

FAMILY COURT OF NOVA SCOTIA

Citation: *D.L. v. L.C.*, 2018 NSFC 24

Date: 20181219

Docket: FPICPSA-110715

Registry: Pictou

Between:

D.L.

Applicant

v.

L.C.

Respondent

DECISION

Judge: The Honourable Judge Timothy Daley

Heard: December 12 and 19, 2018

Oral Decision: December 19, 2018

Counsel: Shawn MacLaughlin for Applicant

Pavel Boubnov for Respondent

Introduction

[1] This decision concerns a young child, D., who is six years old and what is in his best interests. Specifically, his mother, L.C., request that she be permitted to relocate the child with her to Alberta. The father, D.L., opposes this relocation requests and seeks an order that the child remain in Nova Scotia in a shared custody arrangement.

[2] The mother says that the child should primarily reside with her and be permitted to relocate to Alberta in part because the father is not an involved parent, they have not had a shared custody arrangement and he does not support her in her parenting of the child. She says that moving to Alberta will allow her to access family support from her mother and father and other relatives and the relocation will allow her to attend school for further education to qualify as a Registered

Nurse. She says that her plan is to ensure a continuing relationship between the child and his father by ongoing contact and, in particular, by having the child come to Nova Scotia in the summers and for half of Christmas each year to ensure the continuity and strength of that relationship.

[3] The father says that since the parties separated in the summer of 2013, they have enjoyed a shared custody arrangement whereby each of them has the child with them approximately half of the time. He firmly denies that the mother has been the primary care parent for the child throughout that time. He says he has been fully involved in his son's life, not only by having his son with him half of the time but also through his involvement with his son's school, his extended family, various activities and says that he is a very involved parent.

[4] The father says further that if the child is permitted to relocate with the mother to Alberta, this will have a significant and negative effect on his relationship with the child and the child's relationship with him, the child's friends and extended family here in Nova Scotia. He seeks an order that the child be prohibited from relocating to Alberta, that the parties have joint custody of the child in a shared custody arrangement, that no child support to be paid between them and that this reflects the history of parenting since 2003.

Parenting and Relationship History

[5] The parents were in a brief relationship for approximately one year in 2012 to 2013. They separated in the summer of 2013 and have remain separated since then. Their only child together is D.

[6] The father has another child with his girlfriend, C.M., and that child, S., is approximately 10 months old. He is therefore D.'s half-sibling.

[7] The mother also has another child from a prior relationship, C., who is 8 years old. He is therefore D.'s other half-sibling.

[8] The mother says that she is not currently in a relationship with anyone.

[9] The mother has lived in Pictou County, Nova Scotia since she was three years old with the exception that she resided in Alberta for approximately three years from 2006 to 2009. The mother returned to Pictou County in or around 2009 and has resided here since.

[10] The father was born and raised in Pictou County, as was D., and neither have resided anywhere else.

The Law Applicable to Relocation and Best Interests

[11] In order to review the evidence in the appropriate legal context and then to apply the appropriate analysis in arriving at a decision, I find it helpful to review first the law applicable to relocation in determining the best interests of the child in a circumstance such as this.

[12] 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.

[13] 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).

[14] 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 to be considered, though this list is not exhaustive. The relevant considerations under this subsection include the following:

- (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's... willingness to support the development and maintenance of the child's relationship with the other parent...;
- (c) the history of care for the child having regard to the child's physical, emotional, social and educational needs;

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

...

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

(h) the nature, strength and stability of the relationship between the child and each... 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....

[15] I note that s.18 (f), which requires consideration of the views of the child, was not included as a factor in this matter. The most common way the child is heard is through a Voice of Child Report, but no such report was requested. There is no helpful evidence of the child's wishes or views before me to consider.

[16] As well, s.18(e), which requires consideration of the child's cultural, linguistic, religious and spiritual upbringing and heritage, was not considered as no evidence was advanced respecting these issues for the child.

[17] I also acknowledge that there was brief mention of what might be allegations of family violence made by the father against the mother in his initial affidavit, but the issue was not advanced or argued further. If present, I must consider such allegations pursuant to s.18(j). Given the paucity of that evidence and the approach of the father of not addressing those allegations further, I will not consider this evidence in this decision.

[18] The analysis of the child'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. In the interests of time today I will not recite those factors but I do consider them in the analysis of the child's best interests.

[19] 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 by way of a response to the application of the father 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.

...

[20] 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*, [1996] 2 SCR 27, 1996 CANLII 191 (SCC).

[21] For reasons set out in the decision of this court 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.

[22] 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 helpful guidance. In the interests of time I will not recite those comments today, but I am mindful of them in assessing credibility where required.

Relocation - Options Available

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

[24] The mother seeks, as her primary position, an order of sole custody and primary care of the child with her and permission to relocate with the child to Alberta. She proposes a structure of parenting time and contact time for the father with the child within that proposal.

[25] In the alternative, the mother says that if the child is not permitted to relocate with her to Alberta, she will remain in Nova Scotia and seeks an order of sole custody and primary care of the child with her and parenting time and interaction time for the father.

[26] The father seeks an order denying relocation and an order for joint and shared custody of the child in Nova Scotia with the child spending equal time with each parent. The father indicates he will not relocate to Alberta if relocation of the child is authorized.

[27] Within the context of these primary and alternative positions, I must next determine the issue of relocation.

Presumptions and Burden of Proof for Relocation

[28] The first step in deciding the issue of relocation under the *Act* is to determine where lie 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.

[29] In considering each provision of this section, I note the use of the phrases “substantially involved” in s.18H(1)(a) and “substantially shared” in s.18H(1)(b) and find that they deserve some attention. As I found in *C.O. v. S.M.*, 2017 NSFC 22, respecting the phrase “substantially involved” at paragraph 90 as follows:

[90] The phrase "substantially involved" merits some attention. The word "substantially" is variously defined to mean "significant", "to a great or significant extent" and "not imaginary or illusory". While reference to dictionary definitions is not determinative in such analysis, this does provide a beginning.

[91] In considering this section in the context of the amendments to the Act concerning relocation with a child, it is clear to me that section 18H(1)(a) creates a presumption in favour of the relocation in a circumstance where the parent opposing such relocation has minimal or moderate contact, involvement and decision-making responsibility or interest in the child. It is intended to prevent such a parent from unreasonably obstructing a move and respects the decisions of the primary caregiver in such circumstances. It is, in many ways, an effort to mitigate against claims by minimally or uninvolved parents where there is little likelihood of success in opposing the relocation and does so by placing the burden squarely on the parent opposing to show that the relocation would not be in the child's best interests.

