decision-making authority respecting any such care.

[256] Z.L. shall have parenting time with the children every second weekend from Friday afternoon until Monday morning commencing the first Friday after this decision. He shall pick the children up on Friday after school or from their afterschool program or child care provider and will take them to school on Monday morning.

[257] Z.L.'s weekend parenting time shall be expanded to include any in-service days or statutory holidays which fall on his weekends such that his parenting time will begin on Thursday after school or continue until Tuesday morning or both as the case may be.

[258] Z.L. shall have the children during the week following his weekend parenting time from Thursday after school until he returns the children to school on Friday morning. If the children do not have school Friday morning he shall deliver them that morning to H.L. or to a child care provider as directed by her.

[259] The following special parenting time shall apply and the parenting time set out above shall be suspended during these times:

[260] Christmas School Break - During the Christmas school break, the parties shall share time with the children on an approximately equal basis. One parent shall have the children from after school the day that school ends until Christmas Day at 2 PM and the other parent shall have the children for parenting time from Christmas Day at 2 PM until they return to school after the school Christmas break. H.L. shall have the children from after school until Christmas Day at 2 PM in 2018 and the schedule shall rotate each year thereafter.

[261] Easter - For Easter, one parent shall have the children from after school on Thursday until Saturday at 2 PM and the other parent shall have the children from Saturday at 2 PM until they return to school on Tuesday morning. H.L. shall have the children with her for parenting time from Thursday after school to Saturday at 2 PM in 2018 and the schedule shall rotate each year thereafter.

[262] School Spring Break - Unless otherwise agreed between the parties, they shall share the school spring break with the children equally between them. If Z.L.'s normal parenting time weekend falls at the beginning of the school spring break, he shall have the children with him until Wednesday of that week at 5 PM and H.L. shall have the children with her for the balance of the week until they return to school the following Monday morning. This schedule shall be reversed if Z.L. has the children with him for his parenting time weekend at the end of the school spring break.

[263] Summer School Break - During the children's summer school break, the parents shall enjoy a shared parenting arrangement on a week about basis. The day for exchange will be Friday at 5 PM or at another time otherwise agreed to by the parties. Z.L. shall have the first full week of shared parenting time commencing the first Friday after the end of school and, notwithstanding this arrangement, H.L. will have the children back in her care for at least three days before the commencement of school each year.

[264] Mother's and Father's Day - Notwithstanding any other parenting arrangement, H.L. will have the children with her on Mother's Day from 9 AM to 5 PM and Z.L. will have the children with him on Father's Day from 9 AM to 5 PM.

[265] Children's Birthdays - There will be no special parenting time for the children's birthdays. Whichever parent has the child on his or her birthday, that parent will keep the children for that day and the other parent may celebrate that birthday on another day of their choosing.

[266] Z.L. shall not consume or be under the influence of alcohol for 24 hours prior to or during his access time with the children.

[267] Each parent shall obtain and maintain the children 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 the children in proportion to their incomes.

[268] Z.L. shall name or maintain H.L. 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 \$150,000 to secure child support.

[269] All communications between the parties shall be conducted in a polite, respectful, businesslike child focused manner. They shall only communicate respecting matters concerning the children. The primary means of communications shall be via text or email though they may communicate via telephone or in person in an emergency.

[270] Each parent is prohibited from making any negative or derogatory comments about the other parent at any time they have care of the children, whether the children are present in the room or not. Each parent shall ensure that no one else makes any such negative or derogatory comments about the other parent at any time and should such comments be made, that parent shall ensure that those comments stop immediately, the person making those comments is removed from the vicinity of the children, or the children are removed from the vicinity of that person.

[271] Z.L. shall pay child support to H.L. in the amount of \$966 per month, which may be paid bi-weekly if the parties agree, based upon an income for Z.L. of \$52,344 per year in accordance with the Nova Scotia Table.

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

[273] All child support and special or extraordinary expense payments shall be made directly by Z.L. to H.L. in a form mutually acceptable to them. Either party may elect at any time to register the order with the Maintenance Enforcement Program and once registration is complete, all further payments shall be made in a form acceptable to and made through the Office of the Director of Maintenance Enforcement, P.O. Box 803, Halifax, Nova Scotia, B3J 2V2, while this order is filed for enforcement with the Director.

[274] Z.L. shall provide to H.L. a complete copy of his 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.

[275] If the parties are sharing any costs pursuant to section 7 of the Provincial Child Support Guidelines, H.L. shall provide to Z.L. a complete copy of 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.

[276] Z.L. will disclose immediately to H.L. any change in his 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.

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

[278] If counsel wish to be heard on the issue of costs, written submission must be made within two weeks.

[279] Counsel for the applicant will draw the order and provide it to the court within two weeks.

Daley, J.