

FAMILY COURT OF NOVA SCOTIA

Citation: *M.T. v. J.H.*, 2019 NSFC 6

Date: 20190313

Docket: FATMCA-92660

Registry: Antigonish

Between:

M.T.

Applicant

v.

J.H.

Respondent

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

Judge: The Honourable Judge Timothy G. Daley

Heard: September 12, 2018 and September 25, 2018, in Antigonish, Nova Scotia

Final Written Submissions: October 1, 2018

Final Written Decision: March 13, 2019

Counsel: Meghan MacGillivray, for the Applicant
Coline Morrow, for the Respondent

[1] This decision is about E.H., a 6 year old boy, and what is in his best interests. Specifically, I must decide whether he should be permitted to relocate with his mother, M.T., to Halifax, or, whether he should remain in the care of his father, J.H., in Antigonish. Depending on whether permission is granted for the relocation, or not, I must decide what parenting arrangement is in his best interests.

[2] Thus, the issues for determination are as follow:

1. Should M.T. be permitted to relocate E.H. with her to Halifax?
2. If M.T. is permitted to relocate E.H. with her to Halifax, what custodial and parenting arrangement would be in E.H.'s best interests?
3. If M.T. is not permitted to relocate E.H. with her to Halifax, what parenting arrangement would be in E.H.'s best interests?
4. What child support should be paid?

History of the Parties and Proceedings

[3] The parties separated in 2014 after a 3 1/2 year common-law relationship. After some initial challenges in their parenting arrangement, the parties entered into a consent order before the Family Court in February, 2016. In that order, the parties agreed to a joint custody arrangement and the order identifies the parenting as a shared custody circumstance. While the parties now disagree as to whether it truly qualifies a shared custody, or not, they only disagree slightly as to the calculation of parenting time, and they each agree that E.H. spent between 39% and 41% of his time with his father, and between 59% and 61% of his time with his mother.

[4] The order, which is very detailed respecting parenting arrangements includes special parenting time for occasions such as Christmas, Easter and summers. It also includes other specific conditions respecting notice for relocation, prohibition of alcohol consumption during parenting and a requirement that the child's passport remain in the custody of the court. The latter provision was, according to the evidence, in response to the concern of the father that the mother might flee Nova Scotia with the child and possibly travel to her home country of Ukraine.

[5] This application arose because the mother has decided to return to university in Halifax to seek a science degree in anticipation of improving her financial circumstances with new employment. She says that this relocation will improve

her and E.H.'s general circumstances. She feels this relocation will not substantially interfere with the father's parenting time with E.H..

[6] The father opposes the relocation of E.H. to Halifax saying that E.H. has a rich life in Antigonish including a strong relationship with his family. He says that the relocation would substantially change his parenting time and thereby adversely impact his relationship with his son or his son's relationship with his extended family. He says his plan will permit the mother to spend significant parenting time with E.H. even if she relocates to Halifax.

[7] J.H. denies any violence alleged by M.T. during their relationship.

[8] J.H. says that throughout E.H.'s life, he has been a devoted and involved parent, sharing in his care, attending at medical and dental appointments with the mother and ensuring that E.H. spend time with his extended family in Antigonish. He also says that he has supported M.T.'s mother and grandmother visiting them in Nova Scotia from Ukraine for extended periods of time. He also supported M.T. travelling with E.H. to visit family in Ukraine.

[9] J.H. says that E.H. has a meaningful relationship and spends time with members of his extended family and friends in Antigonish. J.H., his mother, father, sister and girlfriend gave evidence supporting that position.

[10] M.T. says that J.H. was not an involved father and often spent time away from the home when E.H. was very young. M.T. says that she did the bulk of the parenting including major and day to day decisions for E.H. and it was she who made appointments and attended various services with him.

[11] She also says that, while J.H.'s family was supportive, she did not feel that they were close with her and did not support her to the extent she wished, remaining somewhat distant and uninvolved at times.

[12] M.T. also says that it is important that E.H. continue to use Ukrainian in his communication with her maintaining his language skills and, by being with her on a primary care basis, he can maintain a connection with his Ukrainian heritage. He can attend the Ukrainian church in Halifax, the religion into which he was baptized in Ukraine. There is no such church in Antigonish.

[13] Both J.H. and his extended family say that they were supportive of both M.T. and E.H. before and after the separation. J.H.'s sister describes having a particularly close relationship with M.T. J.H.'s mother, SH, describes having a

similar supportive relationship, specifying she spent considerable time with M.T. and E.H. after separation.

[14] J.H. says he supports M.T.'s efforts to maintain E.H.'s connection with the Ukrainian language, religion and heritage and feels this can be accomplished even if E.H. remains in Antigonish and his mother relocates to Halifax.

Matters Not in Dispute

[15] I first want to be clear what this decision is not about. This is not a competition to prove who loves E.H. more. I accept, without hesitation, that each of these parents love E.H. very deeply, as does his extended family, wanting what is best for him.

[16] This case is not about what is best or convenient for the father, mother or others. The sole and exclusive focus in this case is what is in E.H.'s best interests, only.

Relocation – Options Available

[17] It is important to note that the parties have identified two options or parenting arrangements for the court to consider. Of course, the court is not limited to these options or to the structure proposed by either party with within any of these options.

[18] The father says that he wishes E.H. to remain in Antigonish in his primary care and proposes parenting time for the mother in Antigonish and Halifax based on her relocating E.H. to Halifax to pursue her education.

[19] The mother that she wishes E.H. to relocate with her to Halifax and proposes parenting time for the father in Antigonish.

[20] The father is clear that, if I permit E.H. to relocate with his mother to Halifax, he will remain in Antigonish.

[21] Similarly, the mother is clear that, if I refuse to permit E.H. to relocate with her to Halifax, she will move to Halifax to pursue her education.

[22] I will therefore restrict myself to these options.

The Law

[23] In assessing what is in E.H.'s best interests, it is important to begin with a review of the law applicable to such circumstances and then to review and assess the evidence in the context of the legal tests, standards of proof and presumptions applicable to arrive at an appropriate decision reflecting on E.H.'s best interests.

Material Change in Circumstances

[24] As noted earlier, that there is a consent order of the Family Court issued in 2016 which set out in detail the parenting and custodial arrangements for E.H. This is, therefore, an application of M.T. seeking a variation of that order permitting the relocation of E.H. with her to Halifax. As a result, M.T. bears the burden of proof to establish that there has been a material change in circumstances since the granting of the consent order in 2016. If she can do so, I must then embark on a fresh inquiry into what is in E.H.'s best interests today.

[25] The leading decision on what constitutes material change in circumstance is the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC).

12 What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way... The question is whether the previous order might have been different had the circumstances now existing prevailed earlier.... Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order. ...

13 It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[26] In this case, there appears to be little dispute that the relocation request by the mother constitutes a material change. This circumstance, combined with the fact that E.H. has begun attending school in 2018, supports that position. If there is

any question on this, I find that M.T. has established, on a balance of probabilities, that there has been a material change in circumstances which warrants a fresh inquiry by this Court into what is now in the best interests of E.H.

[27] Specifically, I find that the proposed relocation of E.H. to Halifax would be a change in his circumstances and would also be a change in the ability of his parents to meet his needs. The parenting dynamics since 2016 has been relatively stable and is, or is close to, a shared custody arrangement in Antigonish. The relocation to Halifax, an approximate two-hour travel time each way, will clearly affect that parenting arrangement. It will also take E.H. away from the community in which he was raised and, though he will no doubt spend time with his father and extended family in Antigonish, it will have some impact on all those relationships. It will also affect the father's ability, at least to some extent, parent E.H., given the distance and parenting arrangements proposed. All of this will materially affect E.H.

[28] E.H.'s commencing school is also a material change in circumstance. Until September, he enjoyed specified parenting time with his parents under the order of 2016. That order provided parenting time for E.H. with M.T. from Monday at 8:00 am to Friday at 5:00 pm, and with J.H. from Friday at 5:00 pm to Monday at 8:00 am. E.H. had additional parenting time with J.H. every third week when J.H. had an Earned Day Off (EDO) starting Thursday at 5:00 pm until Sunday at 5:00 or 7:00 pm, depending on M.T.'s work schedule. Additionally, E.H. had parenting time with J.H. every Wednesday evening from 5:00 pm to 7:00 pm.

[29] Given the respective parenting plans set out by the parents below, it is clear that there will have to be a change in this parenting arrangement. Whether or not M.T.'s application is granted, E.H. is beginning school. This material circumstance means that the current parenting plan must change.

[30] I also find that such a relocation plan was certainly not foreseen and could not have been reasonably contemplated by the court in 2016. It was not part of that application nor reflected in the consent order.

[31] I, therefore, find that the application by M.T. and E.H.'s entering school constitute a material change in circumstance. It requires that I now consider all the evidence available today and determine what is currently in E.H.'s best interests.

The Law Applicable to Relocation and Best Interests

[32] In order to properly analyze the evidence and arrive at appropriate findings in this matter, it is necessary to situate the evidence within the applicable law. The governing legislation in this circumstance is the ***Parenting and Support Act 1989 RSNS c.160 as amended*** (the *Act*). The beginning point in any analysis under that *Act* is s.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.

[33] 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).

[34] In determining what I should consider in assessing what is in the child's best interest, s.18(6) sets out some of the relevant considerations, 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;
- (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- ...
- (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... sibling, 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....

[35] The analysis of the children’s best interests does not end with the factors set out under s. 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 s. 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. While I will not list those factors in this decision, I do consider them in assessing the best interest of E.H.

[36] In this case, there is also the issue of relocation. This requires consideration of the law applicable to such matters. The *Act* includes specific provisions respecting relocation. Some of these provisions, including those respecting the requirement to provide adequate notice of relocation and the consequences of a failure to do so, I find are not applicable as appropriate notice was given. I find that other provisions as set out below are applicable:

18G

...

(2) On application by

(a) a parent ... of the child;

...

the court may make an order authorizing or prohibiting the relocation of a child and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just.

(3) An application for an order authorizing or prohibiting the relocation of a child may be filed at any time prior to or after the relocation occurs.

