SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *J.E.W. v. W.E.D.*, 2019 NSSC 141

Date: 20190425
Docket: SFHPSA-112105
Registry: Halifax

Between:

J.E.W.

Applicant

v.

W.E.D

Respondent

Library Cover Sheet

Justice:	The Honourable Justice Theresa M Forgeron
Heard:	March 20 and April 25, 2019 in Halifax, Nova Scotia.
Oral Decision:	April 25, 2019
Written Decision:	May 3, 2019
Topic:	Family Law; Relocation Request; Statutory Interpretation; "Substantially Involved"; "Substantially Shared Parenting"; Best Interests Analysis.
Summary:	The court denied the mother's request to relocate with the children to Calgary. The court adopted a holistic, contextual and child-centric approach to the mobility provisions of the Parenting and Support Act in keeping with modern principles of statutory interpretation. The court found that the father proved that it was in the best interests of the children to remain in Nova Scotia and that it was not in the children's best interests to move to Calgary. Factual matrix included an active, nurturing and positively involved father who had a deep and meaningful relationship with his two children; two young children; and a mother who minimized the father's parenting while overstating her own. The court held that the parenting arrangement must be suited to the children's ages and stages of development.
Counsel:	Terrance Sheppard for the Applicant, J.E.W. Steven Jamael for the Respondent, W.E.D.

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Editorial Notice: The electronic version of this decision has been edited to remove personal identifying information.

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By the Court:

Introduction

[1] This decision is about where four-year-old A. and two-year-old L. will live. A. and L. are the much-loved children of J.E.W. (the mother) and W.E.D. (the father). The mother wants to relocate with the children to Calgary. The father is against the move; he wants the children to continue to live in Halifax.

[2] In support of her position, the mother states that she no longer has a job in Halifax because she was transferred to Calgary. The mother maintains that the move is presumed to be in the children's best interests because she was the primary care parent and because the father was not substantially involved in the children's care. She wants to return to Calgary where she says she has employment, support and opportunities that are lacking in Halifax. The mother further notes that the father could seek employment in Alberta because that is where he consistently worked in the past. Given these circumstances, she believes that relocation is in the best interests of the children.

[3] For his part, the father states that the move is not in the children's best interests. The father asserts that the parties previously moved from Calgary to Halifax because Calgary living was not conducive to the family life that the parties desired. He states that the children flourished in Halifax where they benefitted from the positive and substantial involvement of both parents, and from the support of the father's extended family and friends. From his perspective, the parties shared parenting of the children. The father states that if the children relocate to Calgary, the father child relationship will be damaged, as will the children's relationship with their extended family. In contrast, he argues, that if the children remain in Halifax, they will continue to enjoy a nurturing and loving relationship with both parents.

[4] This decision will focus on the best interests of A. and L., and not on the best interests of either the father or the mother. The children's best interests will be determined according to the mobility provisions of the ***Parenting and Support Act***, RSNS 1989, c 160.

Issues

[5] In resolving this relocation dispute, I will answer the following three questions:

- What is the applicable presumption and evidentiary burden?
- Where is it in the best interests of the children to live – Halifax or Calgary?
- What parenting arrangement is in the best interests of the children?

[6] Before addressing these issues, I will provide background information to provide context.

Background Information

[7] The parties met in 2011 and began living together in Calgary in 2012. The mother was employed as a parole officer. The father worked in contract positions with various companies in the oil fields of Alberta. He is an electrician.

[8] In 2013, the parties learned that they were expecting their first child - A. who was born in June 2014. The mother was the primary care giver of A. as she took a year's maternity leave while the father continued his contract work on a rotational basis, and for about six months of the year.

[9] Eventually, the parties decided to move to Halifax. The mother was able to secure a work transfer. A. was 22 months old when his home was moved to Halifax, although the new family residence was not purchased until August 2016.

[10] After they moved, the parties learned that they were expecting their second child. L. was born in February 2017. The mother once again took a year maternity leave; she returned to work in February 2018.

[11] For his part, the father's initial attempts to find permanent full-time employment in Halifax met with little success. He was only able to secure part-time employment, and ultimately returned to working out west for about six months of the year, while collecting EI and working part time for the balance.

[12] The parties' relationship began to deteriorate. The mother was concerned that the father was unfaithful, an accusation which the father denied. An argument ensued. On October 20, 2019, the relationship ended. About two weeks later, the father reported that the mother assaulted him during the argument. The mother denied the charges and was eventually found not guilty.