[30] 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*.

[31] 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.

S.18H(1)(a) – “Substantially Involved”

[32] In considering section 18H(1)(a), I note that this subsection creates a presumption in favour of the relocation if:

1. a primary caregiver is identified,
2. that primary caregiver requests the order for relocation,
3. someone is opposing the relocation and
4. the person opposing the relocation is not substantially involved in the care of the child.

[33] If those four circumstances are present, then the burden of proof falls to the person opposing to prove that the relocation would not be in the child's best interests.

[34] In this case, there is dispute respecting whether the mother is the primary caregiver for the child. There is no pre-existing order identifying either party as having primary care or control of the child or residence of the child. This might be, in many cases, the simplest way to identify the parenting circumstances and whether one parent is a primary caregiver. That said, there are many cases where an order may be in place identifying one parent in this way but the reality of the parenting arrangement as it evolves over time may be quite different. For example, an order may identify a father as a primary caregiver but over the course of months or years circumstances may evolve into a parenting arrangement where each is equally involved in caregiving and that circumstance may mean that a primary caregiver cannot be identified.

[35] Where an order does not exist to assist the court in this regard, the circumstances of the parties and child must be carefully examined. In this case, there is a clear disagreement respecting the parenting arrangement. The father says that, since separation, he has had equal parenting time with the child. The mother says that she has been the primary caregiver since separation and the father has been unreliable and unsupportive of her in parenting the child. While I will have

more to say respecting these positions and the evidence in support of each when examining whether there exists a substantially shared parenting arrangement, I do not find it necessary to enter into that analysis when considering this section of the *Act*.

[36] I find it sufficient to examine whether the person opposing the relocation, in this case the father, is or is not substantially involved in the care of the child. Upon examination of the evidence, I find that the father is substantially involved in the care of the child and therefore the presumption in favour of relocation is not applicable in this circumstance.

[37] In making this finding, I have considered the evidence of the mother and of her grandmother, D.C. The mother says in her affidavit that the child has been in her primary care since 2012 and that the father is very difficult to get along with and communicate with. She also makes an unsubstantiated claim of a history of mental illness and drug addiction on the part of the father, which he denies, and which she does not pursue any further.

[38] The mother says that the father will not pay child support or child care, does not support her by providing childcare when she must work unexpectedly and on short notice and says his behaviour is intended to exact revenge against her.

[39] The mother says in her second affidavit that for the first two years after their separation, the father was inconsistent in his involvement as a parent, there was no set schedule for parenting time and that she wanted the father to be more involved in the child's life. She does say that after 2017 the father became more involved but was still inconsistent. She says she simply can't rely on the father in a parenting role.

[40] She goes on to say that the father never paid child support to her and contributed nothing to expenses such as school supplies and birthday parties. She said that the father never bought clothing for the child or contributed to any related expenses with the exception of the pair of sneakers in 2017.

[41] Her grandmother, D.C., says that she is supportive of her granddaughter relocating to Alberta with the child. She lives close to the mother and when the mother has taken shifts on short notice, she takes care of the child. She says that the father's involvement in the child's life was limited, his parenting time was somewhat irregular and that on multiple occasions when the mother had to work,

the father cancelled his parenting time and she had to step in to care for the child. She states firmly that the father never had the child for half of the time.

[42] D.C. goes on to say that the father swore at her when she asked if he was going to pay any child support and his reply was that he has the child 50% of the time and he didn't need to pay any such support.

[43] In cross-examination, D.C. said that she was at the father's home on one occasion to drop off the child and only went to the door. She said she has never been inside the house nor has her husband. Thus, her opportunity to observe the father's involvement with the child is limited.

[44] Respecting the mother's evidence on this and other matters, there are some credibility concerns. Specifically, in her first affidavit she says that the father does not work and that "he cannot show up for to a job". She later says, "he does not understand working as a parent." From that affidavit, I was left with the impression that the father was not working and had not worked for some time. The mother expressed concerns about neither the father nor his girlfriend working and the environment in which the child was being raised in that home.

[45] The evidence of the father is that he has worked full time with a tree trimming company for 13 years. His evidence was that he had been on parental leave since January 2018 after the birth of he and his girlfriend's child and that he is due to return to work with the same company in January 2019. His Statement of Income and associated tax returns confirm his earnings from employment with that company and through Employment Insurance as he describes.

[46] In her second affidavit, the mother changed her evidence and, when discussing the father's failure to pay child support voluntarily, she says that he was always working while they were together and, to the best of her knowledge and belief, he was always or almost always working after they broke up.

[47] Respecting his involvement in the child's life, the evidence of the mother and her grandmother is in stark contrast to the evidence of the father and witnesses he called.

[48] The father describes in significant detail in his affidavit his involvement in the child's life. It is his evidence that he has had shared custody of the child with the mother since separation and he provides a calendar and detailed schedule of the parenting arrangement.

[49] He says he has been actively involved as a father since the child's birth. He describes sharing holidays and special occasions with the mother including Christmas, Halloween, summers and Easter. He describes ensuring the child is on and off the bus from school during his parenting time and provides photographs of the child getting on and off that bus. He says that he provides for all the child's needs when in his care including purchasing toys, clothes, a bicycle and other items.

[50] The father describes an active parenting life with the child including seeing relatives on his side of the family a couple of times each week and spending time with his girlfriend and their child several times each week.

[51] The father describes preparing lunches for the child for school and at home, arranging daycare for the child with family when the father is working as well as taking him to events.

[52] While he admitted in cross-examination that he had only attended one parent-teacher meeting, he described having constant communication with the teacher, whom he was able to identify, respecting the child's behaviour and progress. The father says he took the child to school for his first day in 2018, he reads books that are sent home from school with the child and helps him with his homework. He says he even took the step of enrolling the child in a learning program at school and says the school was unable to reach the mother respecting this.

[53] The father says there have been occasions when he left work to pick up the child because the mother had failed to contact the school on her day to have the child.

[54] The father describes outings with the child and family including two trips to Prince Edward Island, pool parties, birthday parties, Canada Day events and a trip to the wildlife park among other occasions and activities. He described a fort swing and pool at his home set up for the child and other family members to enjoy. He says he and his girlfriend hosted three family barbecues during the summer of 2018 which included D. and other family members and he celebrated D.'s birthday in 2018 with family. All this evidence was unchallenged by the mother.