18H (1) When a proposed relocation of a child is before the court, the court shall be guided by the following in making an order:

(a) that the relocation of the child is in the best interests of the child if the primary caregiver requests the order and any person opposing the relocation is not substantially involved in the care of the child, unless the person opposing the relocation can show that the relocation would not be in the best interests of the child;

(b) that the relocation of the child is not in the best interests of the child if the person requesting the order and any person opposing the relocation

have a substantially shared parenting arrangement, unless the person seeking to relocate can show that the relocation would be in the best interests of the child;

(c) for situations other than those set out in clauses (a) and (b), all parties to the application have the burden of showing what is in the best interests of the child.

....

(3) In applying this Section, the court shall determine the parenting arrangements in place at the time the application is heard by examining

- (a) the actual time the parent or guardian spends with the child;
- (b) the day-to-day care-giving responsibilities for the child; and
- (c) the ordinary decision-making responsibilities for the child.

(4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including

- (a) the circumstances listed in subsection 18(6);
- (b) the reasons for the relocation;
- (c) the effect on the child of changed parenting time and contact time due to the relocation;
- (d) the effect on the child of the child's removal from family, school and community due to the relocation;
- (e) the appropriateness of changing the parenting arrangements;
- (f) compliance with previous court orders and agreements by the parties to the application;
- (g) any restrictions placed on relocation in previous court orders and agreements;
- (h) any additional expenses that may be incurred by the parties due to the relocation;
- (i) the transportation options available to reach the new location; and
- (j) whether the person planning to relocate has given notice as required under this Act and has proposed new parenting time and contact time schedules, as applicable, for the child following relocation.

[37] Prior to the proclamation of the *Act* in 2017, which included new provisions in s. 18 respecting relocation, the leading judicial authority on relocation matters was the Supreme Court of Canada decision in *Gordon v. Goertz supra*.

[38] For reasons set out in my decision in *J.B. v. E.D., 2018 NSFC 8* at paragraphs 46 to 54, I find that, with the proclamation of the *Act*, the provisions on mobility contained in s.18 are a complete legislative scheme for considering such matters under the *Act*. These provisions were enacted long after the decision in *Gordon, supra* and clearly were designed to clarify and, in some cases, modify the analytical structure from that decision in determining such matters.

[39] In this case credibility is an issue. In assessing credibility, I am mindful of the comments of Forgeron, J. in *Baker-Warren v. Denault 2009 NSSC 5* in which she provided the following helpful guidance respecting the assessment of credibility. While I will not quote from that decision, I keep in mind her summary at paragraph 18 to 20 in my consideration of any issues of credibility in this matter.

Allegations of Family Violence

[40] As a preliminary issue, I will deal with the allegations of family violence. In her evidence, M.T. makes several allegations of emotional and verbal abuse by J.H. against her. The father flatly denies each of these allegations. Each of these allegations predates the consent order granted in 2016.

[41] In circumstances where there are allegations of family violence, I am required to consider that evidence in assessing what is in E.H.'s best interests and must consider the provisions of the *Act* related to family violence. In considering the evidence of family violence, I find that I should not give weight to the allegations made by M.T. against J.H. for several reasons.

[42] First, some of the allegations are vague, consisting of an allegation of emotional abuse and a fear that it might turn physical without providing any examples or details. M.T. alleges a power imbalance in the relationship, saying J.H. could control her by threatening to put her out of the house and attempting to have her deported. She suggests that the requirement that she reside with him in her permanent residency application was used by him to intimidate and control her without giving any examples of how that was carried out.

[43] The one specific example she gives was in February, 2012 when she alleges that when she was at J.H.'s apartment, he returned drunk and began assaulting her.

She alleges he grabbed her by the wrist, dragged her upstairs and kept insulting her. She says he then threw her belongings out the window onto the snow. J.H. denies this.

[44] J.H. says that an incident of family violence occurred in February of 2012 when he had to grab and hold M.T.'s wrists to stop her striking him. He says that he did not drag her upstairs and she had no belongings at his house to throw out. He says that she assaulted him and maintains this evidence was before the court prior to the consent order in 2016.

[45] This one incident may well qualify as an act of family violence, abuse or intimidation as defined in the *Act*. But if I were to accept it as an act of family violence, there is no evidence before me of the impact of that act on E.H., the ability of the father to care for and meet the needs of E.H. or the appropriateness of any parenting arrangement require cooperation between the parents.

[46] Moreover, I note that this is a single incident of alleged violence and, while certainly unacceptable, and whatever version is accurate, it is alleged to have occurred six years previously. It appears to have been a single incident, occurring before E.H. was born. There is no evidence of any harm to or impact on E.H. as a result and no repetition of this behaviour. Most importantly, these allegations of family violence during the relationship could have been raised with the court as part of the proceeding that led to the consent order in 2016. I do not know if such issues were raised, but it is obvious that M.T. would have been aware of these alleged incidents. She could have raised them at the time and argued that they would impact her and the parenting arrangements. Yet, she consented to the order, nonetheless.

[47] Finally, while the history of any relationship is important to provide context to the court, it is important that this court not go behind the order granted in 2016 and permit parties to relitigate matters that were available to bring before the court at the time of the previous order. This, I concede, is a delicate balance to achieve, given that the history of parenting in the relationship of the parties and is always relevant to the current assessment of best interests of the child. I find this court should not allow a party to seek the hearing of evidence prior to the most recent order unless necessary.

[48] In all the circumstances, I do not find that the allegations of family violence made by M.T. against J.H. are relevant to the current circumstances of E.H. They are dated, were within the knowledge of M.T. at the time of the consent order in

2016. There is no evidence of any previous or ongoing impact on E.H. from these alleged incidents and no evidence that there is any ongoing family violence since the granting of that order.

Child Hearsay Statements and Views of the Child

[49] I note that s.18 (f) of the *Act* was not included as a factor in this matter. This section requires consideration of the views of the child. The most common way the child is heard is through a Voice of Child Report, but no such report was requested, nor would it be appropriate given the age of E.H.

[50] There was some effort to have E.H.'s voice heard through hearsay evidence by several witnesses, including the parents. There were preliminary motions to strike, many of which were granted, making such hearsay inadmissible.

[51] With respect to the balance of the hearsay evidence of statements made by E.H., I will not consider the majority of these with the exception of any that might explain the actions of a party or add to the narrative of the evidence. As I have said many times respecting such hearsay, I am reluctant to admit and consider such statements when they are offered by parents or family members. There are always concerns respecting the motives of such a witness to fabricate, exaggerate or otherwise inaccurately report such utterances. There is also the concurrent concern that a child may simply be telling a parent or family member what the child believes that person wishes to hear as a means for the child to cope or potentially curry favour from that family member.

[52] In the matter, and without reviewing every alleged utterance individually, I conclude that the hearsay risk is live with respect to the bulk of the statements and they are inadmissible and will not be considered by me.

Presumptions and Burden of Proof for Relocation

[53] The first step in deciding the issue of relocation under the *Act* is to determine where lies the presumptions, if applicable, and the burden of proof concerning the proposed relocation. Section 18(H)(1) sets out three possible circumstances of parenting at the time of the application for relocation and identifies a presumption in the first two circumstances and a distinct and different burden of proof for each.

Substantially Shared Parenting Arrangement – Analysis and Finding

[54] I will now review the issue of whether the parties are in a substantially shared parenting arrangement such that the presumption against relocation would be engaged and the burden of proof would rest with M.T. to establish that the relocation is in the best interests of E.H.

[55] I discussed the phrase “substantially shared parenting arrangement” in s.18H(1)(b), this is my decision of *A.P. v. J.K.*, 2018 NSFC 14 at paragraphs 33 and 34 as follows:

[33] Similarly, I find that the phrase “substantially shared parenting arrangement” in s.18H(1)(b), when considered in the context of the amendments to the *Act*, makes two things clear. First, the use of the term “substantially shared parenting arrangement” is markedly and deliberately different than the phrase “shared custody” under the *Provincial Child Support Guidelines* which is defined to exist where “a parent exercises parenting time with a child for not less than 40 per cent of the time over the course of a year.” The use of different terms between the *Act* and *Guidelines* strongly implies that the Legislature did not intend to equate the definition of “shared custody” under the *Guidelines* with the term “substantially shared parenting arrangement” under s.18H(a)(b) of the *Act*.

[34] Second, this is reinforced by the requirement that the court consider the three factors under s.18(H)(3) in determining the parenting arrangement. This is different from the analysis of counting time only, whether days, hours or minutes, in determining shared custody under the *Guidelines*. The determination of substantial shared parenting is a more nuanced and blended analysis of actual time spent with a child, the day-to day care responsibilities and the decision-making responsibilities of each parent.

[56] In this matter, on review of the actual time the parents to spend with E.H., the positions of the parties are remarkably close. The position of M.T., as reflected in her evidence and counsel's brief, argues that, on careful review of the number of hours spent over the course of the year with the parent, E.H. spends 61% of his time with her and 39% of his time with his father.

[57] J.H., in his evidence, and in counsel's submission, says that, over the course of 48 weeks of the year, E.H. spends 59% of his time with M.T. and 41% of his time with J.H. For the remaining four weeks of the year, he says that E.H. spends an equal amount of time with each parent.

[58] To consider this branch of the test, I do not find it necessary to parse the evidence to attempt to arrive at a precise calculation of time with each parent. That is not what is required under the *Act* when determining the actual time each parent spends with E.H. I find it sufficient to determine that E.H. spends close to 60% of his time with his mother and close to 40% of his time his father. It is important to remember that this calculation is not an attempt to identify whether this is a shared custody arrangement under the *Provincial Child Support Guidelines*, but rather to determine, as one prong of the test for substantially shared parenting arrangement, the actual time spent.

[59] I further find that, whatever the precise time spent with E.H. by each party, they each spend substantial time with him. When compared with an order that would reflect a more common parenting arrangement, J.H. spends a significant amount of time with E.H. For example, many orders grant noncustodial parents parenting time every second weekend and perhaps an overnight during each week along with extended parenting time on special occasions such as Christmas, Easter, March Break and summer. In those circumstances, that parent's parenting time would be substantially less than the amount enjoyed by E.H. with his father. While certainly not determinative of the issue of whether this is a substantially shared parenting arrangement, I find that this reflects a circumstance in which J.H. does spend substantial amounts of time each year with E.H.

