

SUPREME COURT OF NOVA SCOTIA

Citation: *Owda v Hussini*, 2024 NSSC 23

Date: 20240122

Docket: *SFHPSA*, No. 125456

Registry: Halifax

Between:

Noor Owda

Applicant

v.

Zain Hussini

Respondent

Judge: The Honourable Justice Cindy G. Cormier

Heard: March 28 and 29, 2023; April 12, 2023; and May 3, 2023, in
Halifax, Nova Scotia

Final Written Submissions: January 21, 2024
March 27, 2023; June 26, 2023; July 6, 2023; July 13, 2023
and July 21, 2023.

Counsel: Noor Owda, self-represented Applicant
Jabob Leon, for the Respondent

By the Court

Introduction

[1] On April 7, 2022, Ms. Owda (the mother) filed an initial application under the *Parenting and Support Act* seeking to have Mr. Hussini (the father) pay child support. The mother stated the “children’s monthly expenses are over \$3,000” and that the father “is not currently providing any support. He is intentionally unemployed or underearning to avoid responsibilities.”

[2] On April 25, 2022, the mother filed her Parenting Statement. She stated in part “the father should see the children at least two days per week” and she agreed to “a flexible schedule so long as it doesn’t disrupt the children’s routine.” The mother worked from home and suggested the children be in her care Tuesdays, Wednesdays, and Thursdays. She indicated she was flexible about whether the father exercised his parenting time Sunday and Monday or Friday and Saturday. Her Statement of Contact Time and Interaction filed April 7, 2022 indicated she was working Monday through Friday 10:00 am to 6:00 pm.

[3] On May 27, 2022, the father filed a response to the mother’s application seeking: to address custody and parenting arrangements; exclusive occupation of

the residence; and to prevent relocation of the children. In his Parenting Statement he indicated he was working from home, and he suggested that should the mother remain in Nova Scotia with the children he have care of the children Thursday, Friday, and Saturday each week.

[4] On August 11, 2022, the mother filed an amended application and she requested: primary care of the children; permission to relocate with the children; and child support as of “July 2021.” The amended application followed a letter dated May 26, 2022, notifying the father of her intention to move to Calgary, Alberta with the children by August 2022. The mother offered to work out a parenting arrangement with the father in Calgary (if he moved there) – or in the alternative she suggested the children would visit with the father in Halifax, Nova Scotia upon reasonable request from him.

[5] The mother filed a letter from her new employer, Alberta Health Services (AHS), dated April 28, 2022, which did not clarify when the mother began working for that employer but indicated the mother had requested permission to “temporarily work remotely from Nova Scotia in her position as Ability Advisor for the period of May 16, 2022 – August 12, 2022. The letter from her employer indicated in part that the mother needed to be available to work in Alberta as of August 15, 2022, and that the mother’s work hours would be based on Mountain

Standard time (MST) and AHS reserved the right to end the temporary arrangement at any time.

[6] Before trial, the mother was seeking to have the father pay child support based on an income of \$45,000 attracting a monthly child support payment of \$654.00 per month. She was also seeking a retroactive child support award of \$11,844 from July 2021 onward, to be paid at \$493.50 per month over 2 years.

[7] The father is seeking an order requiring the children to remain in Halifax. He is prepared to care for the children primarily and facilitate the mother's parenting time in Calgary, Alberta. If the mother remains in Halifax, Nova Scotia, the father would be content with the parenting arrangement currently in place with the father having care of the children each Thursday through Sunday and to have the parties pay the "set-off" of any child support ordered.

[8] The father asked the court to answer the following questions:

1. Whether a relocation serves M and L's best interests?
2. What parenting arrangement is in the children's best interests, provided a relocation is not allowed and the applicant remains resident in Nova Scotia?
3. What amount of child support is owed to M and L?