[55] In cross-examination, the father confirmed the name of the child's doctor, but he had not been to see the doctor on a regular basis with D. He did say that he

had ensured D. was up-to-date with immunization needles. He was unaware of any dentist for D. and was unaware of any dental problems.

[56] The father's evidence respecting his involvement with the child is corroborated by several witnesses including S.L. who is the maternal grandmother. It was her evidence that she provided childcare 2 to 3 days per week when the parties were together and, since then, continued to provide some childcare until the father was off on paternity leave.

[57] She described in detail her opportunity to observe the father, the child, the father's girlfriend and their child together, saying that she observed her son's parenting on a weekly basis when the parties were together. She conceded she did not observe the father and the child in the father's home as frequently after separation but did speak with her son about his activities with the child on weekends and otherwise.

[58] She also confirmed knowledge of the outings the father had with the child to Prince Edward Island, the wildlife park as well as events such as Halloween. She says she observed the father spending time with D. at these events.

[59] Similarly, she confirmed the father set up a fort swing set and a pool for the child and family to enjoy, that she was aware that the father had taken the child for day trips, had hosted three family barbecues over the summer in which D. participated and that they celebrated D.'s birthday with family.

[60] She also testified of her observations that the father was a very hands-on parent, did housework and laundry for his family, held a full-time job and is a very involved father.

[61] Similar evidence was given by the father's girlfriend, C.M. She says that they do not live together but spend approximately three nights each week together and other times during the day. They have a child together, S., who is about 10 months old now.

[62] She testified to her observations of the father and the child based on the many days they spend together. It was her evidence that the father has the child with him almost every time that she sees the father. She confirmed the father's description of the scheduled parenting time and that it was approximately equal.

[63] She says that the father is very involved with the child's school, describes his and the child's involvement in various activities set out earlier, that the father provides school supplies and clothing for the child, reads the child his books from school and prepares meals for school.

[64] She confirmed the father has enrolled the child in a learning program at school and has had multiple conversations with the child's teacher respecting his progress. She said she observed the father contacting the school to ensure the child was on the proper school bus and that she has witnessed the father having to stop what he was doing to pick up the child because the mother had made improper arrangements with the school to get him to her.

[65] Overall, her evidence describes a very strong relationship between the father and son and a father who is very involved in the son's life both by having him half of the time and by being involved in his day-to-day care, school, transport to and from school, family and other activities and celebrations in the child's life.

[66] There was evidence from W.H., the mother of C.M., who testified that the father and child frequently visit her during the week and on weekends. She says her daughter and their child together, S., are also there for the visits.

[67] She confirms her belief that, based on her observations, the father had the child with him for half of the time. This is not only based on her observations but as a result of telephone calls with her daughter who confirms the child is often with the father.

[68] She describes travelling to Prince Edward Island with the father and D., her daughter and their child in the summer of 2018 along with other family and friends.

[69] She was aware of the father taking the child on a number of trips including two trips to PEI, to the wildlife park, to the Annapolis Valley for a visit to a zoo, trips to the beach and to family gatherings including the child's birthday.

[70] R.L., the father's sister, gave evidence by affidavit. Cross-examination of her was waived and her affidavit was admitted by consent. She, like the other witnesses for the father, confirms her observation that the father has the child with him approximately half of the time since separation. She also said that she has seen the father and child together a lot including for birthdays, holidays and other days. She says her mother brought the child to her home from time to time. They

have also taken the child to the beach with his cousins and to Trenton Park for swimming and for walks.

[71] C.L., the father's sister, provided evidence in the matter. She similarly testified as to the various events, family gatherings and occasions which the father and child attended and participated in and her observation of the close relationship between the father and child. She said she has been babysitting the child since he was born, and they developed a strong relationship.

[72] Finally, A.D., the best friend of C.M., provided her evidence and confirms that since the father and C.M. began a relationship, she has had opportunities to observe him and the child together. She says that she spends 2 to 3 visits per week at C.M.'s home and nearly every time the father is there with the child. She was also present for family and other events with the father and child and has observed the father keeping the child for extra time when the mother was not available.

[73] After carefully reviewing all the evidence before me, I find that the father has been substantially involved as a parent since separation. I find that he and the other witnesses in support of his position are credible in their description of his parenting, commitment and involvement with the child. This covers a range of activities including parenting time, care of the child, involvement with the school and his education, activities both with family and otherwise, travel and providing him with the necessities including clothing, school supplies and an appropriate home and parenting environment.

[74] The evidence before me is quite persuasive that his involvement is not imaginary or illusory and that his involvement is significant. He has far more than minimal or moderate contact, involvement in decision-making responsibility or interest in the child. Therefore, I find he is substantially involved in the child's life and the presumption under section 18 H(1)(a) in favour of relocation is inapplicable in this circumstance.

S.18H(1)(b) – “Substantially Shared Parenting Arrangement”

[75] Section 18H(1)(b) creates a presumption against relocation if both the person seeking and the person opposing the relocation have a substantially shared parenting arrangement. In that case, the person seeking relocation bears the burden to prove that the relocation is in the child's best interest.

[76] In this case there is a dispute as to whether the parents are in a substantially shared parenting arrangement. As noted earlier, this is not an assessment of whether this is a shared custody arrangement under the provincial Child Support Guidelines. It is a more nuanced assessment of the parenting arrangement in place at the time of the application by examining the factors set out under section 18H (3).

[77] I will begin with an assessment of the actual time the parents spend with the child. On this I find the evidence is clear that each of the parents spent a significant amount of time with the child prior to the application. While it is unnecessary for me to determine if this was precisely equal, I am satisfied that each parent had very substantial parenting time, at times approaching or exceeding equal time, with the child over several years.

[78] The evidence of the mother and her grandmother is that the father did not spend such substantial time with the child. When weighed against the evidence of the father and the various witnesses he called, I find his evidence to be more persuasive. The mother provided very little evidence in support of her position other than asserting her belief. Her grandmother gave her evidence, but I find she had very limited opportunity to observe the amount of parenting time exercised by each parent.

[79] The father and his supporting witnesses were able to identify significant detail regarding his parenting time including the schedule generally followed, a calendar in support of it and the recollection and observations of the various witnesses respecting that parenting schedule. I acknowledge that there were variations from time to time necessitated by work for each of the parents and other factors in the lives of the families. But I am persuaded that each parent spent a significant, and at times equal, amount of time with the child since separation.

[80] When considering the day-to-day caregiving responsibilities for the child, I likewise find that each parent substantially shared such responsibilities. This finding requires an assessment of the evidence respecting the day-to-day care required for the child and who bore that responsibility.