[60] With respect to the day-to-day caregiving responsibilities for E.H., there is little dispute of the evidence that each parent is primarily responsible for his care when E.H. is with that parent. I find that this prong of the test requires an assessment of the evidence respecting ordinary decisions contrasted with major custodial decisions respecting the child. For example, this prong is more about day-to-day caregiving responsibilities such as ensuring E.H. is taken to and from school, child care and family or other events, ensuring he eats well, has a regular bedtime and routine, his oral care regime is appropriate, ensuring he is dressed appropriately for the weather and activity, that he is appropriately disciplined and a host of other routine but essential decisions and activities that must be undertaken by a responsible parent in care of the child.

[61] I further find that the third prong of the test, the ordinary decision-making responsibilities of the child, encompasses not only major custodial issues, including decisions around significant medical treatment, assistance at school, braces or dental surgery and a host of other similar issues. It also includes more mundane decisions such as scheduling and sharing appointment information for doctors, dentists and others, determining transportation arrangements for school,

child care, appointments and other events, deciding who the child will spend time with and a host of other decisions.

[62] On review of the evidence, there seems little disagreement about the role each parent plays in the day-to-day caregiving responsibilities for E.H. M.T. says that, when with her, she looks after these responsibilities. The father says the same about his time with E.H.

[63] M.T. says that she makes most of, if not all, of the doctor and dental appointments and other service provider appointments. She says the father attends when he can. J.H. says he attends all that he is notified of without exception and he makes such appointments when E.H. is in his care.

[64] There is no dispute between the parties that each is responsible for E.H.'s bedtime and meal preparation routine when with that parent. There is evidence that each parent deals with discipline issues for E.H., though these are few such issues in the evidence.

[65] Each describes E.H. as having a good social life with friends and family. M.T. describes E.H.'s relationship with her mother and grandmother when they are in Canada and contact that continues when they are visiting in Ukraine. J.H. and his family describe a robust relationship with extended family in Nova Scotia. Both parents describe the connection E.H. has with friends that each of them supports.

[66] Respecting school, which E.H. has just begun but the limited evidence available at the hearing indicates that each parent is quite interested in attending any meetings, supporting E.H. in his schoolwork when in their care and ensuring he has supplies, clothes and ready to go to school each day.

[67] Respecting child care, each parent's evidence is that they have made appropriate arrangements for E.H. when in their care including arrangements for an afterschool program.

[68] Respecting social and physical activities, both parents' evidence support that they ensure E.H. is engaged including in swimming, skating, hiking, going to the beach and other activities in the community, both with and without family. Each may suggest they do more of these activities than the other, but the evidence is clear that E.H. is well engaged in such activities through the efforts of each of the parents.

[69] It is also important to acknowledge that when the parties disagree about a major decision for E.H., they have engaged the services of a psychologist to help mediate any disagreements. This has been ongoing for some time and has provided professional support for the parents and E.H. during the time of separation. Each parent is to be commended for engaging in such a service to minimize the conflict and work through mediated resolutions.

[70] Considering the ordinary decision-making responsibilities for E.H., despite the separation and emotion surrounding that event, the parents seem to have been able to arrive at joint decisions on major issues for E.H., either on their own or with the assistance of the psychologist. While there was a dispute about whether E.H. would commence school in Antigonish or Halifax, once an interim order was granted that E.H. remain in Antigonish, the parents agreed on the school E.H. would attend and both attended for registration.

[71] Circling back to my comments in the decision of *A.P. v. J.K.* supra, the evidence in this matter clearly supports a finding that these parents are in a substantially shared parenting arrangement. Each of them spends a substantial amount of time with E.H. each week throughout the year. They each provide for all of his necessities and make the routine decisions for him when in their care and they share in decision-making responsibilities for major issues for E.H. While one parent may take the lead on some matters, for example: making medical appointments, they both attend such appointments and events. The fact that the parties use the services of a psychologist to mediate disputes indicates parents who are equally involved in E.H.'s life and, to their credit, demonstrates that they are doing everything they can to ensure his best interests are addressed.

[72] When applying a nuanced and blended analysis of actual time spent with E.H., the day-to-day care responsibilities and the decision-making responsibilities of each parent, I find that they are in a substantially shared parenting arrangement.

[73] As a result, I find it necessary to apply the presumption and burden of proof set out in section 18H (1) (b) of the *Act*. It is therefore presumed that the proposed relocation from Antigonish to Halifax is not in E.H.'s best interest unless M.T. can persuade the court, on a balance of probabilities, that the relocation is in E.H.'s best interests.

Best Interests Analysis

[74] I must now turn to the analysis of what is in E.H.'s best interest, keeping in mind that M.T. bears the burden to prove that the relocation is in his best interest.

[75] In doing so, it is important to note that there is nothing in the *Act* to suggest that any one of the factors to be considered under ss. 18(6) and 18(H)(4) is of a higher priority than the others and, as a result, one factor may be more relevant for one family than for another. I find that I must conduct a blended analysis of the evidence and these factors, including the applicable "*Foley factor*" in arriving at a decision respecting E.H.'s best interests.

The Child's Physical, Emotional, Social and Educational Needs, Including His Need for Stability and Safety, Taking into Account His Age and Stage of Development - (s.18(6)(a), *Foley factors*)

The History of Care for the Child Having Regard to the Child's Physical, Emotional, Social and Educational Needs – s.18(6)(c), *Foley factors*

[76] There is some disagreement in the evidence respecting the history of care of E.H. M.T. says that, since birth, she has been his primary caregiver. The father disagrees. As noted earlier, I do not find it is necessary or appropriate for me to focus on the history of care prior to the granting of the order of this court in 2016 as a factor in determining the best interest. That said, the history prior to that order can provide some context in the current circumstances.

[77] These parties were in a common-law relationship for about 3 1/2 years and separated in 2014. E.H. was less than two years old at the time of separation.

[78] M.T. is originally from Ukraine. She obtained a Bachelor of Arts in nursing in Ukraine and worked as a registered nurse for some time before coming to Canada in 2010. She began here as a foreign worker at a local restaurant and began investigating how to transfer her nursing credentials to Canada. She describes this process as taking a very long time and explains the multiple and arduous steps required including a translation of various documents. She is, therefore, not yet registered as a nurse in Canada. She has applied for Canadian citizenship.

[79] She and J.H. were living together when she became pregnant with E.H. After his birth, M.T. took a maternity leave and was E.H.'s primary caregiver. This was a joint-decision of the parents recognizing that both could not take time off to care for E.H. for financial reasons.

[80] M.T. breast-fed E.H. until he was 18 months old.

[81] M.T. says that FH worked full-time and worked at a part-time job at night to provide income for the family. This meant that she had the primary responsibility of caring for E.H. during that time. She also says that J.H. spent his free time drinking with friends, alone in the basement or at a bar.

[82] J.H. confirms that after E.H.'s birth, M.T. stayed at home and he worked to support the family. He denies spending his free time away from the family as described by M.T. and says he was an involved parent to the extent possible.

[83] Throughout their evidence, these parents disagree on many of the parenting circumstances prior to separation. Given that they have been separated for several years, and that they have an order setting out their custodial and parenting arrangements since 2016, I do not find it necessary to make specific findings regarding this portion of their history. It is far more relevant to discuss the history of parenting since separation and the order of February, 2016.

[84] As noted earlier, that consent order identified the parties having joint custody of E.H. in a shared parenting arrangement. The order provided parenting time for E.H. with M.T. from Monday at 8:00 am to Friday at 5:00 pm, and with J.H. from Friday at 5:00 pm to Monday at 8:00 am. E.H. had additional parenting time with J.H. every third week when J.H. had an Earned Day Off (EDO) by starting on Thursday at 5:00 pm until Sunday at 5:00 or 7:00 pm, depending on M.T.'s work schedule. Additionally, E.H. had parenting time with J.H. every Wednesday evening from 5:00 pm to 7:00 pm.

[85] The order also contained provisions for a sharing of special events including Christmas, Easter and summer. The parties are to be flexible about parenting time for occasions such as Mother's Day, the parent's birthdays, E.H.'s birthday and other occasions.

[86] Neither parent was permitted to permanently remove E.H. from Antigonish without the written consent of the other or a court order. They were entitled to take short trips outside the province during the parenting time on notice to the other. The child's passport was to remain in the custody of the court.

[87] As to child support, the court did not have the mother's financial information as she had recently obtained employment. However, the court did have the father's. By consent, the parties agreed that the father would pay to the mother

child support of \$300 per month. They agreed on the funding of daycare costs. There were other related provisions in the order.

[88] The evidence before me is that, since that order was granted, the parenting arrangements have worked essentially as ordered. While the parents disagree as to the fraction of time that each of them spends with E.H., I have already determined that they are in a substantially shared parenting arrangement and, by all accounts, this seems to be working well for E.H.

[89] M.T. does say that there have been disputes between the parties, particularly since she gave notice of her intent to relocate to Halifax with E.H. These disputes include where E.H. would attend school, an issue ultimately resolved by an interim order of this court, and the pickup and drop-off arrangements. She says that many of the tensions rising in exchanges and disputes with the father are the fault of the father and his family and that she is always acting appropriately .

[90] J.H. denies that any problems have arisen because of his or his family's behaviour. He ascribes the blame to M.T., particularly around how she decided to relocate and only provided notice at the last minute and attempted to force a decision for E.H. to attend school in Halifax. It is J.H.'s evidence and the evidence of his family that M.T. has been cold and aloof since separation, refusing to communicate at exchanges and feeding into E.H.'s stress and behaviours around those times. All the witnesses attempted to introduce comments made by E.H. about his preferences, experiences and utterances, which I found to be in admissible for the proof of the truth of their contents.

[91] The evidence overall indicates to me that the complaints made by each parent against the other centre around their behaviours towards one another and decisions regarding parenting of E.H. While there is some evidence E.H. struggles with stress arising from the separation, and, particularly at exchanges for parenting time, there is very little evidence before me that E.H. is suffering, either in the short or long-term, as a result of these disputes and the parenting arrangements in place.