Substantially involved parent

[9] The parties presented conflicting and sometimes inconsistent evidence regarding the parties' conflictual relationship and regarding the father's involvement with the children before and after the parties' separation. I have reviewed the evidence and I find the father was substantially involved with the children before and after the parties separated in or around July 2021. I find the relocation of the children, M born in September 2017 and L born in February 2020, with their mother and maternal grandparents from Halifax, Nova Scotia to Calgary Alberta, would have a significant impact on the children's relationship with their father.

Evidence

[10] The parties began a relationship in or around 2008. They experienced ongoing difficulties with conflict throughout their relationship. At one point the mother and or the father moved to Calgary, Alberta until the father secured a job with Bell Aliant in Halifax, Nova Scotia and he promised to provide for the mother financially. They moved in together in or around 2011 and they married in 2012.

[11] According to police records, in October 2012, the father reported an incident of domestic violence. He alleged the mother was throwing his personal belongings

out their apartment window. No charges were laid against the mother, but she was asked to leave their property. The parties reported they were considering separating, and the father reported they were both struggling with feelings of jealousy. They denied any physical altercation had taken place.

[12] On June 18, 2013, a further incident of domestic violence was reported to the police. The father claims he confronted the mother as she had been sending text messages to his sister (then 13/14 years old) complaining about him and he felt her behaviour was inappropriate. The mother denied she had sent any such texts and he attempted to gain control of her telephone to confront her with the text messages. They struggled, and he broke her telephone. He acknowledged his behaviour was not acceptable.

[13] The father tried to leave the parties' apartment and a third party, the property manager, advised police that he "heard women's voices yelling and screaming" and it appeared to him as though the women were attacking the father as he was trying to leave the building, and he was trying to protect himself and get away. Police observed the father to have fresh "scratches all over his body – neck, chest, back, arms". The police file reflects that the mother was subsequently arrested and charged. The officer noted that the mother had attempted to take the father's video games and then the father agreed the computer and the cat were hers to take.

[14] On that same date, on June 18, 2013, the mother reported historical domestic abuse by the father to the police. She stated that on June 16, 2012, she went out to meet her girlfriends, and the father disapproved of her clothing. She was upset by his remarks, and she arranged for him to pick her up rather than stay out. The father acknowledged making comments about the mother's shirt, but he denied ripping the shirt. He suggested "there was jealousy on both sides."

[15] The mother alleged that the parties then became engaged in a verbal dispute with the father stating that he wished her mother would die, and the mother stating she wished his mother would have a heart attack. She said the father then "rushed her" and they had argued and fought all night.

[16] She alleged that she would scream at him, and he would sit on her and at one point he put a pillow on her mouth. The mother reported that she could not leave as the door to the apartment was broken and her telephone battery was dead. She reported she did not tell anyone about the alleged incident. The father was subsequently arrested and charged with assault with a weapon – a pillow. Pictures were taken of the mother's bruises and scratches.

[17] In June 2013, the mother acknowledged to police that "she has anger issues" and the father wanted her to attend anger management, but she would only go if he

attended marriage counseling. Both parties were charged with domestic assault against the other. It appears the police initially considered dealing with the matter by way of peace bonds. The charges were dropped after the parties agreed to participate in counseling together. The parties moved to Alberta together in or around 2013 and reported they completed their counseling in Alberta.

[18] The parties resided in Calgary Alberta between 2013 and 2017. The mother claims she has had steady employment since she graduated from her program of study at university while the father has worked at various jobs – including with Toyota, Pitney-Bowes until he was laid off, RICO until he was laid off, and RGO until he was laid off. The mother has suggested, and the father has denied he was earning more than \$45,000.00 when they resided in Calgary, Alberta.

[19] In 2017, after the mother became pregnant, the parties agreed to move back to Halifax, Nova Scotia. The parties' first child, M, was born in September 2017. The mother reported she was diagnosed with a connective tissue disorder. The mother took an 18-month pregnancy leave.