[13] This backdrop set the tone of the separation and the ensuing parenting dispute. The father said that the mother kept the children from him and made significant parenting decisions without his input. For her part, the mother said that the father was a disinterested parent who had little connection with the children, both before and after separation. A court application was inevitable.

[14] The mother filed an application and an emergency *ex parte* motion on November 1, 2018. She made the motion because the father said he was taking the children to visit family in Cape Breton. The court did not hear the *ex parte* motion. The mother filed an amended Notice of Application on January 3, 2019. This application was not processed because of deficiencies.

[15] The court next became involved because the mother planned to relocate with the children to Calgary. The mother was not happy in Nova Scotia. She asked to be transferred to Calgary; her employer agreed. She said that her new employment was to begin on March 25, 2019.

[16] The father disagreed with the move. On February 14, 2019, he filed an application and an interim motion to prevent the relocation. An interim order preventing the removal of the children was first granted on February 21, 2019 and then confirmed after the notice hearing of February 27, 2019. At the February 27 hearing, MacKeigan, J., held that the mother's relocation notice had not been perfected and directed that the relocation issue be scheduled for final hearing. To accommodate the mother, an early hearing date was secured on March 21, 2019. This was later changed to March 20, 2019.

[17] By the time of the hearing, the father had found full time employment in Halifax as an electrician working at the Halifax Shipyard. The mother's transfer to Calgary remained unchanged.

[18] The March 20th contested hearing was completed. Evidence and submissions were supplied by each party. At the request of the court, the mother's counsel filed further legal submissions on March 29, 2019. The father's counsel did not. On April 25, 2019, the court rendered its oral decision.

Analysis

[19] ***What is the applicable presumption and evidentiary burden?***

[20] Section 18H(1) of the ***Parenting and Support Act*** confirms that in a contested mobility hearing, the court must assign one of three discrete presumptions based on the parties' parenting arrangement, as follows:

- First, a relocation application is presumed to be in a child's best interests if the primary caregiver requests the move and the other party is not substantially involved in the child's care. In such a case, the opposing party must prove why the relocation is not in the child's best interests.

- Second, a relocation request is presumed not to be in a child's best interests if the parties have a substantially shared parenting arrangement. In such a case, the relocating party must prove that the relocation is in the child's best interests.

- Third, for all other situations, there is no operating presumption. Rather, all parties bear the burden of proving what is in a child's best interests.

[21] I must now determine the type of parenting arrangement that was in place for A. and L.. Not surprisingly, the parties have diametrically opposed views on this issue.

Position of J.E.W.

[22] The mother states that the move is presumed to be in the children's best interests because she was and is the primary caregiver and because the father was not and is not substantially involved in the care of the children. In support of this claim, the mother relies on several factors, including the following:

- She consistently parented the children without much input or help from the father since each of the children was born. She stated that the father was often working away from the home at camps in Alberta and was thus absent for extensive periods of time. Further, the mother states, even when the father was home, he spent minimal time with the children, preferring other endeavours.

- Throughout the children's lives, the mother states that she assumed the vast majority of the day-to-day care-giving responsibilities for the children without much contribution from the father, including preparing meals and feeding the children; changing diapers and soothing the children when they

were upset; supervising their play and arranging play dates; attending to the children's hygiene and baths; and ensuring that the children's developmental and emotional needs were met. The mother states that the father devoted a minimal amount of time and energy to such parenting responsibilities.

- Throughout the children's lives, the mother maintains that she virtually made all parenting decisions which affected the children's health, education and general welfare. She notes that she was the parent who located doctors, dentists and childcare providers, without the assistance of the father. She notes that she was the parent who almost exclusively looked after the children's medical needs. She notes that she was the parent who enrolled A. in French preschool. She states that the father deferred to her decision making.

Position of W.E.D.

[23] In contrast, the father disagrees with the mother's characterization. He maintains that he was indeed substantially involved in the care of the children; that the parties had a substantially shared parenting arrangement before the separation. He objects to the mother's attempts to minimize his involvement. In support of his position, the father relied on several factors, including the following:

- Since moving to Halifax, there were two periods of about six months each, when he was not working out west, and when he spent many hours with the children, and this included time when the mother was working. He states that he prepared their meals and got the children ready for bed. He says he was primarily responsible for the day-to-day parenting demands. He enjoyed his time with the children.