[92] Quite contrary, each parent says that he is thriving in their care and in the presence of extended family, both in Nova Scotia, Ukraine and when M.T.'s family visits in Nova Scotia. While a psychologist is involved, this is for purpose of mediating the dispute between the parents, not providing counselling or therapy to E.H. There is no evidence that he is struggling in school, requires any particular

intervention to address his needs other than in the care of his parents and each parent acknowledges that the other loves E.H. and he loves them.

[93] The history parenting also indicates that E.H. has a rich life outside of his parents' home in the community and with family. The evidence from J.H.'s extended family confirms significant contact for E.H. and I find this is clearly to his benefit.

[94] Likewise, the evidence is that, when possible, M.T. ensures that E.H. has regular and ongoing contact with her extended family in Ukraine including visits to Ukraine and family coming to visit in Nova Scotia. I also understand there is ongoing communication for E.H. with this family overseas.

[95] Overall, the evidence which I accept is that, from February, 2016 until notice of the proposed relocation was provided by M.T. to J.H. in or around June, 2018, the parents were able to co-operate and co-parent E.H. successfully. There were certainly challenges along the way requiring the involvement of the psychologist, and there is disagreement on the level and quality of parenting provided by each. That said, I am satisfied that the evidence supports a finding that E.H. is thriving in the care of his parents since separation and has developed normally.

[96] I find that E.H. has all the normal physical, emotional, social and educational needs of a five-year-old, and that these are being met by his parents. He appears to be healthy, happy and well-adjusted, has some friends and plenty of family around him and has begun school. There is no indication that he is struggling with his education.

[97] As a five year old child, he certainly has a need for stability and safety. I have no difficulty in finding that he is safe in the care of his parents. There is no evidence before me that he is being subjected to abuse or neglect, merely different parenting styles and histories.

[98] The issue of stability is important. At any age, children need routine and stability. Family courts have long acknowledged that children experience stress from instability and a lack of routine, even if it is through no fault of the parents. The stress need not arise, in other words, from abuse or neglect but may arise from ongoing conflict between parents, housing and food challenges resulting from poverty or any number of other similar sources.

[99] Family courts have also long accepted the children who are exposed to prolonged periods of stress can experience adverse behavioural, emotional and

physical effects. Difficulties at school, social challenges, emotional dysregulation and, at times, physical aggression can result.

[100] In E.H.'s a circumstance there is scant evidence of any of this in his life or behaviours. There are allegations that at exchanges and at times in the care of parents, he expresses some emotions and unfortunate behaviours, but I find most of these can be explained by his transient feelings regarding exchange, the emotions of his parents at those times and the overall circumstances of the separation. I accept that he is thriving with each of his parents in a stable and safe environment.

[101] While the proposed relocation to Halifax could be a change in his stability, I find that children of his age can adapt quickly to moves from one city to another and even changes to parenting time resulting from that relocation if the child is properly supported by parents, family, schools and others. While each child is different, families move every day in Canada from one community to another and the fact that this would at least temporarily destabilize E.H.'s living situation is not sufficient grounds to find that proposed relocation would introduce long-term instability in his life.

Each Parent's Willingness to Support the Development and Maintenance of The Child's Relationship with The Other Parent – s.18(6)(b), *Foley* Factors

[102] Each parent says that they have been and will be supportive of the relationship between E.H. and the other parent. M.T. says in her first affidavit that she believes it is in E.H.'s best interests to spend as much time as possible with each of the parents which suggests that she supports that relationship.

[103] On the other hand, in the same affidavit she describes her view that J.H. attempts to control her life and cites an example of a plan to take E.H. with her to Ontario for vacation, and J.H.'s refusal to permit this to occur on the basis that E.H. shouldn't go on the trip because he was wetting his pants. She says that J.H. refused to take E.H. so she could travel by herself, and, after 2 sessions with the psychologist, J.H. finally agreed to the trip.

[104] M.T. also says that FH is not flexible when it comes to rescheduling parenting time, providing an example of her missing work shifts and a medical test due to J.H.'s resistance to changes. She says that she now rarely requests any changes.

[105] J.H. denies being controlling, either during the relationship or after separation, as well as denying any manipulation or intimidation during that

relationship. As noted earlier, he also denies any physical or emotional abuse. He denies being inflexible on scheduling, saying that they reached an agreement with the assistance of the psychologist on some changes to parenting arrangements, but the mother refused to implement the plan.

[106] Respecting the trip to Ontario, J.H. provides detail in his first affidavit explaining that E.H. was struggling with wetting himself at night and during the day when with his mother. J.H. says he found out about this when the mother scheduled an appointment with E.H.'s physician for this issue. He attended the medical appointment and testing was completed which determined E.H. had no infection or any physical cause.

[107] J.H. says that when the vacation trip with M.T. was suggested, J.H. had some concerns based on this recent history of wetting himself and wanted to discuss them with the mother. Ultimately, it was resolved with the help of the psychologist.

[108] The parties go back and forth in their affidavits on this and related issues. I do not find that this suggests that they are not supportive of each other's relationship with E.H. They have a different recollection of the facts surrounding this incident, but I do not find it necessary to determine which version is correct. I take this to be an example of parents who disagree on what is best for E.H. in a circumstance and, with the assistance of a professional, sought to sort out a solution. Each feels the other was uncooperative, but I don't find that this extended, in any significant way, into an area of being unsupportive of the child's relationship with each of them.

[109] M.T. describes challenges for E.H. at the beginning of the shared parenting arrangement, particularly around the exchange for the Wednesday evening visits. She suggests that the paternal grandfather involved himself on one occasion to take E.H. with him for a visit in an inappropriate way. This is denied. But again, this is a single incident and a relatively brief period of circumstances after the beginning of the shared parenting arrangement. There is no evidence before me that it continued or that there is any evidence of intent of either parent to undermine the relationship of the child with the other parent at this time or around this time.

[110] The paternal grandmother, S.H., says that she is supportive of the mother's relationship with E.H. and provides evidence of her and her husband's support for that relationship and for M.T. both before and after separation. She says she and her husband have no ill will towards M.T. and they speak highly of her. But she

says that M.T. is cool towards them, and if E.H. relocates with his mother, they begin to lose their close bond with E.H. This evidence was contained in her first affidavit.

[111] As with the parties and other witnesses in this matter, the evidence given in supplemental affidavits significantly increased the tone and level of conflict within the evidence. This is unfortunate, but certainly not uncommon in such circumstances.

[112] S.H. says, in her second affidavit, that M.T. told her several times during the parents' relationship that she was going to take E.H. back to Ukraine to live. I note there is no evidence that M.T. took any steps to do this. She also denied any inappropriate intervention by her or anyone else when picking up E.H.

[113] M.T. alleged that J.H. and his family had arranged for daycare for E.H. in Antigonish during her maternity leave without her consent. S.H. says that daycare was discussed with the parents and she booked a place in a local daycare for E.H. The intent was to ensure that if M.T. obtained work, E.H. would have a safe place to stay. S.H. paid the cost as the parents were unable until M.T. returned to work after maternity leave. She denies the suggestion that she encouraged M.T. to send E.H. to daycare each day while M.T. was at home.

[114] S.H. goes on to say that M.T. attempted to distance E.H. from their family on an emotional level. She describes E.H. meeting cousins from Ontario, striking one of the young children and suggests that this was caused by a story that M.T. may have told to E.H. This has no basis in the evidence, and I do not accept it suggests what S.H. offers.

[115] J.H.'s sister, J.V.H., says that she and her family do not intend to undermine M.T.'s relationship with E.H. She and other family members related their interaction with E.H. after a motor vehicle accident occurred involving M.T. and E.H. M.T. suggests that the father's family was using that circumstance to undermine her as a parent. This is denied by J.V.H. and all other members of the family.

[116] J.V.H. says that she fears that a move to Halifax would be a steppingstone towards alienation of E.H. from J.H. and the family. She and J.H. say that M.T. left with E.H. unannounced in 2014. This led to the hearing that resulted in the consent order of 2016 in which E.H.'s passport was placed with the court. J.H. says that this, combined with conversations she had with M.T. over the years that

M.T. was unhappy in Antigonish and wanted to live in a bigger city, leads her to her concern regarding the possibility of alienation.

[117] These are summaries of some examples of the general concerns raised by J.H. and his family regarding the history of any risk of alienation of E.H. by M.T. Likewise, M.T. suggests in some of her evidence that J.H. and his family are engaged in alienating behaviour putting her relationship with E.H. at risk.

[118] After careful review of all the evidence, both reviewed above and otherwise, I do not find sufficient grounds to conclude that either of the parents or family members engaged in attempts at alienation, whether intentional or unintentional. Moreover, despite the challenges in communication, co-operation and the disagreements among them, I conclude that each parent is willing to support the development and maintenance of E.H.'s relationship with the other parent.

[119] In making this finding, I am acutely aware of the evidence of each of the witnesses, including the parents, on this issue. I am also very aware that M.T. is a single mother in Nova Scotia with no family around her to communicate with her or support her. She is from Ukraine where all of her family reside. Though they had visited her and she them over the last few years, she does not have anyone to visit with locally and spend time with as a support.

[120] I do accept that J.H. and his family have been supportive of her over the years, but it is not surprising to me that M.T. does not perceive it in the same way. She is, in many ways, isolated and, given the context of the disputes that have arisen with J.H., it is not surprising that she perceives that his family would be allied with him, as, indeed, they appeared to be. This is not to suggest that J.H.'s family is acting in bad faith or with ill will towards M.T., but it is clear that their first allegiance is with J.H.

[121] Moreover, though there is evidence that in the past M.T. has taken E.H. without J.H.'s consent and the court did order the child's passport to be placed in the custody of the court, and evidence that J.H.'s family members recall discussions with M.T. in which she indicated she would like to live in a larger centre or move E.H. to Ukraine, there is no evidence before me that she has taken any concrete steps or has any plans to do so.

