

FAMILY COURT OF NOVA SCOTIA

Citation: *E.T. v. T.C.*, 2019 NSFC 16

Date: 20191223

Docket: FATPSA-102926

Registry: Antigonish

Between:

E.T.

Applicant

v.

T.C.

Respondent

DECISION

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

Judge: The Honourable Judge Timothy G. Daley

Heard: December 23, 2019

Oral Decision: December 23, 2019

Counsel: Meghan MacGillivray Case for the Applicant, E.T.
The Respondent, T.C., Self Represented

Introduction

[1] This decision concerns two children, E.C. who is 12 ½ years old and A.C. who is 9 ½ years old, and what is in their best interests. Specifically, their mother, E.T., requests that she be permitted to relocate the children with her to Antigonish from Sherbrooke, Nova Scotia and reside primarily with her in a sole custody arrangement under which the father would have parenting time with the girls every second weekend and other times including special occasions.

[2] The father, T.C., opposes this relocation request and seeks an order that the children remain in Sherbrooke, attending school in that district, and that the children enjoy a shared parenting arrangement spending equal amounts of time in each parent's home and care. Implied in his application is a request for a joint custodial order as well requiring joint decision-making on major issues for the children.

[3] The mother says that the children should primarily reside with her and be permitted to relocate with her to Antigonish because she has been the primary caregiver since birth, there has been a long history of physical, emotional and verbal abuse by the father towards her, at times in the presence of the children, that the children have been adversely impacted by this and there is no reasonable prospect that he has changed his behaviour such that shared parenting could be workable between them. The mother also says the father has a history of poor parenting, drug and alcohol abuse and has frequently failed to put the interests of the children first.

[4] The mother says the relocation is necessary because the family home has been lost to foreclosure. Her employment is in Antigonish and she has no means of finding a place to live in Sherbrooke should the children be ordered back to that community. She says that shared parenting between her and the father at such a distance would be contrary to the children's best interests and unworkable.

[5] The father says that the children should return to the school in Sherbrooke where they have been attending prior to an interim order of relocation being granted by this court. He says that even if the mother cannot relocate back to Sherbrooke, shared parenting is practical even considering the distance between the homes.

[6] He says that since the involvement of the Department of Community Services in the family's life, he has taken programming and received services that have significantly improved his behaviours and ability to co-parent the children with their mother such that shared parenting is practical and in the children's best interests at this time. He does not specifically admit to any of the allegations of abuse levelled against him by the mother, but he does not deny any of them either. He simply says that he is now a different person and capable of co-parenting in a shared parenting and joint custodial arrangement.

[7] The mother seeks child support based on the table amount on the assumption that primary care will be granted to her and seeks retroactive child support to the date of separation, claiming the father has not paid support for a significant period of time. Regarding payment of the arrears, she seeks the release of funds held in trust in Alberta resulting from the sale of the family home there to satisfy the arrears calculation of \$18,485. She also seeks child support contribution to section 7 special or extraordinary expenses, excluding rodeo related expenses, to be paid in proportion to the parents' incomes.

[8] Regarding income, she seeks imputation of income to the father of \$70,000 per year. The evidence is the father has left his employment as a truck driver and is attending for education and retraining at this time. The mother says there is no reason why he cannot work for at least the amount of income he received as a truck driver and that income should be imputed to him for purposes of child support.

[9] There are other general provisions she seeks which will be reviewed further in this decision.

[10] The father says that he is fine to have any arrears in child support paid out of the funds held in trust in Alberta. Respecting his income, he says that he was a truck driver but was involved in a serious accident, was injured in the accident and on trying to restart his career, he suffered anxiety and is unable to return to truck driving as a result. He says that he is receiving Worker's Compensation benefits and is being offered retraining as a farrier which will take some time to complete. As a result, he asks that his income be based upon his Worker's Compensation benefits only and that no additional income be imputed to him.

[11] Respecting child support, section 7 special or extraordinary expenses, he asks that these include rodeo related expenses and that they be shared equally between the parents.

Parenting and Relationship History

[12] In order to properly determine the matter, it will be helpful to begin with a review of the parenting and relationship history including the family's involvement with the Department of Community Services ("the Agency").

[13] These parents were in a common-law relationship from 2006 until 2013 after which they separated for approximately six months and reconciled in early 2014. The father alleges another separation during the relationship in 2010 for a few months. They remained together until their final separation in October 2016.

[14] During much of their relationship they resided in Alberta. The mother took maternity leave after the birth of each child and says she was the primary care giver for the children throughout the relationship.

[15] While living in Alberta, as noted earlier, the parties did separate for approximately six months. During that time, the mother petitioned the Alberta court for primary care of the children and child support, alleging the father suffered from long-term chronic drug addiction and drinking problems and was verbally and emotionally abusive to her, exhibiting anger issues in their relationship.

[16] After they reconciled, the mother relocated to Nova Scotia, her province of origin, during her maternity leave with A.C. and remained in Nova Scotia thereafter. The father remained in Alberta for some time until he too relocated to Nova Scotia.

[17] When they came to Nova Scotia, the parties purchased a home in Waternish, Nova Scotia where they remained until separation.

[18] On return to Nova Scotia, the mother obtained employment with the Eastern Mainland Housing Authority, beginning that work in November 2016. She remains employed with that organization.

[19] The father has had a career in truck driving as well as being a professional rodeo rider, competing successfully at the national level and generating income from those activities as well. He continues to ride rodeo today and his daughters participate in barrel racing, an activity they share. The father says he also managed the feedlot of 5000 head of cattle for two years from 2010 to 2012.

[20] The father says that when in Alberta, the mother worked at a mill and for a forestry company. He generally describes her as working a lot of shift work and that she was not around often with him picking up the children from school and taking them to activities on Wednesday evenings and Sunday afternoons. He says he took the children to medical appointments and the dentist. Both parents agree that he travelled with the children to take part in rodeo events as well.

[21] After separation, the mother applied to this court for custody and child support. Those proceedings began in 2016 and continued to today. Several interim orders were granted under the *Parenting and Support Act*. These orders provided for custody and primary care with the mother and parenting time for the father.

[22] Unfortunately, the parents were unsuccessful in maintaining the parenting arrangement and the Agency became involved on a voluntary basis in or around 2017. Services were offered, including co-parenting courses, but it is clear from the evidence that the primary focus of concern for the Agency was the behaviours of the father. He continued to exhibit aggressive and inappropriate behaviours towards the mother, often in the presence of the children. This led the Agency to become involved and eventually close their file for the family on the basis that they felt that the parents, particularly the father, had gained enough from services that further intervention was not required.

[23] The matter continued before this court by way of various interim orders until the Agency began their involvement again, making an application to this court under the *Children and Family Services Act* seeking a finding that the children were in need of protective services. The affidavits in that proceeding have been admitted into evidence in this proceeding for the court to consider. While I will review some of that evidence later in this decision, it is again clear from the evidence in the Minister's proceeding that the focus of concern began with, and continued being, the behaviours of the father towards the mother and the risk that his abusive behaviours represented for the children.

[24] Throughout the involvement of the Agency, the children were placed in the care of their mother under the supervision of the Agency and the father was granted access. Ultimately, the Minister's proceeding ended in late June or early July 2019 on the basis of a *Parenting and Support Act* order being granted placing the children in the primary care of their mother and providing parenting time for the father.

[25] During the Agency's involvement there were several criminal charges laid against the father which ultimately lead to the convictions for criminal harassment and breach of undertakings. These two convictions resulted in a probation order including a prohibition on contact between the father and mother except as permitted by an order of this court.

[26] Further interim orders of this court under the *Parenting and Support Act* were granted including parenting time for the father and culminated with this hearing.

[27] During these proceedings, child support was ordered to be paid by the father to the mother in the form of making the mortgage payments on the family home. It was paid for a time but eventually the father stopped paying. He says that this was the result of his accident in 2018 and his inability to return to truck driving. In the end, the home was lost to foreclosure.

[28] The mother then sought and received an interim order permitting her to relocate the children to Antigonish on the basis that she had no ability to maintain the family home, had no alternative living arrangements available in the Waternish/Sherbrooke area and had to relocate to Antigonish for housing, work and school for the children.

The Law Applicable to Relocation and Best Interests

[29] 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.

[30] 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).

[31] In determining what I should consider in assessing what is in the children'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;
- (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;
- (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....