- Further, he states that even when he was working in Alberta, he was home every third week for upwards of seven days. During that time, he shared parenting responsibilities. When he worked out of province, the father states that he stayed connected electronically with the mother.

- He states that both he and the mother were involved in significant decisions affecting the children, including the decision to move from Calgary to Halifax where the family would be closer to the father's family and friends.

- After separation, the father did not agree to the parenting arrangement which was unilaterally put in place by the mother. The father acquiesced because he did not want to place the children in a conflict situation.

Legal Analysis

[24] As indicated previously, section 18H(1)(a) of the ***Act*** states that in a relocation dispute, the court must assign one of three options based on the parenting arrangement in place, as follows:

> 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.

[25] When determining the applicable parenting arrangement, the ***Act*** directs the court to examine three specific factors as stated in s. 18 (H) (3) as follows:

> (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.

[26] Section 18(H)(1)(a) uses the phrase "substantially involved" and s. 18H(1)(b) uses the phrase "substantially shared parenting arrangement". What meaning is to be assigned to these phrases?

[27] When applying sections 18H (1)(a) and (1)(b) to the facts of this case, I adopt an interpretation that is holistic, contextual and based on a child-centric approach, while balancing the three factors set out in s.18 H (3). Such an approach favours the best interests of the child as it focuses attention on the welfare of the child and not on the parents. This approach is consistent with the modern principles of statutory interpretation.

[28] In ***Sparks v Holland,*** 2019 NSCA 3, Farrar, JA reviewed the basic principles of statutory interpretation at paras 27 to 29 as follows:

> [27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at ¶21).
>
> [28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.
>
> [29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slauenwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:
>
> 1. What is the meaning of the legislative text?
> 2. What did the Legislature intend?
> 3. What are the consequences of adopting a proposed interpretation?

Meaning of Legislative Text

[29] In Nova Scotia, the only reported case dealing with the phrase "substantially involved" is that of ***C.O. v S.M.***, 2017 NSFC 22, wherein Daley, J., applied the dictionary meaning at paras 90 and 91 as follows:

> [90] The phrase "substantially involved" merits some attention. The word "substantially" is variously defined to mean "significant", "to a great or significant extent" and "not imaginary or illusory". While reference to dictionary definitions is not determinative in such analysis, this does provide a beginning.
>
> [91] In considering this section in the context of the amendments to the Act concerning relocation with a child, it is clear to me that section 18H(1)(a) creates a presumption in favour of the relocation in a circumstance where the parent opposing such relocation has minimal or moderate contact, involvement and decision-making

> responsibility or interest in the child. It is intended to prevent such a parent from unreasonably obstructing a move and respects the decisions of the primary caregiver in such circumstances. It is, in many ways, an effort to mitigate against claims by minimally or uninvolved parents where there is little likelihood of success in opposing the relocation and does so by placing the burden squarely on the parent opposing to show that the relocation would not be in the child's best interests.

[30] The phrase "substantially shared parenting arrangement" was tangentially discussed in ***D.A.M. v C.J.B.***, 2017 NSCA 91. In that case, the Nova Scotia Court of Appeal equated a s. 9 CSG shared parenting arrangement with the phrase "substantially shared parenting arrangement" at para 19, although the argument over what constituted a "substantially shared parenting arrangement" was not in issue and thus not thoroughly examined.

[31] British Columbia is another province where legislation, the ***Family Law Act,*** was amended to provide a framework to determine relocation applications. The BC legislation uses the phrase "substantially equal parenting time" as opposed to "substantially shared parenting arrangement". The courts in British Columbia have not yet reached a consensus as to the meaning of "substantially equal parenting time". For example, in ***D.M. v E.M.***, 2014 BCSC 2091, paras 35 -38, Butler J held that the 40 per cent threshold for equal parenting under s.9 of the ***Child Support Guidelines*** would serve as a useful "rough guide as to the lower end of the range for equal parenting". In contrast, other British Columbia cases take a more fact-based approach. In ***S. v W.***, 2014 BCPC 0177, para 12, the court held that it "… ought not to engage in a minute-by-minute analysis of the actual time a parent spends with a child. What is important is the fact that, with a shared parenting arrangement, both parents play a significant role in the child's day-to-day life. Actual time in this case is not a factor".