[122] There is always some risk that if relocation occurs as requested, M.T. could make a further request later to relocate with E.H. to Ukraine or elsewhere. There is nothing wrong with this and the court will have to assess all of the evidence at that

time to determine what is in E.H.'s best interests. But, again, there is no evidence that, since 2014, M.T. has taken any steps to flee with E.H. or to otherwise directly undermined his relationship with J.H.

The Nature, Strength and Stability of The Relationship Between the Children and Each Parent – s. 18(6)(g), *Foley* factors

[123] In considering the nature, strength and stability of E.H.'s relationship with each of his parents, I will be brief. Each parent acknowledges the love between E.H. and each of them. I agree.

[124] Though M.T. raises issues respecting J.H.'s involvement in the care of E.H. when he was very young, the evidence strongly indicates that E.H. has a very strong and stable relationship with each of his parents, particularly since separation. He has spent significant time with each of them and has been well cared for. They each meet all of his needs as described earlier, and I find they have acted as good parents notwithstanding their disputes from time to time on a range of issues.

[125] There is no doubt that M.T. has a deep, loving, stable and strong relationship with E.H. This is borne out throughout her evidence which I will not review in any depth at this point. I find the same to be true of the relationship between J.H. and E.H. Having reviewed all the evidence, I do not find that either parent has suggested otherwise in any meaningful sense.

[126] Though the parents disagree on the circumstances surrounding their particular roles in parenting and with respect to certain instances including medical and dental appointments, decisions or daycare and schooling, trips and other similar issues, I do not find that this evidence points to any concern respecting their individual relationships with E.H.

The Nature, Strength and Stability of The Relationship Between the Child and Each Sibling, Grandparent and Other Significant Person in the Child's Life – s. 18(6)(h), *Foley* factors

[127] On the issue of the nature, strength and stability of the relationship between E.H. and his grandparents and extended family, I find that the evidence supports the conclusion that he does have important, strong and stable relationships with many important people in his life.

[128] There is significant evidence from his paternal grandparents, paternal aunt and his father's girlfriend that persuades me that these relationships are meaningful and important in his life and provide a significant measure of stability to him. Their evidence is that E.H. spent significant time with them at different times when in the care of his father.

[129] For example, the paternal grandmother says they see E.H. each week for dinner and at other times on weekends and in the summer. She describes their activities which are appropriate and natural interactions with a grandchild.

[130] Similarly, the paternal aunt describes a loving and supportive relationship with E.H. when he is with J.H. and includes details of the things they do together. I find this is also an important and significant relationship in E.H.'s life.

[131] J.H.'s girlfriend also provided evidence that she has a good relationship with E.H., and, though they do not reside together, J.H. ensures that E.H. spends time with her and her young daughter with whom E.H. has a good and healthy relationship.

[132] In cross-examination, each of the paternal grandparents and paternal aunt confirmed their available times through the week to spend time with E.H. While each of them has limits based on work and other schedules which were explored in cross examination, I am satisfied that their evidence respecting their time spent, activities and relationship with E.H. is well-founded. For example, the fact that the grandparents may see E.H. for a meal during the week and on the weekends does not diminish the importance of that relationship to E.H., likewise, the paternal aunt and girlfriend.

[133] Based on the descriptions of the family and girlfriend respecting their activities, their relationships and time spent with E.H., I find that these are healthy, normal and very supportive and valuable relationships with E.H. now and into the future. They supplement and support the relationship of J.H. with E.H. and provide an important family context for E.H.

[134] I further find that the connection with grandparents and other members of a parent's family is extremely important to a child. If those family members regularly spend time with the child, it connects the child with the history, values and traditions of the family and places the child's parent in the context of preceding generations and current family relationships. This can be extremely important in the developing a child into a mature, well-rounded and responsible adult.

[135] In this case, I find all of these relationships with J.H.'s extended family and girlfriend are deep, strong, stable and meaningful to E.H. and should not be aside or interfered with. Those relationships are now well established and, like the relationship E.H. has with each of his parents, should be valued and considered carefully by the court in determining the relocation application of M.T.

[136] I am mindful that there is evidence from each of the parents, the paternal grandparents and paternal aunt that there have been challenges in their relationships with one another. M.T. also suggests there have been problems in the relationships between E.H. and the father's family. For example, she expresses her view that J.H.'s family have not been supportive of her over the years and have, at times, undermined or interfered with her role as a parent, and on a few occasions, been involved in conflicts between the parents.

[137] The responses from each of the family members deny these allegations and suggest that they were acting in good faith. However, they were and are supportive of M.T. and that she at least misapprehended their behaviour and intention in each of the circumstances.

[138] In this portion of the analysis, I do not find that any of these allegations undermines the finding respecting the nature, strength and stability of E.H.'s relationship with the father's family and girlfriend. Again, these are important relationships for E.H., and I do not find they have been harmed, weakened or challenged by any of these allegations, if true.

[139] M.T.'s extended family resides in Ukraine and her mother and grandmother have both visited Nova Scotia and she has travelled with E.H. to Ukraine, as well. When E.H. was young, he was baptized into the Ukrainian church there. She teaches him the Ukrainian language, cultures and traditions while he is in her care. As with J.H.'s family, maintaining those connections will be important to E.H. and should be supported and maintained where possible.

[140] M.T.'s mother travelled from Ukraine and stayed with the parties on three separate occasions starting in May, 2015. On two of these occasions, she lived with the parents for approximately a year. M.T. says on these occasions, E.H. developed a very close and valuable relationship with his maternal grandmother. E.H. had the benefit of time with his grandmother, speaking Ukrainian with his mother and grandmother, cooking Ukrainian meals together. M.T.'s mother told E.H. Ukrainian stories, sang children's songs to him and he helped her bake. M.T. says the mother has a ticket to come to Halifax to visit in the Fall of 2018.

[141] Yet the dynamic of those relationships is clearly different from that of the family of J.H. Through no fault of her own, M.T. faces the challenge of maintaining and enriching the relationship between E.H. and her family at a great distance. While trips and technology, such as videoconferencing, can help, there is no real substitute for regular, personal contact with extended family to fully realize the benefit to the child. The visits by the maternal grandmother were certainly good for E.H. M.T. has not indicated that this will be repeated for long visits as a part of her plan for relocation.

[142] As with J.H.'s family, this Court should be cautious in granting any order that would interfere with or damage the relationship E.H. has established with the family of M.T. That said, whether she is permitted to relocate with E.H. to Halifax, or not, may have little effect on those relationships. If E.H. is permitted to relocate to Halifax, she will still have the same of distance for her family. If E.H. remains in Antigonish and she in Halifax, the same challenge exists. Thus, I find the relocation or refusal of the relocation will have little impact on E.H.'s relationship with M.T.'s extended family in Ukraine.

The Child's Cultural, Linguistic, Religious and Spiritual Upbringing and Heritage (s.18(e))

[143] In considering E.H.'s cultural, linguistic, religious and spiritual upbringing and heritage, I find this is a significant issue for him in the context of this relocation application.

[144] E.H. has always resided in the care of his parents in Antigonish, Nova Scotia. There is no question that he is surrounded by Canadian and Nova Scotia culture and heritage and the English language. Through his interactions with his father and his father's extended family, E.H. has already absorbed many of these values and traditions. Like all of us, he wears them without effort. He will be educated in a Canadian school and will be taught Canadian and Nova Scotia history, values and traditions. By participating in sports and other activities, he will absorb any number of Canadian traditions and affection for hockey, curling, soccer, song and the many other strands woven into the fabric of Canadian and Nova Scotia life. This will maintain whether he resides in Antigonish or relocates to Halifax.

[145] Certainly, remaining in Antigonish will maintain his relationships with his father's extended family, from whom many of these values and traditions will be obtained. But even from Halifax, he will spend time with his father and extended

family in Antigonish. While in Halifax he will, of course, go to school and learn all these values, traditions and history just as he would in Antigonish.

[146] E.H.'s connection with his Ukrainian culture, language, religion and spiritual upbringing and heritage is more challenging. M.T. has done a commendable job in teaching E.H. Ukrainian and educating him respecting his Ukrainian culture, history and traditions. He has visited Ukraine and some of his Ukrainian family have visited Nova Scotia. He has been baptized into the Ukrainian church. His mother commits to take him to a Ukrainian church in Halifax and notes there is no such church in Antigonish or the surrounding area.

[147] If E.H. is permitted to relocate to Halifax with her, this will no doubt enhance his opportunity to absorb the Ukrainian culture, language, religion and heritage through his mother, the Ukrainian church and communication with his extended family in Ukraine. M.T. says that if E.H. remains in Antigonish while she lives in Halifax, this opportunity will be at least diminished, and she is concerned that E.H. will lose some of what he has learned and will learn less in the future about his connection with Ukraine.

[148] I find that this is a significant and important part of E.H.'s life which should be protected and supported. I, likewise, find that the mother is correct that if he remains in Antigonish and she in Halifax, this connection likely to diminish E.H.'s experience of his Ukrainian connections.

[149] On the other hand, under the father's proposal E.H. will still spend significant time with his mother in Halifax or Antigonish and can maintain the same connection with his Ukrainian relatives overseas. When with his mother, he can attend the Ukrainian church, develop his language skills and learn more about his heritage. His daily use of Ukrainian will be reduced, but it will not end his connection with his heritage and language.

The Ability of Each Parent to Communicate and Cooperate on Issues Affecting the Child – s. 18(6)(h), *Foley* Factors

[150] Respecting these parents' ability to communicate and cooperate on issues affecting E.H., there have been some challenges since the order of February, 2016 but also some success.

[151] Some of the challenges included a breakdown in communication and cooperation when E.H. was due to start school. This issue arose after M.T. gave notice of her plan for relocation to J.H. Leading up to the commencement of the

school, the parents disagreed as to whether E.H. should be in school in Antigonish or in Halifax. The court was unable to sort the issue out as quickly as the parties wished and they had an exchange of texts on the matter.

