

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *Kehoe v. Patrick*, 2024 NSSC 171

Date: 20240614

Docket: SFHPSA 127848

Registry: Halifax

Between:

Sarah M.R. Kehoe

Applicant

and

Phillip J. Patrick

Respondent

Judge: Justice Lawrence I. O’Neil

Heard: March 25 and 27, 2024 and April 11, 2024, in Halifax, Nova Scotia

Counsel: Courtney Losier, Counsel for Sarah Kehoe
Peter Crowther, Counsel for Phillip Patrick

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Introduction

[1] The parties began a common-law relationship in 2018 and separated in 2022. They disagree on whether they separated in July or October of 2022. They are the parents of two (2) girls born in 2020 and in 2022. At the time of separation, the children were infants.

[2] The current parenting arrangement for these two (2) children is governed by an interim order which flowed from a settlement conference held on April 6, 2023. That interim without prejudice order provides *inter alia*:

Parenting Time

1. Sarah shall have primary care and residence of the children.
2. Phillip shall have parenting time with the children on the following scheduled:
 - (a) With A., commencing April 14, 2023, every second weekend from Friday after daycare until Sunday at 4:00 p.m. where he will drop A. off at Sarah's parent's house. If daycare is closed on Friday, Phillip shall pick A. up at Sarah's parents' house at 5:00 p.m.
 - (b) With A., every Wednesday from after daycare until Thursday morning at daycare. If daycare is closed, Phillip shall pick up Allison at Sarah's parent's house on Wednesday at 5:00 p.m. and return her on Thursday at 9:00 a.m. to Sarah's parent's house.
 - (c) With H., every second weekend on Saturday from 10:00 am. To 4:00 p.m. and Sunday from 10:00 a.m. to 4:00 p.m. This shall occur at the same time as Phillip's parenting weekend with Allison. All drop-offs and pick-ups shall occur at Sarah's parents' house.
3. When Phillip obtains suitable accommodations, his parenting time with H. shall occur on the same schedule as his parenting time with A.
4. Phillip will be solely responsible for parenting exchanges.
5. The parties shall communicate via "Our Family Wizard" software, on issues strictly related to the parenting of the children. The costs of obtaining such software shall be shared.

[3] The Applicant (mother) now seeks to have the foregoing parenting principles made final. The Respondent (father) seeks a shared parenting arrangement.

[4] At the conclusion of his oral evidence, Mr. Patrick explained that shared parenting is understood by him to be an equal decision-making role to that of Ms. Kehoe and I infer from all of his evidence that it also means the children having an

equal amount of parenting time with each parent.

[5] Mr. Patrick resides in the Lower Sackville region and Ms. Kehoe lives on the Halifax peninsula.

[6] Ms. Kehoe is employed by the IWK hospital in a research role. Mr. Patrick is an accountant employed by the Canada Revenue Agency.

Issues

[7] The parties disagree on the go forward allocation of parenting time and decision-making authority relevant to their two (2) children. They have asked the Court to decide these two issues and further, that separate submissions be made to address the sharing of expenses related to the children and the child support implications that flow from the parenting arrangement decided upon by the Court. The Court agreed to proceed as requested.

Discussion

[8] The Court heard from Ms. Kehoe's mother Susan Rouse-Kehoe.

[9] She impressed the Court as a loving, caring and supportive mother and grandmother. She has been helpful to the parties and the children.

[10] She and her husband, the maternal grandfather, are very involved with the children. At paragraphs 9 and 10 of her affidavit Ms. Rouse-Kehoe detailed their involvement in the children's lives and the children's involvement in her life and that of her husband.

9. On average, I see the children approximately 2 to 3 times per week. We have scheduled family dinner every Sunday evening and all family birthdays are celebrated together. On Tuesdays, John and I pick the girls up from daycare and bring them to our house for dinner. The kids have come accustomed to these routines and traditions and enjoy themselves.
10. John and I are almost always available to support Sarah and the children. We help with pick up and drop off of the children at daycare, and take them to appointments such as the dentist, if required. I have also attended some of the children's appointments with Sarah, such as for Hannah's Covid vaccination on September 12, 2023.

[11] The children and the parties are fortunate to have these grandparents in their lives.

[12] Ms. Rouse-Kehoe is closely aligned with her daughter's legal position and appears to lack perspective when assessing the merits of the parties' respective positions in this litigation and within the parties' relationship both before and after separation.