[32] A "substantially involved" parent envisages an active, nurturing and positively involved parent who has fostered a deep and meaningful relationship with their child. A "substantially shared parenting arrangement" encompasses such a parent, who in addition, has care of their child on a somewhat equal basis.

Intention of Legislature

[33] In announcing the new ***Parenting and Support Act***, the government highlighted several of its objectives, including the need to reform and modernize

family law; the need to put children first; and the need to create a framework to decide relocation cases, as follows[1]:

- Legislative amendments passed by the House of Assembly to improve support for children and put their interests first when their families break up will come into effect on May 26th, 2017.

- Amendments to the *Maintenance and Custody Act*, which has been renamed the *Parenting and Support Act*, include modernized family laws and updated court rules and forms.

- "We have modernized this act to be more helpful to families when they come to court to make decisions in the best interest of their children, often under very difficult circumstances," said Justice Minister Diana Whalen.

- The legislation, which was passed in December 2015, updates language and terminology around custody and parenting arrangements, introduces new terms to describe how parents interact and spend time with their children and establishes the use of a parenting plan to help parents clarify their responsibilities.

- The amendments will also introduce specific guidelines that families must follow when a parent or guardian wishes to move away with their children.

- Key amendments include:

    - replacing the terms "access" and "visiting privileges" with "parenting time", "contact time" and "interaction"

    - establishing a framework for a parenting plan that outlines each parent's responsibilities and the living arrangements for the child to encourage planning and reduce confusion

    - new guidelines that require parents who are moving outside the province to give advance notice and establish, depending on the parenting arrangements, whether or not the relocation will benefit the child

    - a clear list of actions that can be taken for those who fail to comply with orders for parenting or contact time, or interaction with the child.

[34] The stated intention of the legislature is in keeping with the child-centric approach that I adopted.

[1] https://www.nsfamilylaw.ca/about/news/new-parenting-and-support-act-family-court-rules-proclaimed

Consequences of Adopting a Child-Centric Approach

[35] If a child-centric approach is adopted, then the best interests of each child will gain paramountcy in keeping with s.18(5) of the ***Act***. As a result, decisions will be fact based, and may lack the predictability that many had hoped would be achieved from the mobility amendments. A child's best interests, however, must not be sacrificed to predictability.

Summary of Legal Analysis

[36] The modern principle of statutory interpretation applied to the mobility provisions of the ***Act***, as read in their entire context, in their grammatical and ordinary sense, and harmoniously with the scheme of the ***Act*** indicates that the court must analyse the unique facts of each case, from the lens of the child's welfare, while balancing the stated legislative factors.

Decision

[37] I have determined that there is no operating presumption in the case before me. In so doing, I find that although there was no substantially shared parenting arrangement, that the father was nonetheless substantially involved in his children's care. In reaching my decision, I make the following factual findings:

- The mother was the primary care parent. She was the parent who physically spent more time with the children. She was the parent who assumed more of the day-to-day care giving responsibilities and who assumed more of the ordinary decision-making responsibilities.

- The mother was the parent who took two maternity leaves and generally was responsible for securing the children's doctors and childcare providers.

- The father's physical time with the children was negatively impacted by his work in camps in Alberta. When he was working at the camps, the mother was the sole caregiver. The father, however, did not work year-round. There were significant periods when he was home and was physically parenting the children. During these times, the father was active and substantially involved in his children's care. The father eventually stopped working in the camps because such work was not conducive to his role as a father. The father sought other work, at first

securing casual employment, and recently full-time employment at the Halifax Ship Yard.

- The mother minimized the father's involvement with the children, and in some respects overstated her own. The father was not a disinterested and passive father who neglected his parenting responsibilities. To the contrary, the father was actively engaged and substantially involved with his children.

- The father was substantially involved with the children's care, even though he was not the primary care parent. The father spent substantial time with the children when he was not physically working out west, which was about half of the year, and even when he was employed, during the rotation weeks which allowed him to return home.

- The father was regularly and substantially involved in the daily lives of the children. He made decisions about day-to-day care-giving and assumed ordinary decision-making responsibilities, including those associated with meal preparation and feeding; soothing, cuddling and getting the children ready for bed; looking after the children's hygiene by bathing them and getting them dressed; playing with the children; reading with the children; baking and craft making with the children; arranging extended family outings; arranging play dates for the children with family and friends; and almost exclusively directing their outdoor involvement with sports and recreation.