[81] The brief evidence of the mother is that she was responsible for all day-to-day decisions and care for the child with the exception of the times, limited as she says they were, that the child spent with the father.

[82] The father described in some detail his day-to-day caregiving activities including ensuring the child travelled to and from school safely, preparing lunches for him, working with him on his homework, reading books to him for school, interacting with the teacher on a regular basis, enrolling him in an education program as recommended by the school and otherwise supporting his education. The father says that he also ensured the child's immunizations were current.

[83] Similarly, his evidence, supported by those who testified in his favour, was that he is active and involved in day-to-day parenting including the routine care of the child and ensuring he was involved in activities with family and friends. I will not review all that evidence again, but D. was kept busy and fully involved with the father and his family in day-to-day activities which fall within the caregiving responsibilities of a parent.

[84] I also find that the mother is likewise significantly involved in the day-to-day caregiving responsibilities for D. when he is in her care. While she was called on short notice for work from time to time and there were some struggles in finding child care, I do not find that derogates from her position that she was a good parent to D. after separation. Her evidence is that she works two jobs, one part-time and one casual, and it is no surprise that there would be occasional challenges in parenting D. when she is called to work on short notice.

[85] She suggested the father failed in his responsibility because he did not always step up to take care of D. in her absence. The father explains that he did so when possible, but he has his own work and family responsibilities and could not always take D. on short notice. I find that to be credible and I find nothing to criticize either parent in that circumstance.

[86] I therefore find that both parents were substantially involved in the day-to-day caregiving responsibilities for D.

[87] Respecting the ordinary decision-making responsibilities for D., I can find that each parent was substantially involved. There is little evidence from the mother about those decision-making responsibilities that she undertook except the broad allegation that the father was not involved in the care of the child. I do accept that when D. was in her care, she made those decisions.

[88] Likewise, the evidence of the father is quite clear that he undertook the decisions for D. when in his care. I accept this evidence.

[89] One of the challenges for this family is the inability of the parents to communicate and cooperate effectively in co-parenting D. Each accuses the other of poor communication and, in the case of the texts introduced as part of the evidence, I find that each parent bears some responsibility for that poor communication. That said, it did not prevent the parents from making appropriate decisions, though not always jointly, in the best interests of D..

[90] I find that the parents enjoyed a substantially shared parenting arrangement at the time of the application and therefore the presumption against relocation set out in section 18 H (1)(b) does apply. In that circumstance, the mother bears the burden to prove, on a balance of probabilities, that the relocation is in D.'s best interests.

Best Interests Analysis

[91] Keeping in mind the burden of proof on the mother to establish that the relocation is in D.'s best interests, it is appropriate now to move on to the analysis of those best interests. In doing so, I note that there is nothing in the *Act* to suggest that any one of the factors set out under section 18 (6) and 18H (6) 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 I must conduct a blended analysis of the evidence and these factors, including the applicable "*Foley* factors" in arriving at a decision respecting D.'s best interests and whether the mother has met the burden of proof.

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

[92] There is little in the evidence to suggest that D. has anything other than the normal physical, emotional, social and educational needs of a six-year-old boy. The father does allude to some behavioral challenges in school but says that those seem to be properly addressed. There is an educational program in which D. is registered at the father's request but little information as to what that might involve or why it was put in place.

[93] There is also no doubt that the child has significant connection with family and a circle of friends at school including a best friend identified by the father. D. will have the normal needs for social interaction and education and I find that, at this stage, those needs are being adequately met by both parents.

[94] Both the father or mother raised issues of stability and safety. The mother suggests that the father is not supportive of her when she needs child care on short notice and that he fails to communicate properly with her respecting the needs of D. as they arise.

[95] The father says that the mother has been struggling with ensuring that D. is picked up at school and he has had to step in on occasion to look after this need. He, too, suggests communication is difficult between them which would obviously affect their ability to provide for stability and safety when the need arises.

[96] Considering the evidence before me, I am satisfied that each of the parents is able to meet these needs despite the challenges of communication. Clearly, each of the parents needs to do a better job of communication and keeping each other informed when D. is at school and arrangements have not been made for his pickup. Rather than criticize one another, they need to work actively on a plan to back each other up when necessary, particularly given the extensive family support they have available.

[97] That said, I am not concerned respecting stability and safety and do find that, given his age and stage of development, D. is being appropriately cared for by each of his parents. Co-parenting him will be a challenge but, so far, this is not an insurmountable obstacle.

[98] I have already made findings respecting the history of care for D. The parents have had a substantially shared parenting arrangement since separation which I find has served his needs including his physical, emotional social and educational needs.

[99] As I will discuss later, I find that the shared parenting arrangement has created difficulties. There are multiple transitions through the course of the week and, though there is no evidence D. struggles emotionally or socially with these transitions, I find it has presented significant challenges for the parents in organizing his care and transportation. For many children such transitions create their own stresses, leaving them with the burden of deciding where to go for bus transport and leading to confusion about where they will be from day-to-day. In

this circumstance, I think there is an opportunity to simplify things for both the child and his parents.

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

[100] Each parent complains that the other is not fully supportive of the development and maintenance of D's relationship with them. The mother complains the father does not communicate with her, is too private, does not step up when she needs child care on short notice and has been less than fully involved in D.s life since separation.

[101] The father says that the mother has failed to make appropriate arrangements for D.'s pickup at school on occasion, that it is difficult to communicate with the mother at the best of times and he attaches to one of his affidavits a series of texts between the parents as proof. Unfortunately for both parents, these texts do not reflect well on either parent. The texts quickly devolve into ad hominem attacks, reflect parents who jump to the worst conclusions possible and, in many cases, are rude, vulgar and dismissive of one another. The threats and language of marginalization are very unhelpful to a co-parenting arrangement.

[102] On this issue, I have concerns respecting both parents. Until they can gain some insight into their own poor communication and their role in the failure to properly co-parent, D. will continue to suffer the consequences.

[103] In this context, the relocation proposal of the mother is particularly concerning. While she maintains that she wishes the father to be fully involved and will ensure that he is a significant part of D.'s life if relocation is approved, the pattern of communication and interaction between the parents does not suggest that this is likely. She has marginalized him in her description of his parenting and, as is clear from the text communication, she demeans and marginalizes him as a parent.

[104] I am concerned that if relocation is approved and she moves with D. to Alberta it is unlikely that she will support the development and maintenance of the father's relationship with D. I find that it is likely that she would continue to marginalize the father. There is little evidence, if any, that she is willing to do otherwise.