[32] Given that family violence is alleged in this matter, I first note that it is defined in s.2(da) as follows:

“family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person's family in a single act or a series of acts forming a pattern of abuse, and includes

- (i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or

(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,

- (A) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,
- (B) placing unreasonable restrictions on, or preventing the exercise of, a family member's financial or personal autonomy,
- (C) stalking, or
- (D) intentionally damaging property,

but does not include acts of self-protection or protection of another person;

[33] I am directed to consider family violence as a factor in determine the children's best interests under s.18(j) as follows:

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

- (i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and
- (ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[34] I must also consider s.18(j) in the context of s.18(7) as follows:

(7) When determining the impact of any family violence, abuse or intimidation, the court shall consider

- (a) the nature of the family violence, abuse or intimidation;
- (b) how recently the family violence, abuse or intimidation occurred;
- (c) the frequency of the family violence, abuse or intimidation;
- (d) the harm caused to the child by the family violence, abuse or intimidation;

(e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and

(f) all other matters the court considers relevant.

[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. The following is a list of those factors which are relevant to this case:

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

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

1. Statutory direction ...;
2. Physical environment;
3. Discipline;
4. Role model;
- ...
8. Time availability of a parent for a child;
- ...
11. The emotional support to assist in a child developing self esteem and confidence;
12. The financial contribution to the welfare of a child.
13. The support of an extended family, uncles, aunts, grandparents, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. ...;
15. The interim and long range plan for the welfare of the children.
16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact

on the ability to adequately meet the child's reasonable needs; and
17. Any other relevant factors.

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

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

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

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

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

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

[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:

18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. v. Gagnon* 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" *R. v. R.E.M.* 2008 SCC 51, para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements,

inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: *Re: Novak Estate*, 2008 NSSC 283 (S.C.);

- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorney* [1952] 2 D.L.R. 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: *R v. Norman*, (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in *Re: Novak Estate, supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.*, [1996] 2 S.C.R. 291 at 93 and *R. v. J.H.*, [2005] O.J. No. 39, *supra*).

Relocation – Options Available

[40] It is important to note that the parties have identified 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.

[41] The mother seeks an order of sole custody and primary care of the children with her and permission to relocate with the children to Antigonish. She proposes the father have parenting time and contact time with the children within that proposal.

[42] The mother did not articulate any alternative position, including her proposal for parenting time should I order the children returned to Sherbrooke.

[43] The father seeks an order of joint custody and shared parenting of the children in Sherbrooke whereby they would spend approximately equal time with each parent.

[44] He, too, did not articulate an alternative position should I order that the children be permitted to relocate to Antigonish.

[45] Within the context of those positions, I must next determine the issue of relocation.

Presumptions and Burden of Proof for Relocation

[46] 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.

[47] 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.

[48] 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*.

[49] 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”

[50] 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.

[51] 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.

[52] In this case, I need not consider this provision as both parties agree that the father is substantially involved in the care of the children. Based on the evidence before me, I agree with these positions and find s.18H(1)(a) is not applicable.

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

[53] Section 18H(1)(b) creates a presumption against relocation if:

1. both the person seeking and the person opposing the relocation have a substantially shared parenting arrangement.

[54] In that case, the person seeking relocation bears the burden to prove that the relocation is in the child’s best interest.

[55] Given my comments respecting the phrase “substantially shared parenting arrangement”, I find that the evidence supports the position of the mother that this was not a circumstance where the parties were in a substantially shared parenting arrangement.

[56] Throughout the mother’s evidence, she provides a very detailed history of the circumstances of the parties both before and after the birth of the children. The mother says that she has been the primary caregiver of both children. She described in detail her role and the father’s involvement. She took both maternity leaves. The father often travelled for work, leaving early and being away for days at a time. That is not to say he did not spend time with the children when he could, often by participating together in rodeo activities, but it was the mother who carried much of the load.

[57] She provided detailed evidence regarding caring for the children including getting them up in the morning, feeding and dressing them, packing lunches for school, ensuring homework was completed and assisting when needed. She booked appointments at school, addressed education issues and took the children to doctors, pediatric and dentist appointments, eye exams and outpatient visits. She dealt with late-night outpatient trips and head lice treatment. She arranged extracurricular activities, got them to and from those activities except for horse activities when the parents shared that responsibility.

[58] She says the father referred to much of the work that she did including homework, healthcare, laundry, dishes, medication and other related activities as "mom" jobs.

[59] Her evidence is that when they lived in Alberta, she worked eight days and was off six. She said the father worked during the week for the first six years of the relationship and participated in rodeo season during the summer and fall,

travelling for these events. In recent years the father worked for a trucking company and was gone from home for days at a time. He was only home for brief periods while working on the road.

[60] Her evidence is that this continued after the separation. She had primary care of the children and did most of the parenting, including dealing with medical and school decisions.

[61] As noted earlier, the father says that when in Alberta, the mother worked at a mill and for a forestry company. He generally describes her as working a lot of shift work and that she was not around often, with him picking up the children and taking them to activities on Wednesday evenings and Sunday afternoons. He says he took the children to medical appointments and the dentist.

[62] After separation the father had parenting time with the children on a schedule which did not approach equal time. He did not contest the mother's evidence that she had the primary responsibility for the care of the children and made most of the day to day decisions for them.

[63] When assessing this evidence, I find that the mother shouldered the bulk of the parenting responsibilities, including decision making during and after the relationship and the father did not have shared parenting time after separation. While he asserts he did a great deal of parenting during the relationship, I find the mother's evidence on this more credible and probable, particularly given the uncontroverted evidence of the father's employment in trucking and the related travel away from home and his extensive history on the rodeo circuit.

[64] As a result, I find that the parties were not in a substantially shared parenting arrangement both during the relationship and after separation and therefore the presumption in s.18H(1)(b) does not apply.

[65] As a result, I find that s.18H(1)(c) applies and both parties have the burden of showing what is in the best interests of the children.

Best Interests Analysis

[66] 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 the children’s best interests.

The Impact of Any Family Violence, Abuse or Intimidation, Regardless of Whether The Children Have Been Directly Exposed (S.18(j), S.2(da) And S.18(7))

[67] The mother's argument for both relocation primary care and as sole custody arrangement is founded in large part on her view that the father has committed family violence, abuse and intimidation against her throughout the relationship and after the relationship ended. She argues that this behaviour has not only impacted her but has impacted and continues to impact the children despite the services provided to the family, particularly the father, by the Agency during its two periods of involvement with them. The allegations of such family violence, abuse and intimidation are extensive.

[68] The mother says that the father's abusive behaviour took place throughout the relationship and continued after it ended. In reviewing this evidence, I will only set out some of the more significant allegations she has made, as well as the father's response to each of those allegations to provide context on this issue. I do not find it necessary to go through every allegation made in order to determine this issue.

[69] The mother asserts that the father has been physically, emotionally, psychologically and sexually abusive to her throughout the relationship and much of this behaviour has continued since separation. She says he is also had a long history of chronic drug and alcohol abuse and has significant anger issues.

[70] The mother says that on one occasion the father had the children with him for a weekend of parenting time after they had separated. The father told her that he had rented a place to live and was collecting his belongings. The mother returned to the home not expecting the father or children to be present.

[71] When she was in the process of feeding the horses on the property, the father came home with the children. She says he drove his truck down by the horse pen where she was located, and she asked him about leaving the horse and some horse supplies at the property. She noticed they were not in the shed. She then saw them on a rack in the horse trailer connected to the father's truck. She says the father told her in an angry voice, and in the presence of the children, that those items were not hers. The father then drove his truck away with the children in it.

[72] The mother's coat was caught on the door of the horse trailer pulled by the truck and she had to run alongside for 10 to 15 feet before he stopped the vehicle. The father got out of the truck, grabbed the mother, and shut the horse trailer door. He continued to yell at her in the presence of the children that the items in the trailer were not hers and threatened to take all the horses but one to which she objected.

[73] The mother said she took her cell phone out to call the police and he began to struggle with her for possession of the phone. She says both children were crying as the father struggled with her and at one point the father obtained the phone, she asked for its return to call the police and he threw the phone in the horse pen.

[74] The mother says their daughter A.C. was out of the truck and kicked the father who then got his phone and called the police. A.C. then went to the horse pen to retrieve her mother's phone while E.C. got back into the truck and the mother sat with her to calm her down because she was crying. The mother described the children as traumatized by this incident. This was one of the incidents that led to the involvement of the Agency on a voluntary basis.