- The father was an active, nurturing and positively involved parent who fostered a deep and meaningful relationship with A. and L. The father and the children enjoy a positive, loving and nurturing attachment.

- The mother did not assume sole responsibility for all important decisions concerning the children. For example, both parties agreed that the family should move from Calgary for a variety of reasons, including the lack of available support, the lack of extended family involvement, and the need to have the father available daily, especially when the children would start school. The mother wanted to move to Ontario while the father championed Halifax. Eventually, the parties decided that the family would move to Halifax. This is likely one of

the most significant decisions made. The father was very much involved with the decision.

- The mother was not able to exclusively parent as a single mother after separation. She required the support of her parents who moved in with her after the parties separated. It is suggested that they will also move to Calgary if the relocation request is granted.

[38] The children are deeply loved by each of their parents. The children enjoy a healthy and positive relationship with each of their parents. The children have a secure attachment to each of their parents. The father and the mother are capable parents, with superior parenting skills and each were substantially involved in the care of their children.

[39] **Where is it in the best interests of the children to live – Halifax or Calgary?**

[40] There is no operating presumption. Rather, each party bears the burden of proving what is in the children's best interests based on the various factors stated in s. 18H(4) and by express implication, the factors set out is s. 18(6) of the ***Act***. Such an analysis must be comparative and balanced: ***D.A.M. v C.J.B.***, supra. I further note that many s.18 factors are akin to the best interests' factors discussed in ***Gordon v. Goertz***, [1996] 2 S.C.R. 27 and in ***Foley v Foley***, 1993 N.S.J. No. 347.

[41] I will now provide my analysis of the applicable factors.

Reasons for Relocation - s.18H(4)(b)

[42] The mother relied upon three principle reasons for the relocation. First, the mother stated that she was not happy in Nova Scotia. She stated that she will have better supports in Calgary, as such supports were lacking in Nova Scotia. Second, she said that the parties agreed, before separation, that they would move back to Calgary. Third, she stated that her job as a probation officer in Halifax no longer exists because she was transferred to Calgary.

[43] In contrast, the father said that the parties had few supports in Calgary, but that there were many supports in Nova Scotia. Further, he said that although there were discussions about a return to Calgary, there was no agreement. In addition,

the father said that the employment transfer was initiated by the mother, and not her employer.

[44] I find that prior to separation, although the parties discussed the possibility of a return to Calgary, there was no final decision. The mother began to act unilaterally in making a transfer request in the hope that the father would eventually agree. She asked for a transfer before either obtaining the father's consent or an order of the court.

[45] The mother's strategy cannot be determinative of the relocation request. To do so, would be to thwart the mandatory best interests' analysis. The mother's unilateral decision and her subsequent lack of a Halifax job are but two factors to consider.

[46] Further, as will become apparent, there is little evidence to suggest that a return to Calgary would produce a better child-centric outcome than if the children remained in Nova Scotia.

Effect of Changed Parenting Time on Children - 18H(4)(c)

[47] The mother states that relocation will have a minimal impact on the children for reasons including the following:

- The father can move to Alberta. In the past he worked contracts in the oil fields and can do so again.

- The father can have telephone and face time communication with the children should he remain in Nova Scotia or while working in the oil fields.

- The father can have extensive parenting time throughout the summer and at other times if he chooses to remain in Nova Scotia.

[48] The father disagrees with this reasoning. I accept the position of the father based on my findings, and as follows:

- The parties moved from Calgary, in part, because both agreed that oil field contract work was not in the children's best interests. They agreed that it would be better if both parents found jobs that would enable each to remain at home during the evenings and week-ends. I agree with this sentiment. Although I recognize that the father may also be able to find work in

Calgary as an electrician, on a balance of probabilities, he would likely return to oil field work should he relocate to Alberta.

- Telephone and face time communication is a poor substitute for day-to-day parenting, especially in the case of young children who tend to have poor attention spans, a limited ability to engage in any meaningful telephone-based communication, and a different sense of time. The needs and abilities of young children are significantly different than those of teenagers, for example. Given the ages of A. and L., it is important that they have regular in-person physical parenting time with both their mother and father.

- Block access during the summer or during other holidays is a poor substitute for regular in-person physical contact, especially given the children's ages and stages of development. Further, the cost of travel would be a significant and challenging deterrent given the financial circumstances of the parties.