[105] This should not be taken to suggest that the father is innocent in this dysfunctional behaviour. But he is the one at risk of loss of the relationship with the child if relocation is approved and the mother does not support that relationship. This is therefore a concern when determining the parenting arrangement that is in D.'s best interests.

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

[106] I find that each parent has a strong, stable and loving relationship with D. which should be supported. I have no doubt that they each love this child deeply.

[107] The mother's evidence on this is brief but clear. That evidence is supported by her grandmother. She has a loving, strong and stable relationship with D. Any challenges with parenting revolve around her inability to co-operate effectively with the father. I believe these issues can be resolved with the support of family and improved communication with the father.

[108] I likewise accept the evidence of the father, and those that testified in his support, that he has a loving, strong and stable relationship with D. as well. The evidence which I accept is quite thorough and complete, describing an active and involved father who parents his son appropriately with the support and assistance of family, friends and his girlfriend. I have no concerns respecting his relationships with the child. My concern is largely centred around the parents' inability to effectively co-parent.

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

[109] Respecting the relationships between D. and other significant persons in his life, there are many and all are appropriate and supportive of him.

[110] His maternal great-grandmother has been involved in his life since birth and clearly is loving and supportive of him. She has provided child care and support for the mother and has cared for and spent time with D. over the years. This is an important relationship for him which should be supported.

[111] The mother says that she will have the support of her parents if relocation is approved. While I have no doubt that his maternal grandparents love D., there is

little evidence of these relationships. The maternal grandmother has not lived in Nova Scotia since D.'s birth and has been to Nova Scotia on two occasions over the last four years, spending two weeks each time. There is no evidence that she has maintained communication with D. between those visits though I am sure the mother has kept her informed of D.'s life from time to time.

[112] Likewise, the paternal grandfather has not lived in Nova Scotia since D.'s birth. He has been to Nova Scotia two times for six weeks at a time over the last three years which, like the maternal grandmother, provided him some opportunity to spend time with D. On the other hand, there is no evidence of any ongoing relationship between D. and his grandfather.

[113] There was evidence of other family on the mother's side in Pictou County but no evidence they have a relationship with D.

[114] On the father's side, there is significant evidence of important relationships in D.'s life. They begin with his father's family including the paternal grandmother, the father's two sisters, the father's girlfriend with whom he has a child, as well as the best friend and the mother of the father's girlfriend. Each of them describes having important and significant relationships with D. which I find to be important for him. This is particularly so with his paternal grandmother, aunts and the father's girlfriend. Each of them describes significant other relationships in the family including cousins and other relatives with whom D. has spent time, to one extent or another, since birth.

[115] Of particular importance is D.'s relationship with his two half-siblings. Both his father and mother have other children who are part of D.'s life and with whom he spends significant time. These are relationships that will last his lifetime, well beyond the lives of his parents, grandparents and others in his family. Sibling relationships are important to any child throughout his life and should be supported wherever possible.

[116] Also, of note is D.'s relationship with his school community. His father says that he has many friends and a best friend at school. He has been in school for two years, is involved with children and teachers, and this is important to a child of any age. While children certainly do relocate with their parents on a regular basis, it is important to acknowledge that these school communities and relationships are important to any child, including D., and should be supported where possible.

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 – s. 18(6)(h), *Foley* Factors

[117] Respecting the issue of communication cooperation on issues affecting D., I commented earlier on the poor communication between the parents and their inability to co-parent effectively. I will not repeat those comments except to say that this is a significant ongoing challenge for each of them and each bear significant responsibility for that issue.

[118] The ability to communicate and cooperate is critical in circumstances where parents have substantially shared parenting arrangements and where parents reside thousands of kilometers apart. It is critical that they learn good communication skills, including how to cooperate and communicate effectively in ways that do not hamper decision-making. They must rid their thinking and communication of vulgar, demeaning, insulting and presumptive communication in order to focus on the needs of D. rather than their own emotional needs.

[119] To put it another way, the tone of the communication in the texts in evidence indicates that each parent is far less focused on the needs of D. and far more focused on attacking the other, perhaps to feel, if only for a moment, the superior parent. They must do better for D.

[120] I also find that the texts, which are clear evidence of this dysfunctional form of communication, are likely but the tip of the iceberg in terms of their attitude and communication with one another. Therefore, as part of the order in this matter, I will require the parents to attend at and successfully complete a co-parenting course to attempt to focus them on the best skills that they can develop and to learn how to communicate in a way that is respectful, businesslike, child focused and supportive of their son.

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

[121] When assessing the mother's reasons for the relocation, her evidence is brief. She says that she has a network of support in Alberta consisting of her mother and father who are divorced and live separately. Her mother will allow her to stay with her and will assist with childcare.

[122] The reason for her relocation request is based in that support. She says that in Nova Scotia she only has the support of her grandmother. This is despite the

other family members that are available to her here. Apparently, she has little to no relationship with them.

[123] As well, it is her evidence that when she relocates, she will apply to a local school for training to become a registered nurse. Currently she is an LPN and works two jobs, one part-time and one casual, in that profession.

[124] I do not doubt that the mother feels somewhat isolated in Nova Scotia. I accept that, but for her grandmother, she has no family support in this area. That is a powerful motivation for her to seek relocation.

[125] On the other hand, several issues arise. First, with appropriate co-parenting communication, it seems reasonable that she can call upon the support of the father and his family were necessary. While this may take some time to evolve, there is evidence before me that they have stepped in from time to time to assist her in the past including when the parties were together as well as after their separation. Child care has been provided, however begrudgingly. With improved communication and cooperation this would likely increase her local support.

[126] Second, there is very little evidence before me of what the nature of the support that will be available from her parents in Alberta. They have little relationship with the child. I do not have any evidence directly from either of her parents as to their circumstances and their ability to support their daughter and grandson. It is unclear to me that the level of support that she receives here through her grandmother would be significantly improved by relocating to Alberta and seeking the support of her mother and father. The evidence is that her grandmother does provide significant assistance to her, but it may be that the relocation would provide that added benefit and support.

[127] Third, respecting her education, the father has provided evidence that a nursing program is available at least at two universities in Nova Scotia, one of which is approximately a 30 to 40-minute drive away from Pictou County. He questions whether the relocation is in any way justified by the desire to seek further education when this education is readily available here.

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

[128] When considering the effect on the child of the change in parenting time and contact time with the father due to relocation, each parent sees this differently.

The mother says that she will maintain the father's relationship with the child and will do everything she can to facilitate parenting time. This includes travel to Nova Scotia in the summer and at Christmas and that she will contribute to the transportation costs.