[20] The father stated that upon returning to Halifax, Nova Scotia, it took him about a year to find a new job. He claimed he took time off work as the mother

was ill and he was getting used to having a newborn child. The mother countered, stating that he did not look for work and he did not help her, that her family did.

[21] On January 2, 2018, the father received a letter from his brother, Salah Nadim, President Savvy Techworx Ltd, indicating he was being offered a starting annual salary of \$60,000 on Feb 1, 2018. In September 2018, the father began work with web.com and he continued to work for web.com until September 2019, when he claims he was placed on stress / medical leave between September 2019 and November 2019. He says he went on medical leave due to his emotional reaction to “revelations about her (the mother’s) past” which he says precipitated his medical leave. As of September 6, 2019, the father received payment from Web.com Canada Inc. for the period up to September 1 – 6, 2019, earning a total gross income of \$59,860.00. The father’s total income for 2019 was \$70,900.00.

[22] The father claimed he was still off work when the parties second child was born in February 2020. The mother spoke generally about how she did not feel supported by the father, and she wanted him to be present for her and the children and / or help more. The father earned \$29,074 in 2020. He suggested that aside from when he was at work, he would only go out after the children were in bed, after 10:30pm, and he suggested he often spent time with his family and siblings.

The father's Notices of Assessment or Re-assessment indicate that in 2019 he earned \$70,900 and in 2020 he earned \$29,074.

[23] The mother suggested that at times the parties had resided with her mother and / or each resided with their family. The father has suggested but the mother denied that they did so hoping to save money to buy a home together.

[24] The mother alleged ongoing emotional, physical, financial, and sexual abuse by the father, her mother testified and suggested she had witnessed the father assault the mother. The father denied any abuse but he suggested there was increased conflict in or around December 2020 and April 2021. Around that time the mother's mother, who was a big support to the mother, travelled to Jordan. In addition, in March of 2021, the father began working long hours as a labourer for Finish First Installations. Despite the ongoing conflict, the parties chose to continue to reside together until July 2021.

[25] On July 2, 2021, the mother left the home the parties had resided in together. On July 3, 2021, she returned to the home with her sister to coordinate with the father as the mother wanted him to leave their home. There was a physical altercation between the parties, other family members became involved, and the police were also involved.

[26] The parties both sustained injuries, scratches, and bruises, and both were charged with assault. Both were subject to an order requiring them not to have any contact with the other except to facilitate parenting arrangements for the children.

[27] The mother's sister, Haneen Owda, stated she was present in July 2021, when the parties agreed that the father would move out of their apartment, he would have care of the children on weekends, he would also see the children when he could during the week, and he would pay the mother's rent (\$1,370) instead of paying child support. The parties indicated that the father kept the car he had purchased, and the mother took the SUV she had purchased. Neither party has filed a claim for division of property.

[28] The father has stated that he continued working long hours after the parties separated in July 2021, but his shifts began to "dry up" in September 2021. He was laid off at the end of September 2021 and on Employment Insurance until April 11, 2022, when he began working for Canada Drives, an online car dealership until November 2022 and then he was on Employment Insurance benefits between November 2022 and February 2023.

[29] Police records reflect that on September 5, 2021, the mother acknowledged to police that the father had paid her rent and "sometimes" he paid for some child-

care and for daycare. On November 23, 2021, the mother stated to police that the parties had been “sharing” the care of the children: that she had their children during the week, and the father had their children on weekends. The mother also stated to police that she was not concerned about the children’s safety when they were with their father.

Rent payments or other payments in lieu of child support

[30] The father paid **\$1,370** for rent in July and August 2021. In September 2021, in lieu of the agreed upon \$1,370, the father paid **\$370** toward the mother’s rent. He advised the mother that he could no longer pay her rent and asked the mother to change the parenting schedule to a 50/50 schedule, rather than the father having the children every weekend.