[75] The mother also provided evidence of being pressured to take part in sexual activities with the father. One example of this is her allegation that he repeatedly demanded sex from her when he got up for work at 2 AM even though she had been up preparing the children for the following day's activities until late at night. She felt pressured to engage in these activities.

[76] She also describes driving the father to the airport when he was travelling away for work and him demanding oral sex from her and complaining until she complied, apologizing afterwards. She again felt pressured to engage in this activity against her will.

[77] Another circumstance described by the mother involved the father purchasing three female hound dogs which were penned in an area on their property. She describes the various challenges in keeping them penned and complaints of the neighbors about them. She said that at the end of the summer that year, the father lost his temper in the presence of the children when arguing about the animals. She described him as spitting when he was yelling at her and accused everyone else of letting his dogs out rather than taking responsibility for it himself. She said this behaviour went on for about three hours until the dogs came home, and he calmed down.

[78] On another occasion in July 2016, the mother says the father was upset that the mother and the children had gone to Newfoundland with her sister for her brother's wedding. Attached to one of her affidavits is a Facebook conversation in which the father referred to the mother and her sister as "stupid" and said, among other things, "someone else is about to get their day fucked up... They make medication for just about everything, but they still can't fix stupid... The pill for stupid comes in a brass casing... Yes, yes indeed. And they are reloadable too."

[79] The mother describes things coming to a head on Thanksgiving of 2016. She and the children went to the airport to pick up the maternal grandmother and stayed at a hotel in Truro to shop. The father was working and called approximately six times. When they arrived at the maternal grandmother's home, the father was waiting for them. She described him as very angry and wanting to take E.C to town. He was loud and swearing in the home and both her nieces and their children were present in that home. The nieces, who were in the room at the time, were asked to leave and when the mother and father were leaving the home to discuss things, he said something to the mother's sister which upset both of them. The mother was in the middle of the two adults and the daughters were inside the home. The mother wanted to calm the circumstance, therefore went into the home and locked the door. She told the father to leave and the maternal grandmother told him she would call the police. The father called the police and alleged the mother was keeping the children hostage. When the police arrived, they directed the father to go home and the mother remained at the maternal grandmother's home from that time on.

[80] The mother describes an incident in which the father beat one of the dogs for damaging some casing around door. The children were at home but not present for that beating.

[81] On another occasion, in about February or March 2016, the father called the mother approximately 47 times screaming at her on the phone. Attached to her affidavit is a record of 47 voicemails left on her number.

[82] In November 2016, the mother says that she had to pick up the children at the home because the father changed his mind about the pickup location. When she arrived, the father was angry and took A.C. out to the car to the mother. The vehicle door was half open and the father slammed it shut on her hand and said he did so as it was in his way. Her hand became sore and bruised. When she had it x-rayed there were no fractures. She did call the RCMP in Sherbrooke to report the

incident, but she declined to press any charges as it might make it more difficult to deal with the father.

[83] The mother described a history of chronic drug and alcohol abuse by the father. In her initial application in Alberta she said the father was spending over \$1,000 per month on illegal drugs and drank excessively when unemployed during the spring and summer months. She said that he had driven while impaired many times but had not yet lost his driving privileges.

[84] Before separation, the mother described the father drinking Bailey's Irish cream in his coffee in the mornings before going to work and would drink 24 beer on the weekend.

[85] Regarding drinking and driving, the mother says this was common for the father. She described an incident when she was pregnant with A.C. the father rolled the car over on the way home from a rodeo dance, showing up at the front door covered in blood early the next morning. Her evidence is that he was impaired during that drive.

[86] The mother says that even after her application before this court was commenced, the behaviour of the father continued. As an example, she informed the court that during Christmas of 2016, the parties agreed to the schedule of parenting time for the father. Despite this, he called the mother and insisted on having them with him on a different date and threatened to call the police if she did not allow him to happen that evening. The mother felt she had done nothing wrong given that the interim order in effect did not provide for parenting time that evening, but she did not want to involve the police in the children's lives.

[87] The mother says that the father had another outburst in the presence of the children in January 2017 in the school parking lot. The father was upset about skates and piano lessons. He accused the mother of lying about her sickness when she says she and A.C. were home sick. The father subsequently apologized that the next day for his outburst.

[88] The mother says the father involved the children in legal matters on occasion. In her affidavit sworn February 9, 2017, she says that the children were reporting to her that the father was telling them about visits to his lawyer and E.C. said she was sick of hearing about lawyers. The mother says she does not mention the legal proceedings or lawyers to the children.

[89] On another occasion the father confronted the mother in front of the children about her having a boyfriend. His voice was angry. She did not in fact have a boyfriend or any intent to begin a relationship at that time, but E.C. did ask her about this later.

[90] The mother describes several incidents involving the transition time for the children where the father behaves in a very immature and possessive manner towards the children. Among the issues raised was the father interfering with communication between the children and the mother during that transition, holding them throughout the entire period on the basis that it is his time and not releasing them to her until his "time is up". She says this put the children in the middle of the conflict yet again.

[91] Despite the ongoing assistance from the Agency on a voluntary basis in 2016 and 2017, the mother describes continuing communication and cooperation problems with the father. Among these she describes telephone calls and messages from him that were persistent and insulting and rude in which he accuses her of keeping the children from speaking with him despite the reasonable circumstances she sets out in her evidence.

[92] At the same time, the mother's evidence is that the father was controlling in preventing this equipment for the children to go back and forth between the homes. This included riding equipment and sporting equipment, fishing rods and figure skates. She describes this as controlling behaviour by the father.

[93] The mother says that communication with the father had become exhausting around that time and considered it to be harassing. She stopped defending herself in communication with him. She found the counselling she was receiving through the Agency to be helpful in moving forward in her co-parenting of the children with the father.

[94] The mother gave evidence that in the same timeframe of early 2017 she began to become concerned about the father's mental health. She says he was speaking to the girls in early March 2017 one morning telling them he might be going to jail and was dealing with the police, which worried the children throughout the day. In a subsequent text to the mother, the father alluded to his life ending. When she called to check on him, he was very upset and stuttering on the phone. She was concerned he had not slept and might be on some medication to stay awake. She spent time talking with him to calm him, suggested he get some sleep and something to eat.

[95] In a subsequent call a few days later, the father was upset and angry, saying he was going back to Alberta and he had told the children this. He described the children as upset when he told them of his plan and the mother asked him to calm down given the girls were with him. The father calmed down for a time during the call and they agreed to meet to talk. When she spoke to the girls later, they were both upset, and she explained sometimes the father said things that he did not mean. This calmed the children. When she spoke to the father later, he said that he did not know where he was going but he needed to go away. He was again upset. The mother called the RCMP in Sherbrooke out of concern for the father. When she was unable to reach anyone, she waited on the children to call later saying the father was better and was not leaving. He confirmed this to her in a subsequent call the next day.

[96] A few days later the father confronted the mother at the end of the neighbor's driveway when she was going to work. He was very angry with her and her family regarding a warning about the registration for the pickup and horse trailer. He assumed she or her family were involved. He involved the children by telling them they would not be able to haul the horses anymore. This upset the children. The mother explained that this was an animal problem that they should not worry about. The children were present for this conversation. When the father left the neighbor's driveway with the children in the vehicle, he sped off leaving tracks in the road. She felt he was driving extremely fast for the road conditions and she called the RCMP in Sherbrooke to report his extreme driving hoping someone can intervene. Unfortunately, there was no answer.

[97] Mother says the father exhibited harassing and intimidating behaviour through the same time including following her out of town in a tailgate manner and passing her and the children in the vehicle by crossing a double line.

[98] She says he insisted on parking near her for exchanges, moving his vehicle when necessary to be as close to her as possible. Even when she tried to park away from him, he would move his vehicle closer. She felt intimidated and harassed by this behaviour. This behaviour also included following her and the children out to the car from activities without her invitation to do so.

[99] These are just some examples of what the mother describes in her evidence as harassing and intimidating behaviours throughout that time which caused her to speak to the police. She was afraid of the father during this time.

[100] As noted earlier, the Agency became involved again with the family, filing an protection application in September 2018 seeking a finding that the children were in need of protective services, that they had suffered emotional abuse and were at substantial risk that they would suffer emotional abuse, had been exposed to or made aware of violence by or towards a parent and had suffered emotional abuse inflicted by a parent.

[101] This court heard that matter and granted an interim order placing the children in the care of their mother under the supervision of the Agency and permitting supervised parenting time for the father.