[152] The struggle between the parties to decide where E.H. would begin his education continued as the first day of school approached. On August 27, 2018 the parents and E.H. met with a vice principal at the Antigonish school. E.H. was present at the beginning of the meeting. J.H. says that, in E.H.'s presence, M.T. told the vice principal that she wanted to discuss E.H. beginning school in Halifax instead of Antigonish. They then arranged for E.H. to leave the room to allow the adults to discuss the matter. After he left, J.H. says M.T. requested a delay in E.H.'s schooling for a few weeks until a decision could be made. M.T. says the vice principal asked about the transfer, she did not suggest it. She agrees E.H. was present at that time and that he was moved to another room.

[153] After that meeting, there is some dispute about whether J.H. discussed with E.H. after-school programs in Antigonish. The parties disagree with what occurred raising concerns about that communication and the subsequent conversations between the parents on the issue.

[154] Each parent also gave evidence respecting the day E.H. was to start school. A series of texts between them make clear that there was a significant dispute regarding his attendance in Antigonish. In that exchange, M.T. again reiterates she wants a delay of a couple weeks in E.H.'s attendance, saying she believes this is in his best interests and says she will home-school him during that time. J.H. disagreed and indicated he expected E.H. to be at the Antigonish school the next day.

[155] One of the communication problems arose when M.T. says E.H. was sick one day and unable to attend school. J.H. challenged this and told M.T. he should attend. This was captured in an exchange of texts between them.

[156] In the same collection of texts, there was another discussion between the parties about J.H.'s vacation. Without going into great detail, it is sufficient to say that there was a dispute between them about whether J.H. was entitled to have E.H. with him for a late summer vacation under the order. Whatever the merits of their respective positions, they did communicate about this, disagreed and, unfortunately, M.T. threatened that if E.H. was not returned to her and on this occasion, she would have to call the police to enforce the order. Unfortunately, M.T. did contact the police and an officer spoke by phone with J.H., requesting

that the he and M.T. meet with him to discuss the matter. J.H. says that after that discussion with the officer, he agreed to return E.H. to M.T..

[157] FH says he tried to obtain certain commitments from M.T. respecting attendance at school in Antigonish and says she did not honour those agreements. This led to the exchange of communication regarding E.H.'s potential delay in attendance at school. J.H. also contacted the RCMP when E.H. was not present for the first day of school. He was concerned that M.T. would begin E.H. in school in Halifax. I find from the tone of that exchange of communication indicates that M.T. was being quite firm in her position and J.H. While believing his approach was correct, J.H. was suggesting the parties should discuss a resolution and indicated that was no need to involve the police and the matter could be resolved by the court, if necessary. It is also worthy to note that this dispute arose just before the commencement of school in 2018, when the parents disagreed about which school E.H. should attend. All this began after the issue of relocation was live.

[158] There is also evidence that the parties disagreed from time to time on exchanges to the parenting arrangements for special occasions and other similar disputes.

[159] It is also important to note that in that same collection of texts there was appropriate communication demonstrated around calls by the parents when he was in each of the parents' care. This suggests, as does other evidence in this matter, that the parents have been able to co-operate and communicate for considerable periods of time after separation.

[160] Returning to the challenges regarding communication and co-operation arising after the separation, and particularly the difficulties that began once M.T. notified J.H. of her intent to relocate E.H. to Halifax, I find that these are significant breakdowns and challenges for these parents. I do, however, find that in the history of care of E.H. since separation, these problems were particularly acute during the period after relocation became an issue. There is less evidence to suggest that this pattern of dysfunctional communication and co-operation has existed since separation.

[161] Each of the parents has complained about the other's reluctance and resistance to change the schedule. Each has several examples of challenges and communication difficulties. They also agree that they have engaged the services of

a psychologist to mediate these various disputes which, I find, has often been successful.

[162] I find that the history of communication and co-operation has been challenging, particularly since notice of relocation was given, but not so difficult that it presents a barrier to co-operative parenting whether relocation is granted or denied. It is not surprising to the court that parties struggle with communication and co-operation when tensions rise, and disagreements are at their maximum. Relocation applications certainly generate that for most parents. Fear that they will be far away from their child and have limited opportunity to interact with him usually generates tension even in the most functional of relationships. I find that the difficult communications and problems that arose, including disagreements about where E.H. would attend school, involving the police, proposals to delay his attendance and the resulting tug-of-war between the parents on these issues is significant but temporary. I do not find that it is likely to continue long-term.

[163] That said, I do accept that there have been tensions and problems from time to time between the parties. Whatever the decision of this court, they will have to work to improve their ability to communicate effectively for E.H.'s best interests. There is evidence that they can do so when matters are less tense. But as conflict arises, their coping and communication skills fall away. With that in mind, I certainly endorse that they continue to use the services of a mediator and, while I will not include it in an order, I also strongly recommend that they both attend a co-parenting course to educate themselves regarding appropriate and effective communication skills when co-parenting a young child.

The Reasons for The Relocation - s. 18(H)(4(c))

[164] M.T. says she has a Bachelor of Arts in Nursing from Ukraine and that she worked as a registered nurse there. She relocated to Canada in 2010 and shortly after, she began researching how to transfer her nursing credentials to Canada. To date, she does not have a Canadian nursing license. By her evidence, it takes quite some time to accomplish this goal and she explains a very convoluted and challenging process for doing so. It is now over 10 years since she practiced nursing and she says that, even if approved for work in Canada, she will require upgrading.

[165] M.T. says that she met with the nursing department at St. Francis Xavier University (St. F.X.) in Antigonish to discuss a transfer of credits from Ukraine

and was informed that she would have to enter the program as a new student and would be better off waiting to have her credentials confirmed in Canada.

[166] In the meantime, she did obtain a position as a personal care worker at a local residential care facility on a casual basis. Her hours and schedule are not guaranteed. She feels she is overqualified for that position and would prefer to work as a nurse. Her rate of pay is much lower than that of a registered nurse without any guarantees or benefits. She makes approximately \$23,000 per year.

[167] M.T. says that, in order to improve her circumstance, she decided to obtain a new education. She settled on pursuing a Bachelor of Science in Microbiology and Immunology and says the starting income potential is around \$60,000. She expects to work in a research facility or lab. Her long-term goal is to pursue a PhD or apply to medical school. In order to advance this plan, she applied to Dalhousie University (Dal) in Halifax and said that she was accepted into her chosen program in June, 2018. She provided notice of her relocation plan to J.H. shortly afterwards.

[168] M.T. says that the program that she would like to pursue is not offered at St. F.X. She says that that St. F.X. offers introductory courses in microbiology and immunology, but Dal has a faculty which is associated with the medical school. On cross-examination, M.T. admitted that she did not look deeply into the programs offered at St. F.X.

[169] She says that she has been approved for a student loan and is seeking employment insurance benefits which may be available for full-time students and is expecting to be approved for this funding. If necessary, she says that she will look for part-time work on the weekends.

[170] Since this court granted an interim order requiring that E.H. remain in Antigonish until final hearing in the matter, M.T. has been attending at Dal in her new program.

[171] M.T. also says that E.H. will benefit by the move in having available to him more programs and activities in the larger centre of Halifax. She already has a plan, which will be discussed later, respecting his education, child care and activities.

[172] Another reason identified by M.T. for the relocation is to allow E.H. to participate with her in the Ukrainian church in Halifax and says that she wants him to continue to be exposed as much as possible to the Ukrainian language and

culture as part of his identity throughout his life. She believes this would be far more likely to happen if he resided with her in Halifax.

[173] In response, J.H. says that he does not believe that M.T. applied for admission to St. F.X. or taken any courses towards obtaining credits for a nursing degree in Nova Scotia. He believes that her plan to work towards a PhD or medical school is long-term and quite uncertain. He believes that M.T. would make as much income as a nurse as she would a researcher with greater certainty of employment.

[174] M.T. confirmed that, for the first term of the 2018-2019 year at Dalhousie, she will attend classes on Monday, Tuesday, Wednesday and Friday each week with her Friday classes ending at 12:25 PM. She will also take one online course.

[175] For the second term, she will be in class each week day and her Friday program will end at 10:25 AM. She confirmed that if relocation was not permitted, she can pick up E.H. after school each Friday and J.H. could pick up E.H. in Halifax on Sunday at approximately 3 PM. She did express a preference to meet in Truro at between 5 or 6 PM. She confirmed that E.H.'s normal bedtime is around 8 PM.

[176] M.T. also confirmed, in cross-examination, that she does not have a plan for the summer after her first year and feels it is too uncertain and stressful to make a plan at this time.

[177] In re-direct, M.T. confirmed that when she spoke to representatives at St. F.X., she only inquired about the nursing program and no others. She says she was aware that St. F.X. only offers a general science program and there was nothing similar to what she is pursuing. She then said she did apply for a biology program at St. F.X. but it was late. She believed she could get in but by then she was already engaged with Dal's program.

[178] It is understandable that M.T. would want to upgrade her education to improve her financial circumstances. She has a high level of education and experience as a nurse and anything reasonable that she can do to improve her circumstances will have the effect of improving the life and lifestyle of E.H. These are goals which should be, if possible, supported.

[179] On the other hand, there is a question of whether she could have pursued a nursing degree in Antigonish which would provide her with a significantly higher income than she enjoys now in a field with which she is already familiar. When

she obtains proof of her qualifications, would this either qualify her immediately as a nurse in Nova Scotia, or, at least, reduce the amount of time required for her to obtain a nursing degree here. Further, the evidence is somewhat unsatisfactory regarding efforts made to review other programs and career paths that could be satisfied in Antigonish. Respecting nursing, for example, there is no evidence that she considered that education with a goal of obtaining a master's degree, PhD or taking a nursing education and seeking admission to a medical school thereafter.

[180] The importance of this is the impact of relocation on E.H. that M.T. says is necessary to pursue her education. There is no question that it is in E.H.'s best interest that each of his parents attempt to increase their education and income within reason. Among the issues the court has to balance are the advantages of pursuing that education in Halifax and the concurrent advantages to E.H. of a deeper connection with his Ukrainian religion, language and heritage versus the risk of harm to his relationship with his father and father's extended family in Antigonish.