[31] The mother argued that she preferred to continue with their initial agreement, whereby the father cared for the children every weekend and he paid her rent of \$1,370 per month. The mother and father exchanged some very toxic text messages around that time and the father subsequently made the following payments toward the mother’s rent:

- In October 2021, the father paid **\$870** toward the mother’s rent;

- In November 2021, he paid **\$1,370**, but he advised the mother he could no longer cover child-care and he requested a 50 / 50 parenting arrangement;
- In December 2021, he paid approximately **\$200**;
- In January 2022, he paid **\$270**;
- In February 2022, he paid **\$396.80**;
- In March 2022, he paid **\$96.80**.

[32] The father has stated he paid a total of \$5,313.00 on rent. The father also claimed a portion of the auto insurance of \$120 per month that he paid until November 2022, also covered the mother's insurance for her vehicle. The evidence was not clear with respect to what amount of insurance payment was attributable to the mother's insurance on her car.

[33] The mother stated the father was refusing to remove his name from the lease on their apartment. However, the father claimed it was the mother who needed to provide their landlord with her banking information to have him removed from the lease.

[34] According to police records, on April 7, 2022, the Halifax Regional Police spoke with the father who stated he was supposed to take M swimming during her school's professional development day (PD day), but M's mother wasn't allowing M to go until the father paid her rent. He stated that the mother had indicated he could have M if he paid her \$400. The father suggested to police that the mother

had kicked him out of their apartment the previous year, and he reported he was no longer working.

[35] The police followed up with the mother on April 19, 2022. The mother explained to the police that the parties “consensually” text and call each other regarding the children, regarding the belongings in the apartment, regarding rent and they had also been discussing the issue of the mother potentially moving to Calgary, Alberta with the children.

[36] As noted previously (following the incident in July 2021) in October 2021, the parties had been ordered not to have contact with the other except with respect to access arrangements for the children. The parties’ contact with police in April 2022 raised a concern that the father may believe he could return to and stay in the apartment the mother had continued to reside in as his name was still on the lease.

[37] The police advised the father that his recognizance indicated he was required to reside at a particular address and if he wanted to return to the parties’ previous address, where the mother was residing, that he would need to go to provincial court to have his recognizance changed. I understand that subsequently the father’s name was removed from the lease for the apartment where the mother continued to reside.

[38] Upon review of the various claims (at times contradictory), which the parties have made at various times regarding the father's parenting time with the children,

I find the following:

1. According to police files, in July 2021, following the parties' altercation on or about July 3, 2021, the father had care of the children as early as July 6, 2021, when the mother attended at his location, notifying his mother in advance and retrieved the children from him for her own parenting time.
2. I find it is more likely than not that the father had care of the children up to 30% of the time in July 2021, August 2021, and perhaps in September 2021, when he stated he "continued to work long hours" and he "saw the children when he could."
3. By the end of September 2021 and thereafter, I find the father had care of the children most weekends, from Thursday to Sunday most times, and sometimes more frequently such as in November 2021, in February 2022, and in March 2022, (when he had care of the children more than 60% of the time) resulting in the father having overall care of the children about 40% of the time, between July 2021 and March 2022.

4. That on balance of probabilities, after March 2022, (except in September 2022 when the father was hospitalized for diverticulitis – gastro-intestinal illness) the father’s parenting schedule became more consistent, mostly Thursday through Sunday and the father had care of the children at least 40% of the time.
5. As of April 2022, and / or before, the mother was working 10 am – 6 pm each workday when the children were scheduled to be in her care. The children have been cared for by the maternal grandmother before and after school, and also at other times.

[39] The mother’s application was brought under the *Parenting and Support Act*.

The father quoted s. 18H of the *Parenting and Support Act*, RSNS 1989, c.160,

which was amended, SNS 2021, c 15. I find the applicable provision is 18H (1A)

c:

18H (1A) The burden of proof under subsection (1) is allocated as follows:

(a) where there is a court order or an agreement that provides that the child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(b) where there is a court order or an agreement that provides that the child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(c) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends **substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child;**

(d) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child;

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

(2) Subsection 18H (3) of Chapter 160 is repealed and the following subsection substituted:

(3) In deciding whether to authorize a relocation of a child, the court **shall not ask or permit a party** who opposes the relocation to ask whether the party who intends to relocate the child would relocate without the child or not relocate if the child's relocation is prohibited.