[129] The father takes a very different view. He says that any relocation would be devastating to his relationship with the child.

[130] It is here that the most significant impact of the relocation proposal is found. Having already determined that the father is substantially involved with the child and has a substantially shared parenting arrangement, any such relocation would inevitably have a significant and negative impact on the relationship between D. and his father. There is simply no substitute for the regular, consistent and meaningful parenting time enjoyed by D. with his father.

[131] While it is true that technology affords us the luxury of videoconferencing and there will be available parenting time in the summer and other times through the year, I find that the father's relationship with D. would be significantly and adversely affected by relocation and D. will be negatively affected by that change through the reduction in parenting time and the diminishment of the relationship with his father.

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

[132] When considering the effect on D. of his removal from family, school and community due to relocation, the evidence of his relationships in the community is clear. He has a close and loving relationship with his maternal great-grandmother. He has a similar close and loving relationship with family, friends and others on his father side as well. I have reviewed the evidence of those relationships earlier, including the evidence of his relationship with his father's girlfriend and his stepsiblings. He has friends, and a best friend, at school and has been part of that community for some time.

[133] As with the effect on his relationship with his father on relocation, I find it is inevitable that any relocation will have a significant and negative effect on his relationships with others in his life including his extended family in Nova Scotia on both sides, friends, siblings and school and community. While some of this may be mitigated by videoconferencing and visits to Nova Scotia through the year,

there is no doubt that these relationships will be diminished, and some lost, with the relocation.

[134] On the other hand, D. is young and would develop new friendships and school communities if relocation is approved. He would also have the potential of contact with his maternal grandparents though, as noted earlier, it is somewhat unclear as to the level of involvement they may provide.

[135] Given the nature of his relationships with family and friends of Nova Scotia, this is a significant challenge for the relocation which must be addressed.

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))

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

[137] The mother proposes to relocate the child with her to Alberta. She says they will reside with her mother who will support her with childcare while she attends for further education to become a registered nurse. She says she will have the emotional and financial support of her mother and father who will be able to assist with daycare. She says she will have the support of her father who does not reside with her mother.

[138] Unfortunately, this is the extent of the plan she has provided. She provides no detail as to the living arrangement in her mother's house, any information about local schools, available physician or dentist for the child. She has not provided any information regarding available activities for the child in the area.

[139] The mother has not provided any evidence respecting how she proposes to support herself and the child in Alberta other than a claim for child support from the father and the Canada Child Benefit.

[140] This is in contrast to her evidence that she has two jobs in Nova Scotia for which she is paid \$24.59 per hour. Her part-time position pays her 37.5 hours

every two weeks and her casual position varies from very slow to very busy including overtime at 1.5 times her regular pay.

[141] Her plan is to attend for education as a registered nurse. She has not explained her hours for school, whether she will attend full-time or part-time, the cost of her education, whether she has applied for or been admitted to the school and how she would propose to support herself and the child when attending that school. She did provide evidence that she has sought to have her professional designation recognized in Alberta so that she can register for the program but, as of the date of the hearing, had not received confirmation of that.

[142] The mother has also not provided any plan for how she would propose to maintain contact and a relationship between D. and his father, extended family and friends in Nova Scotia. She has not set out a plan for telephone, videoconference or any form of communication while D. is in Alberta.

[143] She has provided a proposal for parenting time in Nova Scotia during the summer, school spring break and a share of the school Christmas break. She has proposed no other parenting time for the father in Nova Scotia nor has she offered any parenting time to him if he could travel to Alberta.

[144] Also absent from her plan is how she would pay for the cost of transportation of the child to and from Nova Scotia. Since there is no indication of what those costs would be or how she will pay for them, it is difficult to understand how she could afford to pay the cost of flights for D. and, until he is of age to travel alone, another adult to accompany him at least twice each year.

[145] The mother has not proposed a plan for keeping the father informed respecting D. and his needs and best interests. Both she and the father have demonstrated little to no insight into the dysfunction of their current communication and she has provided no indication that she plans to change that style of communication as part of her plan for relocation.

[146] If relocation is denied, the mother says she will remain in Nova Scotia and proposes that she should have primary care of D. and the father should have parenting time every second weekend and additional time during the week subject to each parent's work schedule.

[147] In the further alternative, if the court denies relocation and orders shared parenting, she believes it would be in D.'s best interests that shared parenting be on

a week-about basis with some flexibility to account for the parents' work schedules.

[148] The plan of a parent proposing relocation is not expected to be perfect nor can it be. Employment may be tentative as may housing and other issues. But it is incumbent on that parent to demonstrate that they have turned their mind to all relevant issues and have taken steps to addressing each.

[149] The father's proposal is simple. He says that the best interests of D. would be served by maintaining a shared custody arrangement in Nova Scotia. He had set out the framework of a parenting arrangement and in his affidavit sets out alternatives. In submission, his counsel suggested that the best shared parenting arrangement for D. would be a week-about arrangement with the exchange to take place each Sunday at 5 PM. He proposes that during each week the parent who does not have the parenting time would spend time with D. on Wednesday overnight to ensure that D. has contact with each parent each week. He further proposes an equal share of all holidays including Halloween, Christmas, Easter, summer school break, March break and the like.

[150] The father proposes that, otherwise, everything would remain as it is now including that D. would continue to attend his school and maintain his doctor.

Compliance with Previous Court Orders and Agreements by The Parties to The Application

[151] There are no prior orders or written agreements between the parties so there are no compliance issues nor any restrictions on relocation.

Any Additional Expenses That May Be Incurred by The Parties Due to The Relocation

The Transportation Options Available to Reach the New Location

[152] There is no question that relocation will create additional expenses for parenting time for the father and D. As noted earlier, the mother proposes she pay these costs but provides no evidence of what those costs would be or how she will pay them. The distances involved mean that flights are the only option for transportation.

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

[153] There are no notice concerns as the application to relocate was made well in advance of this hearing.

Analysis and Decision

[154] In any relocation application the court must apply an analysis that weighs the advantages to the child for relocation against the disadvantages of relocation. Generally, this involves an assessment of the benefits to be gained based upon the reasons and plan for the relocation compared to what is often the loss or diminishment of a relationship with the parent as well as that parent's family, friends and community who remain behind.

[155] In the present case, it is not simply enough to weigh those factors and determine what is in the child's best interest. I must be very mindful of my finding that the parents enjoyed a substantially shared parenting arrangement and, as a result, the presumption that it is not in D.'s best interest to authorize the relocation. It is therefore the mother's burden to prove, on a balance of probabilities, that it is in D.'s best interest to relocate.