The Effect on the Child of Changed Parenting Time and Contact Time Due to The Relocation – s. 18(H)(4)(c)

[181] Considering the effect on E.H. of the change in parenting time and contact time due to relocation, I note that the schedule in place since February of 2016 has E.H. with his father somewhere between 39% to 41% of the time. Specifically, J.H. has E.H. each Friday at 5 PM until Monday morning at 8 AM with the exception that if J.H. has an earned day off every third Friday, he has E.H. from Thursday 5 PM to Sunday at 5 PM (or 7 PM if M.T. is working). He also has parenting time with E.H. from 5 PM to 7 PM each Wednesday.

[182] Under M.T.'s proposed parenting plan, E.H. would be with J.H. two and three weekends from Friday at 6 PM to Sunday at 6 PM. This weekend would be extended for long weekends to include a start on Thursday at 6 PM and/or a return on Monday at 6 PM as the case may be. M.T. proposes that E.H. would spend every third weekend with her. She also proposes that that E.H. spend the March break with his father and that they share the other special occasions through the year equally.

[183] While I am not bound to accept the proposal of M.T., I find her proposal would change the parenting time contact time that E.H. would have with his father and extended family in Antigonish in a significant way. It would reduce the number of weekends and eliminate the midweek evening visit. This is a significant

reduction of parenting time by any calculation. There is an opportunity for some additional time on long weekends but, I find, this does not fully compensate E.H. for the time lost with his father and family.

[184] In the light of that reality, and given my findings respecting the quality and depth of the relationship E.H. has with his father and extended family in Antigonish, I find that this would have an adverse impact on him. There is much evidence of his life in Antigonish which I find to be loving and supportive, involved and active. Time with his father and extended family on a regular basis in Antigonish is of value to E.H. and should be supported.

[185] On the other hand, M.T.'s plan would increase her parenting time with E.H. in Halifax. In doing so, this would support his contact, not only with her, but with his Ukrainian language, culture, heritage and the Ukrainian church. This, I find, would have a positive impact on E.H. As always, the question is the relative benefit to be gained by the increased time with M.T. in Halifax as opposed to the loss to E.H. from a reduction in time with his father and extended family in Antigonish.

[186] This court is not bound by the proposed plan of either parent, and, if I were to impose a schedule where E.H. spends every weekend with his father in Antigonish, this would reduce the impact on E.H. Unfortunately, whatever plan the court decides upon, E.H. will spend a great deal of time travelling back and forth between Antigonish and Halifax, and where possible, it will be in his interest to reduce the number of trips required.

The Effect on The Child of The Child's Removal from Family, School and Community Due to The Relocation (s.18H(4)(d))

[187] When considering the effect on E.H. of his removal from family, school and community in Antigonish due to the relocation, I note I have already reviewed the evidence of his relationship with family and community extensively and will not repeat that here. As discussed in the consideration of the effect on E.H. of a change in parenting and contact time due to relocation, much depends on the parenting plan ordered if relocation is granted. Under the mother's plan, I find there would be an adverse effect on E.H. upon his removal from Antigonish. It would diminish the amount of time that he can spend with his father and father's extended family. He is only just begun school, and, therefore, do not find that it would have a significant impact on him in that regard.

[188] On the other hand, if relocation is permitted, I could order parenting time for the father every weekend similar to the current order and add to that significant other time in the summer and other special occasions. In doing so, it would mitigate the negative impact on E.H. of the relocation.

The Appropriateness of Changing the Parenting Arrangements – s. 18(H)(4)(e)

The Plans Proposed for The Child's Care and Upbringing Having Regard to The Child's Physical, Emotional, Social and Educational Needs (s.18(6)(d))

[189] In assessing the appropriateness of the change to the parenting arrangement, I find it helpful to consider at the same time the plans proposed for E.H.'s care and upbringing by each parent.

[190] J.H.'s plan considers that M.T.'s attendance at university in Halifax and that her program schedule will change each term over the years. It also considers the mother's position that she will remain in Halifax regardless of whether relocation is granted, or not, and that she will remain in Halifax when university is not in session.

[191] J.H. proposes that during E.H.'s a school year, E.H. will be with him from Sunday at 3 PM until Friday at 3 PM and with M.T. from Friday at 3 PM to Sunday at 3 PM. He proposes exceptions to this school year parenting plan as follows:

If E.H. is off school on Friday or Monday, M.T.'s parenting time will be extended to include those days.

E.H. will be with J.H. for the last weekend of October, November, January, February, April, May and June.

Christmas will be shared equally between the parties on a rotating basis from December 24 to January 2.

For March break, E.H. will be with M.T., except that at least one in every three years E.H. will be with J.H. if the father plans an out-of-province trip.

[192] For summer, J.H. proposes an approximate equal sharing on a two-week rotating basis with each parent to reduce travel time and number of exchanges. For

transportation, J.H. proposes the mother pickup E.H. in Antigonish to begin parenting time and he pickup E.H. in Halifax to begin his parenting time.

[193] The father's plan has the advantage of keeping E.H. primarily in Antigonish near his father and his father's extended family. It provides significant parenting time to M.T. throughout the year including shared time during the summer, Christmas and March break. There is opportunity for extra time during long weekends. On the other hand, it does reduce the amount of parenting time E.H. will have with the M.T. as compared to the current schedule.

[194] It is appropriate to note that, because M.T.'s extended family lives in Ukraine and their plans for visits in the future are not clear, J.H.'s plan does not have a significant impact on E.H.'s potential contact with the mother's extended family. Of course, contact can be maintained by telephone, videoconferencing or other means with the family in Ukraine.

[195] Implied in J.H.'s plan is that E.H. will continue to attend school in Antigonish. The evidence is that he already has a doctor and dentist in the community and there is no proposal to change that arrangement. The evidence is that the father has childcare arrangements available to him and certainly has the support of his family when necessary.

[196] E.H. already has a well-established life, including social contacts, family involvement and many activities. Though J.H. does not state this, it is clear that his plan would include continuing those activities during the time he has E.H. However, I do note that there is no provision in his plan for regular contact with M.T. when E.H. is in Antigonish.

[197] M.T. says if relocation is permitted, she has already secured an apartment. She has arranged for E.H. to attend a local school and has after-school care available. She has made appropriate arrangements for a doctor and dentist. She has already tentatively registered E.H. for piano lessons, placed him on a wait list for skating lessons and will take him to the Ukrainian church in Halifax as well as involving him in the Ukrainian community in Halifax.

[198] She proposes that E.H. have ongoing contact with J.H. through videoconferencing and telephone calls and will provide updates to J.H. regarding E.H.'s well-being and education. She proposes that E.H. be with FH on Friday at 6 PM to Sunday at 6 PM and that this parenting time would be extended to include Friday and/or Monday on long weekends. The exception would be that every third

weekend E.H. would remain with M.T. She proposes the exchange location for parenting time would be in Truro, approximately half-way between the two communities. M.T. proposes that E.H. spend March Break with J.H. She proposes that Christmas be shared equally, considering the entire Christmas school break and rotating that schedule each year. For summer, M.T. proposes an equal sharing of parenting time with J.H. on a week-about basis but allowing for two and half weeks of block parenting time during the summer. She proposes that the Easter break be shared equally between the parents. M.T. also proposes that the parents have some flexibility in parenting time and not force E.H. to go with the other parent if he is in distress. Finally, she requests that J.H. pay the table amount of child support based on his income.

[199] The advantages and disadvantages of this parenting plan are precisely the opposite of those for the parenting plan of J.H. I will not repeat them here except to note that the additional time available with M.T. would enhance E.H.'s exposure to his Ukrainian culture, language, religion and community. Unfortunately, there is no certainty that it would enhance E.H.'s relationship with M.T.'s extended family in Ukraine. That may change in the future if members of her family are able to come to Nova Scotia, particularly for extended visits, but that is not part of her plan or evidence.

[200] In general, I find both plans to be appropriate with respect to schooling, medical and dental services, after-school care, housing and basic needs. Both parents in the past have demonstrated an ability to provide these needs for E.H., and I find no fault with either plan on these basic needs. On the other hand, the plans are essentially the opposite of each other with respect to parenting arrangements. Each plan would result in a reduction in parenting time for E.H. with one of the parents and, in the case of mother's plan, a reduction in contact time with the father's extended family in Antigonish. J.H.'s plan would reduce the amount of contact E.H. would have with Ukrainian community and religion in Halifax.

[201] M.T. also points out that, because the father's extended family members all work, his plan would cause some reduction in contact for them given that E.H. would spend many weekends in Halifax. She says her plan would maintain a contact on the weekends.

Compliance with Previous Court Orders and Agreements by The Parties to The Application (s.18H(4)(f))

[202] When considering the issue of compliance with previous court orders by the parties, I find they have generally been compliant. That said, there have been some difficulties of late over, for example, the father's vacation time and a disagreement on that issue, the mother's attempt to have E.H. registered and attended school in Halifax which would unilaterally vary the parenting time for the father without further court order and, because of these difficulties, the regrettable involvement of the police. This factor is intended to focus the court on whether the parties can be relied upon to comply with an order when granted. If there is a history of noncompliance by one party, it would raise serious concerns for the court about granting an order in favour of that party without further assurance that compliance would no longer be an issue. In this case, despite the evidence of difficulties of late with some compliance, I am satisfied that these parents will follow a court order once granted.

Any Restrictions Placed on Relocation in Previous Court Orders and Agreements (s.18H(4)(g))

[203] There were no such orders or agreements containing any such restrictions.

Any Additional Expenses That May Be Incurred by The Parties Due To The Relocation (s.18H(4)(h))

[204] With respect to additional expenses that may be incurred by parties due to the relocation, no evidence was led on this. It is apparent that there will be additional costs of the transportation or parenting time but nothing apparent in the evidence beyond this, and I do not find this to be particularly relevant in my conclusions.

The Transportation Options Available to Reach the New Location (s.18H(4)(j))

[205] Both parties agreed travel by car is the only option for parenting time. Neither has raised any issues around this.

Whether the Person Planning to Relocate Has Given Notice as Required Under This Act and Has Proposed New Parenting Time and Contact Time Schedules, As Applicable, For the Child Following Relocation. (s.18H(4)(j))

[206] Respecting appropriate notice of the relocation, the father says that notice was given at the very last possible moment and believes it was so the mother could take advantage of that circumstance and force the relocation. He also says that the notice did not include sufficient details.