[40] When reviewing 18 H (3) including the time both the mother and the father were spending with the children, I note that the father's parenting time occurred mostly every weekend from September 2021 onward, but more consistently Thursday through Sunday since March 2022. Upon separation, the father lived with his mother and his sister, and his parenting time occurred mostly when he was off work on weekends and therefore when he has been able to focus on the children during his parenting time.

[41] Most recently, the mother's parenting time occurs on weekdays while she has been working 10:00 am to 6:00 pm. She lives independently with the children in an apartment, but the mother and children often stay with the maternal grandmother weekdays Monday to Wednesday after school / daycare. The

children go to their maternal grandmother's home until the mother is off work after 6:00 pm Mondays through Wednesdays and / or until their father is off work most Thursdays and Fridays.

[42] The father has been substantially involved with the children, and the parties have a substantially shared parenting arrangement with significant support from primarily the mother's parents but also some support from the father's family. The onus is on the mother to show that the relocation is in M's best interests and in L's best interests.

Proper notice

[43] On or about May 26, 2022, the mother gave notice to the father of her formal request to move to Calgary, Alberta. The mother's letter did not provide many particulars with respect to her plan and the cost of having the children travel back and forth from Calgary, Alberta to Halifax, Nova Scotia for the father's parenting time.

[44] The mother followed up with a letter to the father dated June 30, 2022, suggesting the father had failed to respond to her request to relocate. As noted above, the father had filed a formal response on May 27, 2022, stating he opposed the relocation.

[45] The mother suggested she had understood the father “may allow” a move but only “if she were to reunite with him.” She took the position that the father’s response was inappropriate and did not align with the children’s best interests.

[46] The mother has given sufficient notice in terms of advising the father sixty days before the planned move. However, she provided general information only with respect to her plan for the father’s proposed virtual or in person parenting time and she provided no calculations with respect to the costs associated with ensuring the father’s parenting time.

Reasons for the relocation

[47] In her letter dated May 26, 2022, the mother stated that her reasons for wanting to move from Halifax, Nova Scotia to Calgary, Alberta were twofold: because of the job offer she had received, moving her from an income of approximately \$46,463.00 in 2021 to an income of \$81,333.00; and because she believed the children required and they would have better access to better health care in Calgary, Alberta.

[48] Based on tax assessments and / or tax reassessments, the mother’s total income for child support in 2021 was \$46,463; in 2020 it was \$29,290; and in 2019 it was \$45,041. The mother’s pay slip from Alberta Health Services for the period

ending September 11, 2022 suggested Alberta Health Services was paying the mother approximately \$40 per hour, and her earnings as of that date were \$24,919.50.

[49] The father claimed the mother quit her job as a disability manager with Irving because she would have had to return to the workplace, and she preferred to work remotely. The mother's letter regarding her request to work temporarily from Nova Scotia did not provide information about the offer of employment with Alberta Health Services, so it's not entirely clear to me if she was hired for a term position, if she has a period of probation, or what her hours or days of work would be, except that they would be based on Mountain Time.

[50] The mother's evidence with respect to the children's access to health care was insufficient for me to find the children required health care which was only available in Alberta. The expert witnesses did not convince me the children were unable to obtain appropriate health care in Halifax, Nova Scotia. M was seen at the Pediatric Gastroenterology Clinic at the IWK on January 9, 2023, following a concern raised about acute pain in April 2022 and it was suspected that she was experiencing chronic underlying constipation. An action plan was developed to address constipation and a follow up was planned in six months time.

[51] There is no credible or reliable evidence that M or L have any special physical, emotional, social or educational needs that cannot be managed if they continue to reside in Halifax, Nova Scotia.