[156] After carefully considering all the evidence, the law and the burden of proof, I find that the mother has not proven, on a balance of probabilities, that it is in D.'s best interests to relocate to Alberta. I do so for several reasons.

[157] First, I find that D. has a deep and significant, loving and supportive relationship with his father and mother and the relocation would have an unacceptably high adverse impact on D.'s relationship with his father. His father parents him each week in a substantially shared arrangement, is deeply involved in his life and makes decisions for him as a parent. The evidence makes clear that the father not only provides for his basic needs but also involves himself and D. in family and community activities. The father is involved with the school and has demonstrated that he is a committed and loving parent. A relocation to Alberta would irreparably damage that relationship notwithstanding the offer of parenting time in Nova Scotia during summers, at Christmas and for the school spring break. This parenting time, combined with videoconferencing or other technology, would be, in my view, inadequate to maintain a healthy relationship with his father similar to what he has now.

[158] Second, the same damage will be done to D.'s relationships with his maternal great-grandmother and all the relatives, friends and siblings on his father's side on relocation. He has a deep and abiding relationship with many of these family and friends. I particularly note the relationship he has with his maternal great-grandmother and paternal grandmother as well as his half-sibling. These relationships are important for D. and should not be lightly disturbed. There is no doubt that the relocation to Alberta would disturb those relationships to a significant degree and in some cases, such as those friendships that he has developed at school and in his community, they would be lost. It is fair to say that he would develop other friendships in Alberta, but his family cannot be replaced.

[159] Third, the benefit to him of support from his mother's family in Alberta is, I find, overestimated. The only family there that the mother has identified are her mother and father. Her mother will provide a home and child care, but I do not find that the maternal grandfather would be of much support. It is also unclear to me whether either of the paternal grandparents have any significant relationship with D. He would therefore not only be leaving Nova Scotia and travelling to a new province with his mother but would also be living with and supported by grandparents with whom he has little existing relationship.

[160] Fourth, there is no evidence from the mother of any other extended family, friends or community support for her in Alberta. D. has never lived anywhere else but Nova Scotia. It appears that the mother knows few people in that community in Alberta other than her parents. To take D. from Nova Scotia, even with the support of his maternal grandmother and grandfather as well as his mother, would be a significant challenge and particularly so when balanced against the loss to D. of all those relationships he has come to know in Nova Scotia.

[161] Fifth, the mother's plan for relocation is threadbare at best. She wishes to pursue an education that she can obtain in Nova Scotia. She provides little detail of how she will support herself and D., whether she will be able to obtain that education, the cost of same, what her plans are for medical and dental attention for D., anything about the school that he may attend, and many other details.

[162] Her plan is also sparse with respect to maintaining a relationship between D. and his father and extended family and friends in Nova Scotia. She does not set out how she will pay for the cost of transportation to and from Nova Scotia for parenting time. She has not outlined any plan for work, even part-time, when she arrives in Alberta. It seems unlikely that the combination of child support and

Canada Child Benefit would be enough to support her and D. as well as to cover the cost of at least three round-trip flights every year to Nova Scotia for D. and an accompanying adult.

[163] Sixth, the mother does not address how she will co-parent D. with the father while in Alberta. She makes no proposal for communication or how she would adjust the obviously dysfunctional communication pattern they have established. It seems probable that they would not communicate at all respecting D. even though the father has been deeply involved in his life since separation.

[164] On the other hand, in denying relocation, D. will remain in Nova Scotia in the care of both of his parents. He will continue to enjoy his relationships with his maternal great-grandmother and all the relatives, friends and community he has on his father's side, including his friends at school and his siblings. For D., Nova Scotia is his home. He has never lived in Alberta and there is no one there he knows except his maternal grandparents with whom he has spent limited time in Nova Scotia.

[165] I accept that his mother feels isolated in Nova Scotia, but I also find that, to benefit D., some simple steps can be taken, including improving the communication and co-parenting skills for both parents so that the mother can reach out to the father and his family and support system more readily to assist her when she needs help.

[166] This decision should not be taken as critical of the mother and her reasons for wishing to relocate. I understand that she feels isolated, but I cannot conclude that she has proven, on a balance of probabilities, that it is in D.'s best interest to authorize relocation. There are other solutions to the problems that she faces which do not involve such a drastic change in D.'s life and his relationships.

[167] Therefore, the application of the mother for permission to relocate D. with her to Alberta is dismissed.

[168] As to the most appropriate parenting arrangement that will serve D.'s best interests in Nova Scotia, the mother proposes that she have him in her primary care with parenting time for the father. The father proposes a continuation of the shared parenting arrangement he says has been in place since separation.

[169] Having found that the father is substantially involved and that the parents have had a substantially shared parenting arrangement since separation, I further

find that arrangement has essentially been one of shared custody. That is the status quo that D. has enjoyed since separation. The question is whether that remains in his best interests.

[170] In considering the issue of shared custody, I have reviewed the oft-cited decision of Justice Dellapinna of the Nova Scotia Supreme Court Family Division in *Hammond v. Nelson*, 2012 NSSC 27, in which he reviews the factors he found relevant in determining whether shared custody is appropriate.

[171] Dealing briefly with those factors, I find that in different circumstances, each of these parents would be an appropriate "primary parent". Each has demonstrated over time an ability to look after the best interests and everyday needs of D. despite their difficulty in cooperating as co-parents and I find that they would each be adequate and appropriate if they were called upon to care for D. full time.

[172] Respecting anyone else residing with the parent, I find no one is. There is no evidence that the mother is residing with anyone else. The mother says the father is residing with his girlfriend but both he and his girlfriend denied this, saying they do spend overnights together but maintain separate residences. To the extent that she is involved in the life of the child, I further find that his girlfriend is fully supportive of his parenting plan, that she and D. have a good relationship, D. has a sibling through that relationship and she is an appropriate support to the father and a suitable role model for D.

[173] The parties lived in close proximity such that a shared parenting arrangement has worked and will continue to work if ordered.

[174] Respecting D.'s age, maturity and personality, he is six years old and is therefore completely dependent on his parents for his needs. A shared custody arrangement has been his experience since his parents separated and it is the only arrangement he knows. There is no evidence that he is struggling with this arrangement. Unfortunately, he is too young to ascertain his wishes.