[102] The evidence of the Minister detailed a long history of similar behaviours to those described by the mother in addition to others noted by the Agency. The Agency noted its involvement on a voluntary basis until the application before the court.

[103] While the father made allegations against the mother, there is no question at all that the evidence of the Minister and the findings of this court focused on the behaviours and the impact of those behaviours by the father on the family, particularly the children.

[104] Among the many allegations set out in the Agency's affidavit were evidence of recorded calls between the father and the children in which he was verbally abusive towards the mother and referred to her as "cunt" and "slut" during the calls.

[105] The Agency's evidence in the child protection proceeding included reference to conversations with the police officer who listened to several calls between the parents when the children were present in which the father was verbally abusive towards the mother. While this is clearly hearsay, it is reinforced by the Agency's own evidence from a worker who listened to five phone calls recorded between the parents and which appeared in the children were present on the phone and the father was verbally abusive to the mother during each call. His statements during the call were quoted in detail and it is sufficient to say they are insulting, demeaning, harassing, rude and inappropriate and, worst of all, made in the presence of the children.

[106] An affidavit of J.T., the maternal grandmother, was filed in the matter. She was not required for cross-examination and her affidavit was submitted by consent. In it, she describes witnessing many of the behaviours of harassment and verbal aggression and abuse by the father towards the mother, at times in the presence of

the children and at times not. She describes many occasions when she was involved in the transport of the children when the father would yell obscenities at her or the mother the presence of those children. Most notably, she and the mother testified that on one occasion, as the father dropped the children off to her for transportation, they drove away. The father travelled down the road and "mooned" the maternal grandmother by pulling down his shorts and putting his rear end up for her view. He laughed when he did so.

[107] In addition to describing the several incidents, the maternal grandmother described the father's anger growing over time, that E.C. was becoming more withdrawn and afraid in her presentation, and that A.C. was young enough to speak out and did so.

[108] The maternal grandmother did say that since the involvement of the Agency, the mother seemed to be getting stronger and worked towards making a good life of the children. She also described a large extended family in the community to support both the children and the mother.

[109] B.T. filed an affidavit in the matter as well. This affidavit was entered by consent with no request for cross-examination by the father. B.T. is the sister of the mother and provides very similar evidence to the mother and the maternal grandmother respecting the abusive behaviour of the father towards the mother in the presence of the children on repeated occasions. This included at least one occasion when B.T.'s own daughter was at the home of these parents and reported to her mother that the father was upset and yelled so much that she hid in the corner of a room. She refused to go to sleepovers thereafter if the father was home.

[110] B.T. confirmed she never witnessed physical abuse by the father towards the mother but had repeatedly witnessed mental and emotional abuse including name-calling, yelling and insults hurled towards the mother again and again.

[111] She also testified of a change in the children's behaviour after the parents separated, describing the girls at social functions as avoiding acknowledging the mother and her family and their loss of interest in other activities after spending time with their father, describing them as withdrawn and stressed.

[112] B.T. also says that she witnessed the girls being angry with their mother, blaming her for the separation and for ruining the family. In this context, she also testified she witnessed the exchange of the children between the parents and the

father would discuss parenting issues in front of them, yell at and insult the mother through those conversations. He would also encourage the children not to listen to their mother. This would include undermining the mother's wish that the children take part in swimming lessons and other activities other than rodeo activities.

[113] B.T. describes the father threatening her husband and that she and her husband reported this to the police, though no charge was laid because the threat was not direct enough.

[114] It was B.T. who was the victim of the criminal harassment charge to which the father pled guilty and she describes in some detail the various behaviours he exhibited throughout 2017 and into 2018, which gave rise to that charge and conviction. I do not find it necessary to review all of that as he had plead guilty to the charge except to say that the behaviours were quite extreme in their frequency and circumstance and gave the court serious concerns respecting the father's behaviour in these contexts. Some of these incidents involved the children being present as well which is of significant concern.

[115] L.M. also filed an affidavit in the matter which was admitted by consent and no cross-examination was required. He is in a relationship with the mother and reports very positively on her parenting of the children.

[116] He also reports being harassed by the father at his workplace and in public locations, which has impacted his relationship with the mother and his coworkers resulting in the father not being allowed to have contact with him or his coworkers. The father was charged with harassment of L.M. and he reports that this charge was withdrawn as part of the plea deal resulting in the conviction of the father for other charges.

[117] He also reports observing the father making obscene gestures to the mother in public places and describes his observations of the father as abusive.

[118] Reverend D.E. filed an affidavit in support of the mother and was cross examined at the hearing. M.W. filed an affidavit in support of the father and was not required for cross examination. These affidavits provided the observations of those witnesses and add little to the evidence.

[119] Returning to the evidence of the Minister, there were five affidavits filed in this proceeding arising from the child protection matter. I will not review all the evidence in detail arising from that child protection proceeding but will confirm

that throughout that proceeding, the Agency and the court continued to have concerns respecting the father's behaviours. At the conclusion of the Agency being involved, they determined that they parents had engaged in services sufficient to mitigate the risks identified and would agree to terminate their proceeding if the *Parenting and Support Act* order was issued requiring a third party to provide transportation.

[120] The Agency's involvement ended in late June or early July 2019.

[121] The father provides an alternative explanation to many of these allegations, which I will not review here. I have considered them carefully but do not find them credible. The evidence of his behaviour is overwhelmingly credible from various sources and I do not find any of his explanations persuasive at all.

[122] Having reviewed this evidence, which forms only part of the allegations and evidence before the court respecting family violence abuse or intimidation, is overwhelmingly in support of the finding that the father has engaged in these behaviours. Over many years he was verbally, emotionally and, at times, physically and sexually abusive to the mother. There are innumerable occasions when he was verbally and emotionally abusive towards her in the presence of the children.

[123] I find that this long history and in-depth evidence supports the finding that this constituted psychological and emotional abuse that constituted a pattern in the controlling behaviour which included engaging in intimidation, harassment and threats towards the mother and, at times, others in her family and generally attempting to control the mother and the family dynamic through these behaviours.

[124] I also find that this supports a finding that the father engaged in stalking behaviour of both the mother and other members of her family which involve the children being present on several of those occasions.

[125] Of concern to the court is the fact that this family violence, abuse and intimidation took place over many years, was unremitting and, I conclude, would have had a significant adverse effect on the children both historically and currently.

[126] The only remaining issue to determine is whether the father has mitigated his behaviours through services and other steps such that it will prevent further such violence abuse or intimidation from occurring.

[127] In his evidence, the father rightfully points to the various services in which he has engaged through the Agency over time.

[128] The father provided evidence that he had completed a Cooperative Parenting Course in January 2019 through Family Services of Eastern Nova Scotia. A report letter from the clinical therapist with the program confirmed that he understood the material by paraphrasing the concepts and recounting examples of using what he learned in the program. There is some evidence as well that he had attended at New Leaf, an anger management program for men in Pictou County.

[129] In the mother's affidavit sworn October 29, 2019, she describes the recent challenges with the father. These include his continuing verbal abuse and text messages through the Family Wizard application ordered by the court for the parties to use. On review of these text messages, I agree that some are inappropriately phrased by the father, but they are not as abusive and insulting as much of the prior communication had been.

[130] The mother said that after the father had been involved in an accident in Ontario, he returned to Nova Scotia on his release from hospital and missed his visit for the weekend because he was travelling. Unfortunately, the mother received a subsequent call from the school that the father was present to pick up E.C. at 1:30 instead of 2:30 as is ordered. The mother directed that the child should remain in school until dismissal time. When the mother communicated with the father about picking up the children at the library at 5:35 alone with the father to exit the library before she showed up, she arrived, and the children were out front with the father standing inside the doors. She found the girls reserved for the next day and they resisted getting ready for school. They shortly warmed up and had a good day.

[131] The mother also reports of the father remaining at the exchanges with the children in front of the library claiming that he wanted to ensure their safety. She expressed concern that he was resorting back to his behaviour of stalking and intimidation by remaining was unnecessary to do so.

[132] This concern was reinforced during a pickup in late September 2019 when the mother says the children got into her truck in front of the Town Hall in Antigonish. As she approached the library, one of the children pointed out the father was in his vehicle. He started his car, waited until she passed and pulled out onto the street behind her. It was close enough that she could see him smirking

and smiling in the driver's seat. He followed them for some distance, and she became afraid and found it to be a creepy experience for him to behave that way.

[133] She reiterated her concern about his behaviour and not permitting the children to leave the library and cross the street to her and making her wait 15 to 20 minutes for the children to come to her. She said she cannot go to get them when he is still present.