[52] Although the mother's evidence was replete with allegations of the father's ongoing emotional and financial abuse, that was not a reason the mother put forth for the request to move. In fact, when requesting authorization from the court to relocate, the mother stated that she would be happy to encourage the father's parenting time with the children if he also relocated to Alberta separately.

Effect of the relocation on the father's parenting time

[53] The impact of relocating to Calgary, Alberta with the mother on M's relationship with her father and L's relationship with her father and their relationships with extended family staying behind in the Maritimes would be drastic. Despite the mother suggesting she could visit Nova Scotia for up to three months at a time, she provided no details of how that would impact the children's education or how much time the children would spend with their father while they were in Nova Scotia. I would expect that in reality the visits would be fairly brief (possibly 2 weeks at a time) and most often months apart (December, March, July, and August).

Transportation options / Additional expenses resulting from the relocation

[54] Given the mother's proposed destination of Calgary, Alberta, flying is the only realistic transportation option for the father's parenting time if relocation is granted. The mother did not provide evidence about the cost of flying to facilitate the father's ongoing parenting time – a cost which would include the need for the children to be accompanied by an adult when they fly. In addition to the cost of air travel, if the father visited the children in Alberta, there would be additional costs for ground transportation, accommodations, meals, and any activities the father wanted to do with the children.

Best interest factors

[55] In determining what is in M and L's best interests, I look to the factors listed in subsection 18(6) of the *Parenting and Support Act*. The factors which are particularly relevant to M and L are:

- M and L's physical, emotional, social, and educational needs;
- Each parent's willingness to support M and L's relationship with other parent;
- The history of M and L's care;
- Each parent's plans for M and L's future;
- The nature, strength, and stability of the relationship between M and L and each parent;

- The nature, strength, and stability of the relationship between M and L and his extended family; and
- Each parent's ability to communicate and co-operate with the other.

[56] It appears the mother was not always entirely willing to support M and L's relationship with the father. At times she has suggested to the father that the children do not need him in their life for an equal amount of time, and / or his attempts to contact them by telephone has been disruptive.

[57] At times, the parents do not communicate well. As noted above, in her Parenting Statement, the mother spoke about being fine with a more flexible parenting schedule. However, in her evidence she provided pages of examples of when she was not fine with the father's parenting schedule being flexible. There appears to be a need for specific directions on timesharing and video or phone calls to ensure they happen in a scheduled and predictable manner.

[58] The mother's relocation to Calgary, Alberta with the children would require the parents to cooperate even more with respect to the children's schedules. The mother has suggested she and the father have had tremendous difficulty coordinating and cooperating with respect to pick up times and drop off times for the children while in the same time zone, and they would no longer be in the same time zone if she relocated to Alberta.

[59] Since the children were still very young, ages 5 and 3 at trial in the Spring of 2023, all telephone and computer contact would be dependent on an adult operating the technology. Coordinating flights for M and L would also require the parents to talk and cooperate. The parties' difficulties coordinating their schedules suggests the parties cannot cooperate to coordinate their schedules to ensure the father's parenting time will occur when the additional impediments of distance, technology, air travel, and disparate time zones are added to the mix.

[60] Through their father, M and L have time with other members of their paternal family. For the father and the mother (at time of trial), most of their family members (grandparents, aunts, uncles, cousins, and siblings) lived in the Halifax area.

[61] Throughout the work week, the children have spent their before and after school time monthly at their maternal grandparents' home, often with their cousins on their mother's side. On weekends, the children live with their father, their paternal grandmother, and their paternal aunt. They have often had contact with the father's other siblings and their children / cousins on their paternal side.

[62] The mother has at times minimized the importance of the children's relationship with their father and his family, however there is no credible evidence

to suggest both M and L do not have a “great relationship” with the father’s extended family. I am satisfied that the children’s relationships with their paternal family members are strong and important to them.