[207] In this case, I do not find that it is necessary to make a finding adverse to the mother whatever the evidence is on the issue. The matter has been brought before the court, a contested hearing has been held and, in the meantime, E.H. remains in Antigonish. I, therefore, make no adverse findings respecting notice.

Analysis and Decision

[208] Any decision regarding relocation requires assessing and balancing the many issues which are inter-related and often conflicting. Ultimately, it must be the best interests of the child that governs. I am also mindful that any order should recognize the principle of maximum contact between each parent as is consistent with those best interests.

[209] In this case, I must weigh the benefits of E.H. remaining in Antigonish, and thereby having significant contact with J.H. and his extended family against the benefits to E.H. in relocating to Halifax with M.T. and the long-term opportunity of financial improvement, as well as increased contact with the Ukrainian community and church. In doing so, I have carefully considered all the evidence and the applicable provisions of the *Act* and the caselaw.

[210] I must also be mindful of the presumption and burden of proof in this circumstance. I have already found that the parties have a substantially shared parenting arrangement. As a result, there is a presumption that the relocation of E.H. to Halifax with M.T. is not in the best interest of E.H., and the burden of proof to establish that it is in E.H.'s best interests rests with M.T.

[211] There is no doubt that there is some merit in the proposal of M.T. to relocate. Furthering her education has a potential advantage to E.H. and M.T. by providing greater financial gain and stability. Though I have some concerns respecting her failure to pursue a nursing education in Antigonish or to continue to follow through on her nursing credentials from Ukraine, I do not find it unreasonable that she has taken the steps she has regarding her own career aspirations.

[212] M.T.'s plan addressing E.H.'s needs in Halifax is thorough. It has the advantage of increasing E.H.'s contact with the Ukrainian community, religion and language. On the other hand, while Halifax is a vibrant city, I do not accept that there is an advantage to E.H. respecting activities there over those available in Antigonish. The evidence is clear that E.H. is engaged in significant activities in Antigonish and there are no apparent advantages to Halifax in that regard. Unfortunately, M.T.'s plan does not appear to have much advantage in enhancing E.H.'s relationship with her family in Ukraine, though, as noted earlier, the contact with the Ukrainian community in Halifax bears consideration.

[213] Fortunately, I find her plan will have an adverse impact on E.H.'s relationship with his father and his father's extended family. This is clear when her plan is compared to the current parenting arrangement in place. This must be balanced against any advantage in relocation available to E.H. and whether M.T. has overcome the presumption against the relocation.

[214] With respect to the parents' ability to communicate and co-operate, I find that, regardless of any decision this court makes, the parties will continue to have ongoing challenges. But I also find that they do have a history of overcoming these challenges. I do not conclude that the mother's relocation plan will materially affect their communication or co-operation. The history is one of general success, though sometimes the assistance of a mediator has been helpful. Put simply, M.T.'s plan has no obvious impact on the communication or co-operation between the parents.

[215] Respecting each parents' willingness to support the relationship of E.H. with the other parent, I have already found that, despite the challenges and difficulties the parents have expressed, I do not conclude that either the parents or family members tried to alienate or adversely affect the relationship of either parent with E.H. I find that they have been generally supportive, though there are some noted problems that have arisen from time to time.

[216] Looking at J.H.'s plan, it is similarly thorough and complete with respect to E.H.'s basic needs. It amounts to the status quo, and I find that E.H. is well supported in Antigonish by his father and extended family. There he attends school, has a doctor and dentist and all his other needs are being met just as they have been in the past. J.H.'s plan for parenting time with the mother will adversely affect E.H.'s time with M.T. There is some additional time provided by his proposal through the summer, but it is very clear that it will reduce parenting time for M.T. and E.H. J.H.'s plan does have the advantage of maintaining a strong

contact for E.H. with both his father and his father's family. These are important relationships for E.H. and will support and enhance his sense of self, history and family as well as his cultural connection with Nova Scotia. This is not to diminish his Ukrainian heritage and community, but I acknowledge that he is surrounded by Canadian and Nova Scotia culture regardless of where he is residing.

[217] Because of my findings that both parents have been involved since E.H.'s birth and have had a substantially shared parenting arrangements since the February of 2016, I find there is little to choose between them. Both M.T. and J.H. have been good parents over time and though they have had occasional and sometimes significant challenges in co-operation and communication, I find that they also have a history of overcoming these problems and can do so into the future.

[218] In the final analysis, I find that M.T. has not overcome the presumption against relocation by proving on a balance of probabilities that relocation is in E.H.'s best interests. While her plan and reasons for relocation do address many of the needs of E.H., my overall assessment of the evidence in the context of the presumption and burden of proof under the *Act* leads me to conclude that M.T. has failed to meet the necessary burden of proof. I therefore dismiss her application for relocation of E.H. with her to Halifax.

Order

[219] Given that finding, there shall be an order is follows:

[220] The parents shall have joint custody of E.H. They shall meaningfully consult on and jointly decide respecting all major issues concerning E.H.'s health, education, religious upbringing and general well-being.

[221] Each parent shall have complete and unfettered access to all third-party service providers and information respecting E.H. including, but not limited to, schools, teachers, doctors, hospitals, dentists, therapists and any other service provider.

[222] The parents shall, where possible, discuss in advance any proposed appointments or significant events concerning E.H. and shall provide notice as soon as possible of any such appointments or significant events so that they can meaningfully consult in advance and choose whether to attend or not for the appointment or event.

[223] Either parent may authorize emergency medical care when E.H. is in that parent's care. In that circumstance, that parent will notify the other parent immediately after authorizing the emergency care at which time the joint custodial provisions will apply.

[224] Both parents are prohibited from making any negative or derogatory comments about the other parent or anyone in that parent's family any time that they have care of E.H., whether E.H. is present at the time or not. Each parent is also responsible to ensure that no other person makes any such comments, and, if such comments are being made, that parent shall ensure that the comments stop immediately and the other person is removed from the vicinity of E.H. All communication between the parents shall be conducted in a polite, respectful and businesslike fashion.

[225] J.H. shall have primary care and residence of E.H.

[226] M.T. will have parenting time with E.H. as follows:

[227] Normal Parenting Time – During E.H.'s school year, two out of every three weekends from Friday from 3 PM to Sunday at 3 PM. This weekend parenting time will be expanded to include Friday or Monday if E.H. is not in school on one or both days such that the parenting time will be from Thursday at 3 PM to Monday at 3 PM as the case may be.

[228] The following special parenting time shall apply and take priority over the normal parenting times set out above.

[229] Christmas – Unless otherwise agreed, E.H. will be with one parent from 3 PM on the last day of school commencing the Christmas school break until Christmas day at 2 PM. E.H. will be with the other parent from Christmas Day at 2 PM until 3 PM on the last day of the Christmas school break. This schedule shall rotate each year. E.H. will be with M.T. for the first half of the Christmas school break in 2019.

[230] Easter – Unless otherwise agreed, E.H. will be with one parent from 3 PM on Easter Thursday to 3 PM and Easter Saturday and with the other parent from 3 PM on Easter Saturday to 3 PM on Easter Monday. The schedule shall rotate each year. M.T. will have E.H. with her for the first half of the Easter break in 2019.

[231] March Break – Unless otherwise agreed, E.H. will be with M.T. during the March break with the exception that J.H. may have E.H. with him for the March

break no more than once every three years, and provided he give at least 60 days' notice in writing to M.T. of that intent.

[232] Summer School Break – Unless otherwise agreed, during E.H.'s summer school break, the parents will enjoy parenting time with E.H. on a two-week rotating basis which will commence at 3 PM on the first Sunday of the summer school break. E.H. will be returned to the care of J.H. no later than three days before the commencement of E.H.'s school year.

[233] Father's Day and Mother's Day – Unless otherwise agreed, E.H. shall have at least 5 hours of parenting time with his father on Father's Day and his mother on Mother's Day.

[234] Child's Birthday – Unless otherwise agreed, there shall be no special parenting time for E.H.'s birthday.

[235] Interaction Time - E.H. will have reasonable daily interaction with each parent when he is in the care of the other parent, and such contact may be by telephone or videoconference or other means agreed to by the parents.

[236] Transportation – Unless otherwise agreed, the parent who is coming into care of E.H. will pick him up at the home of the other parent at the beginning of parenting time.

[237] Travel - Each parent is permitted to travel with E.H. anywhere in the Atlantic provinces during their parenting time without notice to the other parent.

[238] Each parent is permitted to travel with E.H. outside of the Atlantic provinces but within Canada upon providing notice, in writing, to the other parent of such travel at least 30 days in advance, and such notice must include a general itinerary and contact telephone number where E.H. can be reached each day.

[239] Each parent is entitled to travel outside of Canada during that parent's parenting time upon at least 60 days' notice, in writing, to the other parent, and such notice must include a general itinerary and contact telephone number where E.H. can be reached each day. The father shall obtain and maintain a passport for E.H. and he will have possession of the passport. Upon request by the mother and notice of intention to travel outside Canada, the father shall provide the passport to her and she shall return it to him upon completion of travel. The non-travelling parent shall provide any necessary authorizations to the travelling parent to permit such travel.

[240] Neither parent shall permanently relocate E.H. outside of the County of Antigonish, Province of Nova Scotia, without the written consent of the other parent or an order of a court of competent jurisdiction.

[241] Each parent will attend and complete a program in co-parenting which focusses on appropriate communication and conflict resolution skills and shall provide proof to each other of completion of such program within 120 days.

[242] Child Support – The parties did not introduce any income information at this hearing nor was the issue of child support pursued. If they wish to be heard on the issue, counsel will provide appropriate financial information and a brief on the issue within 2 weeks. In the interim, considering both that M.T. is attending university and the cost of travel for parenting time, there shall be no child support payable.

[243] The mother shall provide to the father a complete copy of her tax return, whether filed with the Canada Revenue Agency, or not, by June 30.

[244] If the parties wish to be heard respecting cost, they may make written submission to the court within two weeks, and a further decision will be rendered.

[245] Counsel for J.H. will draft the order.

Daley, JFC