[134] This behaviour is alleged to have continued elsewhere according to the mother's evidence. She said that on October 7, 2019, the father came to E.C.'s gymnastics program to watch. He did not leave immediately when it ended. She waited in the gym with the child to ensure he had left. They waited about five minutes and when they left the building the father was outside waiting on the brick walkway. She believes he was waiting there for them to exit the building. He then walked in front of them, said goodbye to their daughter and stared at the mother. He went to his car and she reported it to the RCMP.

[135] On October 22, 2019, the mother says that she was driving to a local hardware store and stopped in a turning lane on the TransCanada Highway near the Superstore intersection. It was midafternoon and a black vehicle crossed in front of her as she was waiting. It was the father driving and he slowed down, looked at her and gave her the finger, driving up towards Walmart. She proceeded through the intersection towards the store and as she signaled to pull into the driveway and parked, the father pulled into the same parking lot, pulled up near the door of the main entrance and drove around in a circle, stopping. She was afraid and decided to leave and go to another store. As she was driving out of the parking lot, she saw the father turn around and drive up the driveway. The father had the children in the car with him that time.

[136] Later that same day the father drove by her home and laid on the horn as he drove by. She confirmed it was him because she was outside, and she could see him in the same car she had seen him drive earlier. The children were at home with her, but they had just gone inside by that time.

[137] The mother says that, since separation, the father has consistently given her "the finger" anytime he and she are driving past one another. It doesn't matter whether the children are in the car or not according to the mother. This has led the mother to obtain a dashboard camera to record these and other incidents as they arise.

[138] Considering this more recent evidence, including the efforts of the father obtaining services but also taking into consideration the uncontroverted evidence of the mother respecting the ongoing behaviours of the father, I continue to have grave concerns respecting the father's behaviour. My concern is not only that he has begun to exhibit the stalking, harassing and intimidating behaviour he once engaged in regularly but does so shortly after the end of the involvement of the Agency and while these legal proceedings continued. I find the mother's evidence on these incidents to be credible and I accept her description of them.

[139] I find that it is probable that the father will continue his history of family violence, abuse, and intimidation. He has certainly made some improvements in his behaviour, but it appears on the evidence that those are short-term at best and he has begun to descend back into the type of behaviours described earlier in the evidence.

[140] Regarding the question of the impact of the family violence, abuse and intimidation of the father, both historically and prospectively, I have reflected on its impact on the ability of the father to care for and meet the needs of the children. In that regard, I am very concerned.

[141] Repeatedly, in the evidence of the mother and others who testified, they describe the children returning from visits with her father as quiet, sullen, and withdrawn. They, from time to time, blame the mother for the financial issues of the father and discuss matters that should never be in their mind in the first place. They display anger and frustration with their mother when there is no reason to feel such emotion and I conclude from this that their father has involved them in these matters by discussing the legal proceedings and his view of the mother and her behaviour in a most inappropriate manner.

[142] As well, I conclude that their witnessing of these incidents of family violence, abuse or intimidation over many years have had an impact on their ability to interact with their mother and father in a derogatory manner. I find their father has engaged in attempts to negatively impact their relationship with their mother, coming close to alienation, and even if it isn't deliberate, their witnessing of his behaviour in denigrating, demeaning, insulting and threatening their mother and have nothing but a negative impact on their well-being. It is the impact on the children that is of greatest concern to this court and I find it probable that the father's historic and ongoing behaviours will continue to impact them negatively and cause them harm if not properly addressed to the court.

[143] This leads to the question of an appropriate arrangement requiring cooperation on issues affecting the children. This also gives me pause for great concern. The father proposes a shared parenting arrangement. Any such arrangement requires significant and ongoing communication and cooperation between the parents, at a level beyond what is required in other parenting arrangements. As well, parents must be able to support one another in such parenting arrangements so as not to confuse the children or put them in a loyalty bind or otherwise cause alienating feelings or emotions to arise.

[144] In this circumstance, I find that the historic and ongoing existence of family violence, abuse and intimidation by the father would make a shared parenting arrangement not only inappropriate but a significant risk to the children and the mother. It would require ongoing communication between the parents which the father has demonstrated very little history of being able to carry out in an appropriate and supportive manner. While of late he has reduced the tone of his behaviour, I have already commented on a more recent inappropriate behaviour during exchanges and his stalking behaviour even during the child protection proceedings and after their termination. I do not find that a shared parenting arrangement will therefore be in the best interests of the children.

[145] With those findings being made, I will briefly discuss the remaining factors to be considered turning the issue of the best interests of the children in the context of the parenting arrangement.

The Children's Physical, Emotional, Social and Educational Needs Including Their Need For Stability And Safety

[146] When considering the children's physical, emotional, social and educational needs including their need for stability and safety, taking into account their age and stage of the development, the evidence is clear that the mother has provided for all of these needs over their lifetime. While the father has had involvement with them both during the relationship and after, the evidence which is accepted is that the mother has done the bulk of this work to the benefit of the children.

[147] These are relatively young children who still require significant involvement of their parents and need the support required of such children. Given the findings I have made with respect to father's behaviour, particularly around family violence, abuse and intimidation, I find that he cannot provide for their emotional needs, specifically the need for stability and safety, if they are placed with him even on a shared parenting basis.

Each Parent's Willingness to Support the Development and Maintenance of The Children's Relationship with The Other Parent

[148] When considering each parent's willingness to support the development and maintenance of the children's relationship with the other parent, the evidence which I accepted is that the mother has made significant efforts to ensure that the children maintain such a good relationship with their father. Her uncontroverted evidence is that she has made many attempts to ensure that they maintain their contact with their father, despite his extreme behaviours towards her and involving the children in those behaviours. There is much evidence of the ways in which she has done so, and I accept that evidence as credible.

[149] On the other hand, almost all the evidence of the father's behaviour suggests that, whether consciously or unconsciously, he is attempting to undermine the relationship between the children and their mother. He does this by involving them in the arguments before her, allowing them to witness his insulting, demeaning, aggressive and abusive behaviour towards her both in person and on the phone, and in the comments that he makes to them when they are in his care and he is angry with their mother. They know far too much about these proceedings and the disputes between the parents for it to be a coincidence and I accept that the mother is not discussing these issues with them. I conclude the father is engaging and is attempting to find favour with them to the detriment of their mother.

The History of Care of The Children Having Regard To Their Physical, Emotional, Social And Educational Needs

[150] When considering the history of care of the children having regard to their physical, emotional, social, and educational needs, I have already found that the mother has a lifelong history of such care and responsibility. The father has been involved in their care, but I do not accept the evidence that he has had significant involvement in these matters. It is the mother who has provided a shelter for the children from their father's successive abusive behaviour when possible and it is the mother who attempts to manage the outcome of the outbursts and ill behaviour of their father when it occurs. It is she who sought out and continues to pursue therapy for the children and I find that she is the one who has demonstrated an appropriate history of care.

The Plans Proposed for The Children's Care and Upbringing Having Regard to Their Needs

[151] Regarding the plans proposed for the children's care and upbringing having regard to their needs, the father's plan is simple. He simply wants them to return to their community where he resides and go back to the school they were attending. He says this will be good for them because that is where their friends are and will allow him to have more time with them.

[152] The mother's plan is to remain in Antigonish. She says the children have adapted well to the new school in which they were placed on an interim basis and enjoy their time in the community of Antigonish. They get to spend time with their father, and this has some benefit to them.

[153] Her plan is premised on a simple reality that the home where she resided with the father has now gone to foreclosure. This is, she says, because the father failed to pay the mortgage in lieu of child support and the insurance was lost which caused the foreclosure. I accept that evidence. She has no family there in that community. Her plan is to remain in Antigonish, and I find that that has much merit for the benefit of the children in the absence of any options to return to the community of the father.

The Children's Views and Preferences

[154] With respect to the children's views and preferences, there was a Voice of Child report ordered for E.C. and completed on August 20, 2019. This report was submitted by consent and the author was not required to provide testimony. I admitted the report into evidence.

[155] In that report, E.C. confirms that she is involved in Western riding, English riding, and barrel racing. She also plays volleyball.

[156] When asked about who it is easier to talk with, she said that if she has a problem, she should talk to both of her parents. She said she feels closer emotionally to her father than her mother, says her father is a good listener gives good advice.

[157] She confirms her view that both parents would care for her if she were sick and take her to doctor and dentist appointments.