Effect of Removal from Family, School and Community – s. 18H(d)

[49] The mother said that the move would have little impact on the children because of their ages. Neither has started school and although they have friends, they will be able to make new friends once they move to Calgary. Further, she said that the children know and have positive relationships with her Calgary connections.

[50] For his part, the father stated that the children have significant connections to extended family and friends in Nova Scotia and such relationships would be negatively affected by a move to Calgary.

[51] I find that the mother minimized the negative impact that relocation would have on the children in respect of family and community. I find that relocation would negatively affect the children for the following reasons:

- A. and L. are integrated within their community and with their extended family and friends who live in Nova Scotia. Nova Scotia is the children's home.

- A. and L. have a positive and healthy relationship with the father's family in Halifax and Cape Breton. The children are close to their relatives and regularly spend time with them. They have established family traditions with their paternal relatives. A move to Calgary will remove this significant

part of their lives. Facetime and an occasional visit during block summer vacation are poor substitutes.

- A. and L. have positive and healthy relationships with a large extended network of friends, who have provided support and enjoyment. A move to Calgary will likewise remove this part of their lives, although the children would develop other friendships if they moved to Calgary.

- The children did not develop a relationship with their maternal aunt who lives about four hours away from Calgary. They could in the future. The children do have a positive and nurturing relationship with their maternal grandparents which developed since the parties' separation. The grandparents usually winter in Florida and live in Ottawa. There was a suggestion that they would acquire a residence in Calgary to continue to assist the mother if the relocation request was granted. The grandparents did not testify so details surrounding the nature of their commitment is unknown. In any event, the maternal grandparents can just as easily visit A. and L. in Halifax as they could in Calgary.

Appropriateness of Changing Parenting Arrangement – s.18H(e)

[52] The mother stated that it is appropriate to change the parenting arrangement because her support is in Calgary as is her employment. Further she said that the move presents an opportunity for professional advancement that is absent in Nova Scotia.

[53] The father disagreed. He said that support was lacking in Calgary and that the mother was eligible for a pay raise in Nova Scotia by taking a language test and obtaining bilingual status.

[54] I agree with the father's position for the following reasons:

- The mother could have taken the language test in Nova Scotia. If she passed, she would receive a pay raise. The mother did not want to take the exam in Nova Scotia because she didn't want to assume the extra work associated with a bilingual parole officer position in Nova Scotia. She said that there is less of a demand for bilingual services in Calgary.

- There are no better parenting supports in Calgary than in Halifax; there are probably less supports available there. The parties previously left Calgary,

in part, because of a lack of support. The mother has no greater number of friends now than she had then, other than the suggestion that her parents will move there too. The maternal grandparents did not testify so this suggestion was not fleshed out or subject to cross examination.

- The parties had the benefit of many supports while living in Halifax. Extended family and friends regularly were involved with the parties and their children; they provided support.

- Educational, medical, and child care supports are equally available in Nova Scotia as in Calgary.

Compliance with Previous Court Orders or Agreements – s. 18H(4)(f) &(g)

[55] This is not a material factor in that there are few previous orders or written agreements. The mother adhered to the interim non-relocation orders. I infer that both parties will follow court orders in the future. There is no evidence to suggest otherwise.

Additional Expenses and Transportation Options– s.18H(4)(h)& (i)

[56] The mother said that she would pay for the children to fly to Nova Scotia once during the summer if the father is current with child support and other expenses. The mother proposes that the father pay for all other parenting time expenses. The father states that such costs would quickly become expensive.

[57] I find that significant costs will be incurred if the relocation request is granted, including the cost of air fare, recognizing that the children are too young to travel alone. Other costs will include those associated with accommodations and food. I find that these expenses will negatively affect the ability of the father to exercise parenting time because of the parties' limited financial resources.

[58] However, if the father moves to Alberta, he will have to acquire accommodations in Calgary, in which case there will be fewer additional travel expenses.

Notice and a Proposed Parenting Contact Schedule – s. 18H(4)(j)

[59] The mother did not provide notice in keeping with the legislation. An interim order issued preventing the children's relocation because of this finding by MacKeigan, J.

S. 18(6) Considerations

Physical Needs of the Children

[60] Neither party currently has acquired a permanent residence for the children; I infer because neither party was certain of the outcome of this decision. In any event, these parents are more than capable of securing appropriate housing and ensuring that the physical needs of the children are appropriately met.