[175] A concern in any shared parenting arrangement is communication. I have already commented extensively regarding the dysfunction in communication. On the other hand, I believe it can be improved and, to date, a shared custody arrangement has served D. reasonably well. As noted, I will be ordering the parents to participate in a co-parenting program to improve that level of communication and cooperation.

[176] Limiting interaction through reduction of exchanges of D. for parenting time should reduce some of the tension between the parents. It is true, as noted by Justice Dellapinna in quoting Justice Cody that it is "a rare case, the rare parents and the rare children" who can make shared parenting work. Given the history of the last few years, I believe this remains a viable option for D.

[177] There will therefore be an order containing the following provisions:

1. The parents shall have joint custody of D. in a shared parenting arrangement.
2. Each parent shall consult with the other on all major issues concerning D. including his health, education and general well-being. Each parent will have equal and unfettered access to any information from any third-party service provider for D. including, but not limited to, teachers, schools, doctors, hospitals, child care providers and any other similar service provider.
3. Each parent will keep each other notified of all major issues concerning D. and his health, education and general well-being. Each parent is authorized to consent to emergency medical treatment for D. when he is in that parent's care and shall immediately notify the other parent of such circumstance at which time the joint decision-making requirement will apply.
4. D. shall enjoy a shared parenting arrangement on a week about basis with each parent. Unless otherwise agreed, the parents shall exchange D. for parenting time each Sunday at 5 PM. During each parent's parenting time, the other parent will have D. from Wednesday after school until he goes to school the next day. When he is not in school, that parenting time shall be from Wednesday at 5:00 pm until Thursday at 8:00 am unless otherwise agreed.
5. The parents may make adjustments to this parenting schedule by consent from time to time to account for their work schedules and the needs of D. as they may arise.
6. Unless otherwise agreed, the parent who is coming to care of D. shall pick him up at the other parent's home each week.

7. The following special parenting time shall apply and suspended the parenting time set out above as follows:
- a. Christmas - D. shall share his time with his parents on an approximately equal basis during the school Christmas break such that one parent will have D. from after school on the day of the commencement of the Christmas school break until Christmas Day at 2 PM and the other parent shall have D. from Christmas Day at 2 PM until he returns to school in January. The mother shall have D. with her for the first part of this schedule in even number years and the father in odd numbered years.
 - b. Easter - Unless otherwise agreed between the parents, they shall share the Easter break on an approximately equal basis such that one parent will have D. from after school on Easter Thursday until Easter Saturday at 2 PM and the other parent shall have D. from Easter Saturday at 2 PM until he returns to school on Tuesday morning. The mother shall have D. with her for the first half of the schedule in even number years and the father in odd numbered years.
 - c. School spring break - Unless the parties otherwise agree, D. shall share school spring break approximately equally with each of his parents such that the parent who had D. for the previous week until Sunday at 5 PM will keep him until Wednesday at 5 PM and the other parent will have D. from Wednesday at 5 PM for the balance of the week and into their week of parenting time to follow.
 - d. Mother's and Father's Day – D. will spend Mother's Day with his mother from 9 am to 5 pm and Father's Day with his father from 9 am to 5 pm.
 - e. Halloween - Unless the parties otherwise agree, the mother will have D. with her for Halloween evening from after school until 8 PM during even number years and the father will have D. with him on the same schedule in odd numbered years.
 - f. D.'s Birthday - Unless otherwise agreed between the parties, there will be no special arrangements for parenting time on D.'s birthday such that the parent who has him on his birthday will keep him and the

other parent will celebrate his birthday on another day when they have parenting time with D.

- g. Summer school break - During the summer school break each parent will be entitled to two consecutive or nonconsecutive weeks of block parenting time. Each parent will notify the other in writing by April 1, or other date as they may agree, each year of their proposed dates for parenting time in the summer. If there is no conflict in those dates, those dates will apply. If there is a conflict in the dates proposed, the mother's dates will take priority in even number years and the father's dates will take priority in odd numbered years with the other parent choosing alternate dates. If either parent fails to provide the notices required, that parent loses any priority they may have to block parenting time dates for that summer.
- h. Communication between the parties shall be conducted in a polite, respectful, businesslike and child focused matter.
- i. The parents are prohibited from making any negative or derogatory comments respecting each other or each other's families at any time they have care of the child. Each parent shall ensure that no one else makes such negative or derogatory comments about either parent or either parent's family and if that person does not immediately cease such comments, the parent in care of the child shall remove the child from that circumstance or ensure that the other person is removed.
- j. Each parent shall register for, engage in and successfully complete an appropriate course in co-parenting as soon as possible. Each parent shall provide the other with proof of successful completion of said program.

Child Support

[180] Given that I have ordered a shared custody arrangement, I must now consider the issue of child support.

[181] The father's evidence is that his current income while on parental leave from employment insurance benefits is \$473 per week for an annual income \$24,596. He expects to return to work with his former employer in January 2019. His income with that employer was as follows:

- 2017 - \$33,277
- 2016 - \$40,896
- 2015 - \$34,041.80

[182] I find the most appropriate income to apply is that of his most recent full year of employment earnings of \$33,277 for the purpose of determining child support starting in February 2019.

[183] The mother's Statement of Income indicates that her annual income is \$24,204. This evidence was uncontroverted.

[183] I apply the analysis set out in the decision of the Supreme Court of Canada in *Contino v Leonelli-Contino*, [2005] 3 S.C.R. 217, in determining the appropriate child support in a shared custody circumstance.

[184] I also find under section 9 of the *Provincial Child Support Guidelines* that there is no evidence of the increased cost of shared custody arrangements provided by the parties. There is also no evidence of the condition, means, needs and other circumstances of each parent and of any child for whom support is sought articulated in the evidence which would go to the issue of child support.

[185] As a result, I conclude that the most appropriate child support is determined by application of the set off calculation. In doing so I find that, until the end of January 2019, no child support is payable by either the party to the other as the parties' incomes are so similar.

[185] Starting on February 1, 2019, I find that the father's income is \$33,277 and the father shall pay to the mother child support the amount of \$285.33 per month. The mother's income is \$24,204 and the mother shall pay to the father child support in the amount of \$175.15 per month. If the parties choose, the order may reflect the net set-off amount payable by the father to the mother.

[187] In his pleadings the father filed a Statement of Special or Extraordinary Expenses and sought an equal split of any such expenses. This issue was not pursued in either the affidavit or viva voce evidence before the court. Further, there were no specifics given with respect to the expenses in his statement. I therefore decline to order any such division under section 7 of the *Guidelines*.

[188] Counsel for the father shall draw the order.