[158] She describes having a good relationship with each of her parents, saying that if shared this with her mother, she just calms down a bit by herself and that she gets along well with her father.

[159] In essence, she describes a good relationship with each of her parents and speaks favorably of each of them. She says she does not know what is going on between her parents and that she did not feel caught in the middle. She did later say she was caught in the middle before, but it stopped because her parents began better communication.

[160] When asked what she wanted the judge to know, she describes seeing her father on Tuesdays and Thursdays in the evenings and every second weekend and expressed a preference to see him more. She said she wanted to stay at the school in Sherbrooke and did not want to go to Antigonish because the school is too big, and she would not have the same school as her sister. She wants to see her father more and be able to get off the bus to see him.

[161] She went on to say she would like a week about parenting arrangement and would like to participate in all the barrel racing events. She wants to be able to communicate with each parent regardless of which home she is in and that this has stopped. She described that she would be very upset if things stay the same because she wants to spend more time with her father. Finally, she tells the author that she just wants her parents to get along.

[162] There is no evidence before me regarding children's cultural, linguistic, religious, or spiritual upbringing and heritage.

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

[163] Respecting the nature, strength, and stability of the relationship between the children and each parent, I will be brief. I find that their relationship with the mother to be strong, deep, and nurturing. She is the one who has provided for them in a mature and responsible manner. Despite the attempts of the father to undermine that relationship, I find that it remains strong. It is to her that they turn when they feel troubled by the experiences they witnessed between their parents and the ongoing conflict. She is the one who has provided support and as well encouraged and arranged for therapy and counselling for the period.

[164] On the other hand, they do love their father and the father loves them, of this I have no doubt. But the father has demonstrated again and again over many years that he is, at least at this time, incapable of dealing with the children and their needs in a mature and parent-like fashion. His behaviours, from mooning her, to demeaning her, to criticizing her and her family, to attempting to repeatedly abuse and intimidate her to get what he wants demonstrates a profoundly immature father who is focused largely on maintaining a relationship with the children based on the rodeo activities and little else. The evidence before me that I accept is that he has attempted to interfere, obstruct and terminate all other activities and demands the mother contribute to the cost of the rodeo and horses, despite the fact that he is not providing support for the children.

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

[165] Respecting the ability of each parent to communicate and cooperate on issues affecting the children, the history again speaks for itself. The father has been consistently abusive and demeaning in his communication with the mother. There are times, of late, and they can appropriately communicate to their credit. That said, I am not yet satisfied that the father has reached a point where he can move on from his frustration and immaturity to have a more adult-like relationship with the mother and therefore an appropriate parenting relationship with the children.

[166] This is reinforced by the timeline of this matter involving the termination of the Minister's extensive involvement months ago to the father's recent behaviours in the evidence which suggests he may be returning to his past. I am very concerned about the idea of placing these children in a shared parenting arrangement which would require the level of communication necessary to address their best interests on the father who has this deep and concerning history and ongoing behaviours that caused concern to the court and the mother. He may get to the point in his life when he can appropriately put the interests of his children ahead of his own and communicate effectively with their mother. I do not find he has reached that point yet.

The Reasons for The Relocation

[167] In the context of the relocation application, I must also consider the reasons for the relocation. As noted earlier, the mother explains in her evidence that the family home has been lost because insurance failed, and the mortgage was

foreclosed upon. This was, she says, because the father paid child support at the time and then stopped, and she was unable to maintain the cost of the home. There is no option to return to that home.

[168] She says the reason for the relocation is simply economic. She has a home in Antigonish available to her and no options in the prior area. Her work is in Antigonish and the cost of the commute would not be appropriate. I find these to be sound reasons and circumstances.

The Effect on The Children of Changing Parenting Time and Contact Time Due to The Relocation

[169] Respecting the effect on the children of changing parenting time and contact time due to the relocation, I first note that the distance between these communities is not large, less than an hour. For a long time, the father has had parenting time that is substantially less than shared and there have been many times of late, according to the mother, when he has been unable to exercise it fully. I find that if the children remain in Antigonish, where they are permitted to be temporarily, it will have minimal effect on the parenting and contact time with the father.

The Effect on The Children of Their Removal from Family, School, and Community Due to The Relocation

[170] Respecting the effect on the children of their removal from family, school, and community due to the relocation, the mother's family is still fully involved with the children on relocation. The father has no family in Nova Scotia, so it would have no impact on them from that perspective. The change in schools was certainly not one they would wish for, but the mother's evidence is that they adapted to the new school well and found friends. Similarly, the evidence is that they have a good connection to the Antigonish community. I have little evidence to suggest that they have been compromised by the relocation proposed in the interim relocation granted.

[171] Regarding the appropriateness of the change of parenting arrangements, at least based on the interim orders, parenting arrangements will continue if relocation is approved without much change.

Compliance With Previous Court Orders And Agreements

[172] Respecting compliance with previous court orders and agreements by the parties to the application, there have been challenges around this. There had to be multiple directions from the court respecting how pick-up and drop-off is to work, where it is to be located and whether a parent should be present or not with the other parent. The father has already been convicted of a breach of an undertaking with respect to a criminal proceeding and there is some evidence before me that he breached other undertakings that he has not been convicted of in a criminal court.

[173] Respecting restrictions placed on relocation of previous orders, there are none.

Additional Expenses that May Be Incurred By Parties Due to Relocation

[174] Respecting additional expenses that may be incurred by parties due to relocation, I first note this is not a significant distance of relocation if granted. Even if I decline to grant the relocation and the mother remains in Antigonish, there would be the same costs incurred, the only question is by which party. If the father travels, he will have some additional costs. If the mother travels, she would. All that said, there is little evidence about these expenses, but I certainly do not find that they are significant.

[175] Respecting the transportation options available to reach the new location, it is a drive down the highway by the parties and of no real consequence in this matter.

[176] In relation to the notice given, I am satisfied the mother has given ample notice by way of this application to the father.

Decision

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

[178] Having considered all of the evidence before me very carefully and reviewing that evidence in the context of the law both contained within the *Parenting and Support Act* and the case law, I am satisfied that it is in the best interests of the children that they relocate with their mother to Antigonish on a permanent basis.

[179] The long and troubling history of the father's abusive behaviour leads me to conclude that the children will thrive only if they are placed primarily in the care of their mother. Through their history, her parenting is one of support and love combined with pragmatic problem-solving and a remarkable ability to cope with the extreme behaviours of their father while maintaining and supporting the relationship with him.

[180] While I acknowledge the father appears to have made some progress as a result of the Agency's involvement, I am not satisfied that he is sufficiently progressed that a shared parenting arrangement would be appropriate in the circumstances. For the reasons set out earlier regarding the requirement of communication and cooperation between the homes and the parents, I do not see that at this time the father is capable of that level of communication and cooperation. His ongoing behaviours suggests he is regressing, not progressing, and is at risk of repeating all of the egregious behaviours of the past.

[181] I simply am not prepared to put the children in a parenting arrangement that might expose them to such abusive circumstances any further. I think that if they are placed in a shared parenting arrangement it is probable that history will repeat itself and they will be further harmed without any benefit.

[182] I have also carefully considered the Voice of Child Report for E.C. and her expressed wishes for shared parenting arrangement and more time with their father. Voice of Child Reports are important in providing an opportunity for children to be heard in legal proceedings that will affect them. They are a helpful tool but not determinative. While a child's voice is important to hear and for the court to consider carefully, the court cannot be bound by the expressed wishes of the child any more than a parent would be bound to allow the child to make decisions regarding their health or education independent of the adult's careful consideration of all of the other factors that would need to be taken into account in such decisions.

[183] I am heartened to read that E.C. does not identify particular concerns with her parents but I am not satisfied that her wishes reflect an appropriate or realistic

plan given the long history of evidence before the court. She is now 12 years old and has witnessed much of the conflict between her parents. The evidence of this is largely unchallenged and troubling to the court. I therefore cannot accept her wishes as a reasonable plan for her and her sister's parenting arrangements going forward.

[184] Respecting custodial decisions, I acknowledge that it should be the rare case where a parent is granted sole custody to make major decisions concerning children's health, education, or general well-being. It should be expected that the parents will make all efforts to cooperate and communicate effectively regarding these matters and will decide the issues in the interests of the children.

[185] To put it another way, it should be of the exception, rather than the rule, that sole custody is awarded. In this case, I find this exception exists.