[63] The father has argued it is in the children’s best interests that their relationship with him and their relationship with his extended family not be drastically changed. The father has stated that if the mother moves to Calgary, Alberta without the children, he can provide for their primary care. I accept that he can. The mother has suggested that at times the father was unable to provide for the children’s basic needs.

[64] Upon review of the evidence, I find the father may have initially had difficulty ensuring he had all the necessary supplies for the children, but that was when the parties initially separated and following the father’s loss of employment in late September 2021. Upon review of the school records I note M did miss more school days after the parties separated but that the issue appeared to have improved significantly the following year.

[65] The mother has suggested that her mother and father, the children’s maternal grandparents, will move with her and with the children to Calgary, Alberta. In addition, she suggested her sister, whose children also go to her mother’s home for

after school care, may also move. The mother has stated that close family friends have already moved to Alberta. There is no reliable evidence about the quality of the children's relationship with the family friends who have already moved to Alberta.

[66] There is no evidence to suggest that M and L's relationship with either of their parents was anything other than strong and stable. However, the mother has suggested that relocating would provide the children with a better standard of living, better health care, and more opportunities. I can't make any judgments on Alberta's and Nova Scotia's health care systems or opportunities. There is insufficient evidence about these.

[67] When considering the mother's financial situation, comparing her situation in Alberta and Nova Scotia, and the mother's argument that the children would have a better standard of living in Alberta, it would be necessary to consider that the mother was suggesting spending up to 3 months at a time in Nova Scotia. It was unclear how many times per year. In addition, it would be necessary for the mother to have filed her most up to date income information with the court. It was unclear to me whether the mother was offering the father parenting time with the children for the entirety of the breaks every Christmas, March Break and for the

entire summer break, along with parenting time any other time that he can travel to Calgary, Alberta.

[68] The mother initially stated that if they came to an agreement before trial, she would be agreeable to the father's income for child support being found as \$45,000 and that he pay \$654 per month, but otherwise she was seeking to have the court impute a higher income. The mother has not provided evidence that she has considered the cost of travel and whether she and the father could equally finance flights with one parent accompanying the children on their flights.

[69] I am not convinced the mother would allow the father and the children to talk by phone and electronically "as much as they can." Rather over the past few years, the mother appeared to often allow the children to choose whether they wished to have contact with their father, and where they preferred to eat or sleep. This approach does not recognize the responsibility a parent has to foster the relationship with the other parent. I am concerned that previously, the mother had expressed frustration when the father wanted to contact the children while they were away on vacation, stating that they missed him too much and didn't understand why they could not see him, and she did not want to have to be bothered to facilitate the contact.

[70] If I accept the father's evidence that he is currently earning \$45,000, I would need to consider whether after paying child support and contributing to any other expenses the father would be able to afford parenting time with the children in Alberta.

[71] Since the parties separated in July 2021 the children's lives have been centered around extended family on both sides, including young cousins. In addition, there are some community connections including M having started school and L having attended daycare. Although there would be some continuity for the children if the mother's parents moved to Alberta with the mother and the children, on the other hand it is more likely than not that the father's and his entire family's relationships with the girls would be forever negatively impacted by their move to Calgary, Alberta.

[72] As noted previously, I found that the mother had the burden to prove the move was in the children's best interests. She has not satisfied that burden. If I am wrong, and the burden should have been the father's, I find that he has met the burden of proving that a move would not be in M's or in L's best interests. The children may not be moved to Calgary, Alberta or outside of the Halifax Regional Municipality or to any location which would negatively impact their father's parenting time with them.

Decision making

[73] Despite ongoing conflict, the parties have been able to register the children for school and for daycare, the father has been able to cooperate with the mother and the maternal grandmother to allow the children to attend the maternal grandmother's home after school. Both parents have supported the children as necessary to meet their health care needs.

[74] The parties will continue to make decisions jointly. In the event of a disagreement, they will defer to the advice of a third-party service provider if appropriate.

How should I adjust the children's parenting arrangement?