[61] In addition, both parties know how to prepare healthy food and to properly manage a home. They can both provide transportation and acquire age appropriate clothes.

Emotional Needs of the Children

[62] The children appear to be meeting all development milestones. For the most part, they are happy and well-adjusted. Despite these positive findings, I am nonetheless concerned about the mother's dismissive attitude towards the father's parenting. The mother pays lip service to the need of the children to have a relationship with their father. She fails to appreciate that the children's emotional health is connected to their relationship with both parents.

[63] The mother remains angry. This anger negatively influenced her ability to objectively view the father's parenting in a positive light. The mother fails to assign priority to the father child relationship. The mother minimizes the parenting relationship between the children and the father.

[64] The mother attempted to dictate the interim parenting arrangement post separation. For example, in February, when the father wanted to extend the children's stay in Cape Breton by two days, the mother immediately called the police who then checked in with the father and the children.

[65] The parties must improve their communication and co-parenting skills to properly meet the emotional needs of A. and L. Their ability to improve will be enhanced by the adoption of a detailed and specific parenting schedule and by meaningful participation in counselling. Counselling will also assist the mother to better appreciate the importance of the relationship between the father and the children.

Educational Needs of Children

[66] The mother chose A.s' school and preschool and the children's childcare providers. The father consented to these choices and did not attempt to thwart them.

[67] Both parties are available to ensure the children's attendance at and transportation to preschool and school. Both parties have worked with the children to ensure age appropriate development through activities designed to improve learning opportunities, such as reading with the children, craft making, drawing and outdoor activities.

[68] Both parties recognize the value of an education. The parties will continue their commitment to the children's education in either Calgary or Halifax.

Social and Recreational Needs of Children

[69] The father made most of the decisions affecting the recreational and social needs of the children. He regularly ensured that the children socialized with children of family and friends and he regularly supported their play. The father taught A. to skate and is taking L. along as well. A. and L. play outside, ride bikes and engage in healthy outdoor activities when in the father's care. Such activity not only provides the children with recreation, but such activity also fosters the development of social communication and problem-solving skills. It also keeps the children in the fresh air and away from inordinate tv and social media time. Most importantly, it provides a foundation for the father child bond to develop and grow.

[70] These types of opportunities will be reduced should the relocation request be granted. Either the father will move to Alberta and once again work significant periods away from the children's home; or the father will remain in Halifax and have limited parenting time with the children given geographic and economic limitations. In contrast, should the mother remain in Halifax, both parents can remain involved.

Moral Development

[71] Little evidence was offered on this point. I should note however, that both parties, attempted to mislead the court on certain points. I caution the parties that children learn by example. Children will learn to be honest if their parents are honest. Children will learn to accept responsibility if parents accept responsibility. You both are encouraged to do so.

Cultural Connection

[72] The mother has a French background and wants the children to attend French schools. The father agrees. This can occur in either Halifax or Calgary.

Summary

[73] Applying a child centric and holistic approach, I find that the father has proven that it is in the best interests of the children to remain in Nova Scotia and that it is not in the best interests of the children to relocate to Calgary. I agree that the children have flourished in Nova Scotia. They have excellent and stable relationships with both of their parents, with their extended family and with their friends. Further, Halifax represents the venue that will best provide for the children's continued development in all areas of their lives and which will best ensure that the children will continue to maintain positive, nurturing, stable and loving relationships with both parents. For the reasons discussed in this decision, the relocation request is refused.

[74] I also hasten to add, that if I erred such that the father was not substantially involved in the children's care, I would have arrived at the same conclusion because of the overwhelming evidence that supports this decision's outcome.

[75] **What parenting arrangement is in the best interests of the children?**

[76] Neither party provided lengthy submissions on the parenting plan that should be adopted in the event the relocation request was denied. I therefore ask that each party supply a proposed parenting plan by May 17, 2019. If further evidence is necessary, counsel should contact the scheduling office, after affidavits have been filed, to obtain a court date. The parenting plan should be mindful of the children's ages and the mother's primary care history.

Conclusion

[77] The relocation request is denied. It is in the best interests of the children to remain in Halifax where they have thrived. A detailed parenting plan will be provided after receipt of further submissions on the issue. Any cost claim can be addressed once the parenting plan is determined.

[78] I wish to thank counsel for their advocacy and professional assistance to the court.