[186] The mother has consistently demonstrated an ability to put the needs of the children before her own throughout their lives. The evidence on this is persuasive and compelling. In addition, she has attempted, for far too long, to communicate effectively with the father regarding the children and their needs.

[187] Over the same time, the father has consistently demonstrated an inability to put the needs of the children before his own. I find that evidence to be persuasive and compelling as well. The history of dysfunctional and abusive communication is so extensive and his recent behaviours are so concerning that I am persuaded that he will be unable to effectively coparent these children with respect to major decisions for them and the arrangement that will best address their needs is one of sole custody to the mother. She will, of course, have to keep the father apprised on all major matters concerning the children's health, education and general well-being and will need to keep him apprised of any decisions that she makes. I will also provide that he will be able to contact any third-party service providers or obtain records from them as he deems appropriate but will not be permitted to give any direction or order to them regarding the children.

[188] Respecting parenting time for the father, he should have regular and consistent time with the children for their benefit. There will be restrictions on his discussions with them of any legal matters or parenting matters which I expect him to abide by. He will also be permitted to attend and participate in appropriate activities for the children and he will, of course, have to contribute to those costs.

[189] I say this because, despite the history of his abusive behaviour towards the mother and indirectly towards the children, they need him in their lives. It will be up to him to determine his path and the behaviours he chooses to exhibit over and only then will he be able to demonstrate that the children will benefit by more time with him should that day arrive.

Child Support

[190] Given my findings respecting custody and parenting arrangements, the father is required to pay child support for the benefit of the children both in the table amount and in the form of contribution to sections section 7 special and extraordinary expenses.

[191] The central question is that of the father's income. In his statement of income filed with this court and attached to his most recent affidavit he says he is in receipt of Worker's Compensation's of \$2874.40 per month. It is my understanding that this benefit is not taxable and therefore his grossed up annual income is \$34,488.

[192] Attached to the statement of income are a notice of assessment for various taxation years. The income from 2016 at line 150 indicates the total annual income of \$110,934. His tax return summary for 2017 indicates a line 150 income of \$55,027.33 and his 2018 tax return indicates a line 150 income of \$14,375.06.

[193] The mother says that the father should have income imputed to him in the amount that he would earn if he were still engaged in trucking.

Should income be imputed to the father?

[194] In determining whether the father should have income imputed to him as requested by the mother, I must look to section 19 of the Child Support Guidelines as follows:

19 (1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child to whom the order relates or any child under the age of majority or by the reasonable educational or health needs of the parent;...

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

- (1) Is the father intentionally unemployed or underemployed?
- (2) If he is intentionally unemployed or underemployed, is this due to a reasonable health need?
- (3) If not, what amount of income should be imputed to him?

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

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

- a) The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reasons and justice, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: *Coadic v. Coadic*, 2005 NSSC 291.
- b) The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: *Staples v. Callender*, 2010 NSCA 49.
- c) The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor asserts that his/her income has been reduced or his/her income earning capacity is compromised by ill health: *MacDonald v. MacDonald*, 2010 NSCA 34, *MacGillivray v. Ross*, 2008 NSSC 339.
- d) The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances: *Smith v. Helppi*, 2011 NSCA 65; *Van Gool v. Van Gool*, (1998), 1998 CANLII 5650 (BC CA), 113 B.C.A.C. 200; *Hanson v. Hanson*, 1999 CANLII 6307 (BC SC), [1999] B.C.J. No. 2532 (S.C.); *Saunders-Roberts v. Roberts*, 2002 NWTSC 11; and *Duffy v. Duffy*, 2009 NLCA 48.
- e) A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity. A party cannot avoid support obligations

by a self-induced reduction in income: *Duffy v. Duffy, supra*; and *Marshall v. Marshall*, 2008 NSSC 11.

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

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

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

1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor". ...
2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.
3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
4. Persistence in unremunerative employment may entitle the court to impute income.
5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.

6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

...

[33] In Nova Scotia, the test to be applied in determining whether a person is intentionally under-employed or unemployed is reasonableness, which does not require proof of a specific intention to undermine or avoid child maintenance obligations.

[197] In *MacGillivray v. Ross*, 2008 NSSC 339, Forgeron J. adopted the reasoning in the Alberta decision of *Mitansky v. Mitansky* [2000] A.J. No. 179 (QB) as follows:

[25] Section 19 (1) (a) of the Guidelines contemplates a three step analysis: *Drygala v. Pauli*, 2002 CarswellOnt 3228 (CA) at para 23. The three steps are as follows:

- a) Is the parent intentionally under-employed or unemployed?
- b) If so, is this caused by the health needs of the parent?
- c) If no, what is the appropriate income to be imputed?

[26] Ms. MacGillivray has proven the first branch of the test; Mr. Ross admits that he is under-employed.

[27] In the second branch of the test, the evidentiary onus rests upon Mr. Ross. He must prove that health problems compromise his ability to work. Mr. Ross is the person with access to the requisite, relevant information: *Drygala v. Pauli*, *supra* at para 41 and *Mitansky v. Mitansky* [2000] A.J. No.179 (QB) at para. 33. In *Mitansky v. Mitansky*, *supra*, Smith J states that such a parent must show a meaningful link connecting the parent's health needs to the inability to work at para 33:

Section 19(1) (a) specifically allows for intentional under-employment for health needs. Health needs are asserted by the father. The mother refutes the assertions. In my view, where long standing health needs are asserted as a reason for under-employment, the person asserting must bear an evidentiary burden of meaningfully linking the health needs to the inability to work. That information is solely within the power of that person to assert. An assertion without more will not be sufficient proof where, as here, there is a long-standing history of the same health concern coupled with an historical ability to work despite that health concern. In other words, while the proving party has the usual civil onus, the other party may be assigned an evidentiary onus in some circumstances.

[28] In *Mitansky v. Mitansky*, *supra*, the court held that the father did not link his health needs to an inability to work above \$10,000 per annum. The court held

that despite the father's serious heart condition, he could earn an income of \$25,000 per annum.

[198] I will now apply the three-part test to the evidence in this matter.

1. Is father intentionally unemployed or underemployed?

[199] The father is normally employed as a truck driver. He says that in 2018 he was involved in a serious accident while driving truck. He was placed on Worker's Compensation Benefits and, on recovering, he attempted to return to work. He says he suffered anxiety and says he cannot return to trucking as a result. He says that WCB is paying for his re-education as a farrier and he will complete that retraining in the next few years. In the meantime, he says that he will continue to receive his benefits through WCB.

[200] I find that the evidence in this matter is clear. The father is intentionally unemployed. He is not working in his prior field and his income has been considerably reduced from when he was employed.

2. If he is intentionally unemployed or underemployed, is this due to a reasonable health need?

[201] The father says that he is unable to work as a trucker because of the anxiety he suffers resulting from the truck accident which occurred in 2018. Unfortunately, he has adduced no evidence from either WCB or a physician or other expert to prove, on a balance of probabilities, that he is unable to work as a trucker. The burden of proof to adduce this evidence is on him and he has not provided any evidence of this circumstance.

[202] While I certainly accept that the accident described occurred, and there is evidence that he is in receipt of WCB benefits, this is not sufficient to make the finding that he is underemployed as a result of a reasonable health need. Without such proof, I cannot find that he is established this factor on a balance of probabilities.

[203] It remains open to him to make application for such relief when he has such evidence available and the court will have to determine if such relief can be granted at that time.

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

[204] In determining what income should be imputed to the father, I must look at what is reasonable in all the circumstances. In doing so, I consider his pattern of employment and amount of income over the last number of years. I do so because he has been employed for various incomes over the past few years as noted earlier.

[205] Considering the history of the father earning income through trucking over many years, I find that his income should be reasonably imputed between the high range and low range of his previous incomes.

[206] The mother has proposed the imputation of income at \$70,000 and I find that to be reasonable in the circumstances. He earned more than that at times in recent years but certainly less. When earning less, I infer from the evidence that these were times that he was unable to work as a trucker due to physical injury.

[207] With all of the fact in mind I find a reasonable indication of income to be at \$70,000 for the father.

Section 7 Special Or Extraordinary Expenses

[208] Both parents seek contribution from the other for special or extraordinary expenses for the children, particularly in specifically activity, neither parent seeks a specific amount on a monthly or annual basis as contribution from the other. They each seek a proportionate sharing of these costs as they arise from time to time.

[209] The identified activities include rodeo events, specifically barrel racing, and possibly other costs associated with those events or activities. As well, the mother identifies swimming and some other prior or ongoing activities. Of course, as with all children, these activities may vary over the years both as to the event and the cost.