[75] The parents' ongoing conflict does warrant clarification of the children's parenting time with their father. Greater certainty and clarity will reduce conflict.

Based on the evidence, I order as follows:

[76] Unless the mother chooses to move to Calgary, Alberta without the children, in which case the father shall have primary care of the children and the mother's parenting time in Calgary, Alberta and Nova Scotia shall be determined by this

court only after the financial implications are considered by both parties. Further submissions would need to be filed with the court.

[77] If the mother will be remaining in the Halifax Regional Municipality, then starting January 22, 2024, the children will continue with the schedule which has been in place for an extended period, with the father having care of the children each Thursday at 6pm until Sunday at 6pm, or as otherwise agreed in writing by both parties. For clarity's sake, and to maintain consistency for the children, the father's second week shall not include the extra Monday as requested by him.

Parenting time on long weekends

[78] Neither party presented evidence on the topic of special holidays. If the mother or the father wish to be heard on the issue of holidays including but not limited to Heritage Day, Easter, Victoria Day, Summer holidays generally, Canada Day, Natal Day, Thanksgiving Day, Remembrance Day, and / or Christmas or other holidays, I am prepared to review their requests. However, I would encourage the parties to negotiate in good faith before coming back to court.

Child Support

[79] As noted above, based on her letter of June 30, 2022, the mother suggested that if the matter was resolved by agreement, she would seek to have the father pay the table amount of child support based on an income of \$45,000 or \$654 per month and have him pay a retroactive amount of child support of \$11,844 for the period between July 2021 and December 2022. I have copied the table she provided:

	2021	2022
January	N/A	658
February	N/A	658
March	N/A	658
April	N/A	658
May	N/A	658
June	N/A	658
July	658	658
August	658	658
September	658	658
October	658	658
November	658	658
December	658	658
Total	3948	7896
Grand total		11844

[80] However, the mother stated that if the matter proceeded to trial, she would seek to have the court impute income to the father closer to his income of \$135,000, which the father reportedly earned while he was working with Bell Aliant back in or around 2011 – 2013. I am not prepared to impute an income of higher than \$45,000 to the father.

[81] According to the evidence on file, the father did make contributions to the mother's rent in lieu of child support, as depicted in the following chart and as acknowledged by the mother:

	2021	2022
January	N/A (parties were living together)	658 (the father paid rent of 270)
February	N/A (parties were living together)	658 (the father paid rent of 396.80)
March	N/A (parties were living together)	658 (the father paid rent of \$96.80)
April	N/A (parties were living together)	658 (the father claims shared care)
May	N/A (parties were living together)	658 (the father claims shared care)
June	N/A (parties were living together)	658 (the father claims shared care)
July	658 (the father paid rent of 1370)	658 (the father claims shared care)
August	658 (the father paid rent of 1370)	658 (the father claims shared care)
September	658 (the father paid rent of 370)	658 (the father claims shared care)
October	658 (the father paid rent of 870)	658 (the father claims shared care)
November	658 (the father paid rent of 1370)	658 (the father claims shared care)
December	658 (the father paid rent of \$200)	658 (the father claims shared care)

Total	3948 – 5,550.00	7896 – 763.60 and he claims shey had a shared care arrangement.
Grand total		

I find that between September 2021 and December 2022 the parties had a shared parenting arrangement and section 9 of the *Guidelines* applies. Neither party has provided full financial disclosure of their T1 Tax and Benefit returns for 2021 or 2022. They must do so within 1 month of receiving this decision after which I will consider whether any child support is owing.

Child Support

[82] I accept that the mother has paid for most of the children's expenses since the parties' separation. I have found the parties had a shared parenting relationship between September 2021 and trial. I will require the parties income information for 2023 before I am able to determine if child support is owed after December 2022.

Conclusion

[83] The father's counsel shall draft the Order arising from this decision. If the parties wish to be heard on costs, the mother must file her submissions within one month and the father withing six weeks.

Cindy G. Cormier, J.