[210] I have already identified the father's reasonable imputation of income at \$70,000. The mother's sworn Statement of Income indicates an annual income of \$38,776. She also filed her notice of reassessment from Canada Revenue Agency indicating a 2018 income of \$42,422. Her statement of income indicates union dues to be deducted, at least currently, of \$49.68 per month and I am prepared to account for that amount, \$600 per year, against her 2018 income reducing adjustable of \$42,000. Based on these incomes, I am prepared to find that her income for the purpose of section 7 special or extraordinary expenses is \$38,776.32.

[211] Applying the proportionate sharing principal under the Guidelines, the mother should pay 36% and the father 64% of all special or extraordinary expenses.

[212] As to how these expenses should be determined and paid, the mother proposes that the father pay all rodeo related expenses and they share in proportion to their incomes all other expenses. The father proposes that they share equally all expenses including rodeo and others.

[213] The mother says that the cost of the rodeo activities is simply too high for her. But these are certainly extremely important activities for the children over many years with both parents. These activities are particularly important in the bonding of the father and the children given the father's long history as a professional cowboy. It is also clear that the children enjoy these events immensely and will benefit by continued participation in them.

[214] That said, there is evidence before me that these events are very expensive, and the father has been unable to participate with the children in these events on a regular basis over the past couple of years. I find it reasonable to at least cap the contribution of the mother to these expenses without her express consent otherwise for further commitment cost from her.

Table amount of child support

[215] Based on the imputed income of \$70,000, the father will pay the table amount of child support to the mother in the amount of \$989 commencing on the first day of January 2020 and continuing on the first of each month thereafter. If the parties agree, this can be adjusted to a biweekly payment and that amount included in the order.

Arrears in table amount and section 7 child support

[216] The mother calculates arrears of child support, both table amount and section 7 expenses, at \$18,485. The father does not oppose this calculation.

[217] The mother asks for this to be satisfied, at least in part, by the release of all the funds held in trust arising from the sale of the family home of the parties. The father agrees with this. Because I do not have an indication of the amounts held in trust, I am prepared to order that the amount of arrears of \$18,485 be released from

trust directly to the mother in satisfaction of all those arrears and the remaining funds and be dealt with by the parties otherwise by agreement or further litigation. If the amount held in trust is insufficient to pay the arrears, the father will satisfy the payment of those arrears by an additional payment in the amount of \$200 per month.

Order

[218] There will therefore be an order as follows:

[219] The mother shall have sole custody and primary care and residence of the children. She shall keep the father reasonably informed of all major matters concerning the children's education and general well-being as they arise, but she shall be entitled to make all such decisions without input from the father. The mother shall keep the father apprised of all appointments and other events concerning the children's health, education, and general well-being.

[220] The father shall be entitled to unfettered access to obtain information or documents from any third party service providers for the children including, but not limited to, schools, teachers, hospitals, physicians or therapists, day care providers or anyone else were involved with the children from time to time. The father shall not be permitted to provide any direction or consent with respect to the children to those third-party service providers.

[221] All communication between the parents shall be conducted in a polite, respectful, child focused and businesslike manner.

[222] The parties shall continue to subscribe to and use Our Family Wizard for communication and scheduling unless they mutually agree to discontinue its use. The primary means of communication shall be via this application and parents shall also use it for scheduling activities and appointments for the children. Only in the event of emergency or urgent circumstances that parents may communicate via phone or in person.

[223] Each parent is entitled to authorize emergency medical treatment for the children when in that parent's care. In such circumstance that parent shall notify the other parent as soon as possible of such emergency circumstance at which point the sole custodial provisions of this order shall apply.

[224] Each parent is absolutely prohibited from making any negative or derogatory comments about the other parent or the other parent's family while in care of the children, whether the children are present at the time or not. Each parent is also required to ensure that no other person make such negative or derogatory comments about the other parent or the other parent's family when the children are in that parents care, whether the children are present at the time or not. If such comments are being made by another person, the parent in care of the children must ensure that the person making the comment ceases them immediately, the children are removed from the vicinity of those comments or the person making the comments is removed from the vicinity of the children.

[225] Each parent is prohibited from discussing any legal matters or these proceedings with the children except as required to explain the new parenting arrangement to them.

[226] The mother is authorized to relocate the children to reside with her in Antigonish.

[227] The father will have parenting time as follows:

- a) Every second weekend from Friday at 2:30 PM until Sunday at 5:30 PM.
- b) Every Tuesday and Thursday from 2:30 PM to 7:30 PM.

[228] If the Friday or Monday of the father's parenting weekend is an in-service or statutory holiday, the father's parenting time with the children will expand to begin on Thursday at 2:30 PM or ending on Sunday at 5:30 PM or both, as the case may be.

[229] The father shall have reasonable interaction time with the children via phone or videoconferencing. The frequency and duration of such contact shall be at the discretion of the mother.

[230] The following special parenting time shall apply and override the normal parenting time set out herein:

- a) Christmas - During the Christmas school break, one parent will have the children from 2:30 PM on the last day of school commencing the Christmas school break until Christmas Day at 1 PM. The other parent will have the children from Christmas Day at 1 PM until 5:30 PM on the day prior to the return to school after the Christmas school break. The

father will have the children from the end of school until Christmas Day in even-numbered years and the mother will have them in odd number years. In 2019, the father will have the children from Christmas Day at 1 PM until 5:30 PM on the day prior to the return to school.

- b) Easter - One parent will have the children from the end of school on Easter Thursday until Easter Monday at 5:30 PM in one year and the other parent will have the children for the same time the next year. The father will have the children for Easter weekend in even-numbered years and the mother in odd number years.
- c) School Spring Break - The school spring break will be divided approximately equally between the parent such that the parent who has the children the weekend prior to the commencement of school spring break shall keep them Wednesday at 5:30 PM and the other parent will have them from Wednesday at 5:30 PM to the end of their parenting time on the following weekend.
- d) Birthdays - There will be no special parenting arrangements for the children's or the parent's birthdays. The parent who does not have the children on those occasions may celebrate that occasion when they have the children in their care.
- e) Summer School Break - Each parent will be entitled to have the children with them for up to two non-consecutive weeks of block parenting time each summer. The parents will notify each other in writing by March 15th of each year of the weeks they would wish to have with the children. If there are no conflicts in the weeks chosen, those will be the weeks of block parenting time they will enjoy. If there is a conflict in the dates chosen, the mother's choices of parenting weeks will be prioritized in even-numbered years and the father in odd number years. If either parent fails to provide the notice in writing by the date set, they will lose any priority of choice in parenting time for that summer they may otherwise be entitled to.

[231] During the summer school break, the father's parenting time will expand to every second weekend from Thursday at 2:30PM to Sunday at 5:30 PM. In addition, he will have parenting time each week from Tuesday at 2:30 PM until Wednesday at 8:00 AM.

[232] Activities - Each parent is required to make every reasonable effort to ensure that the children attend their extracurricular activities during that parent's parenting time.

[233] Exchanges - Unless otherwise agreed, all exchanges for parenting time shall occur at the Tim Horton's location on James Street in Antigonish.

[234] Child support - The father's income for the purpose of the table amount of child support is imputed to be \$70,000 and he shall pay child support to the mother and the amount of \$989 per month commencing January 1, 2020 continuing on the first day of each month thereafter unless otherwise ordered. The parties may agree on a biweekly payment schedule which may be included in the order when drafted.

[235] For the purpose of contribution to special or extraordinary expenses for the children, the father's income is imputed to be \$70,000 and the mother's income is found to be \$38,776. The father shall contribute 64% and the mother 36% of the net after-tax cost of all special or extraordinary expenses agreed to by the parties from time to time. The mother's contribution to the rodeo activity costs for the children shall be capped at \$1,000 per year unless she otherwise agrees.

[236] Arrears in child support, both table amount and section 7 special or extraordinary expenses, is deemed to be \$18,485 payable by the father to the mother. To satisfy this payment, the parties are ordered to forthwith take all steps necessary to have the funds released which are held in trust in Alberta arising from the sale of their family home in that province sufficient to satisfy these arrears in full if possible. Any additional amounts over and above the arrears will be held in trust and subject to further agreement or order of a court of competent jurisdiction. If the funds released from trust in Alberta are insufficient to satisfy the full amount of arrears, the father shall contribute an additional \$200 per month to the mother until the full arrears are satisfied.

Daley, J.