[13] For example, at paragraph 28 of exhibit 4 of her affidavit evidence she wrote:

I had to ask John to be present for all exchanges because of Phil's unstable behaviour. I can never predict what kind of reaction Phil will have, or what kind of mood he will be in. He usually appears to be in an agitated mood and does not speak to me or make eye contact with me. He is often inconsistent with timing, either arriving very early, or late. He is rarely on time for pick-up or drop off.

[14] On cross-examination she confirmed that being fewer than ten minutes early or late was a problem for her, notwithstanding, I am satisfied such would be inconsequential for her.

[15] Mr. Patrick addressed this accusation in his evidence. He maintained records in light of this accusation. I am satisfied his records establish he was reliable and consistent in picking up and dropping off the children subject to a reasonable variation measured in fewer than ten minutes. When he was not precisely on time, he would be off target by several minutes that is he would be 'early' or 'late'.

[16] In her affidavit at paragraph 36 under the heading conclusion, Ms. Rouse-Kehoe attributes poor behaviour exhibited by the children as a product of their being with their father the Friday and Saturday before:

36. I can see the difference in the children from when Phil has them and when Sarah does. For example, on Sundays, after the children are returned by Phil, they are disobedient, hitting, lack manners, and are very tired. They lack emotional regulation after spending time with their father.

[17] The Applicant, her daughter, also comments on the children's behaviour in her affidavit (exhibit 2) at paragraphs 153-154:

153. A. struggled after the separation, but has been doing much better with a consistent routine. She was misbehaving at daycare and hitting other children. I was concerned

that this behaviour was a result of the violence she had witnessed in our home prior to separation. Over the last few months, she has become 'less aggressive' and has reduced her hitting, biting and pushing at daycare.

154. A. continues to struggle with being separated from me, which we are working on.

[18] Ms. Rouse-Kehoe's evidence paints Mr. Patrick as aggressive, prone to confrontation, somewhat disengaged as a parent, demonstrating unstable behaviour, communicating by yelling and often threatening to call the police.

[19] A significant part of the evidence of both Ms. Rouse-Kehoe and the Applicant, Sarah Kehoe, is offered to establish that Mr. Patrick has an anger management problem or had one; that he is violent and is a person who should be feared. In the context of his relationship with his children, by extension, his contact time with the children should not be in a shared parenting arrangement with the Applicant.

[20] The various allegations, factual assertions and evidence will be discussed in greater detail in the following.

[21] The parties describe aspects of their relationship while they were still together as a couple in contrasting terms.

[22] Mr. Patrick describes Ms. Kehoe as controlling of him during their relationship. He says she ridiculed him and hurt his self-esteem. He says he was a very involved parent while they lived together. He says he cared for the children in their infancy.

[23] He agrees that for many months 'during COVID' he was working at home, but he took breaks and did domestic chores and provided care of the children. He said his job permitted that flexibility.

[24] Ms. Kehoe, in contrast, says he was not involved as a parent during this period. She says he frequently mistreated her with his words and attitude. She describes him as having an anger management issue during this period.

[25] It is difficult to conclude what the details of the party's day-to-day dynamic were when they were a couple and why. What is clear is that it was an unhealthy relationship, and both are in a 'better place' having separated.

[26] The parties' dynamic as a cohabiting couple cannot be assumed to be the

template for their post separation relationship, given neither has a history of violence outside their cohabitation with each other. However, the court must consider it when determining the parenting plan that is in the children's best interests.

[27] For the reasons that follow, I am satisfied their complaints about the other were situational. They live independently of the other and have demonstrated they are now capable of interacting with one another in a safe and respectful manner.

[28] The evidence establishes that since Mr. Patrick established his own residence in August 2023, first in an apartment and later in a house, the parenting schedule has been followed in a relatively uneventful manner.

[29] Notwithstanding concerns expressed about the other parent's behaviour while the parties were together, each is asking the Court to order a very significant parenting role for the other.

[30] For example, Mr. Patrick advocates for equal parenting time and an equal role in decision making relevant to the children.

[31] Ms. Kehoe supports a parenting plan that would have the children with Mr. Patrick every Wednesday overnight and every other weekend from Friday to Monday morning. Note that in summation, counsel for Ms. Kehoe proposed weekend parenting time for Mr. Patrick be expanded to include overnight Sunday following his weekend. The initial proposal was that the children be returned Sunday.

[32] After having reviewed all of the filed evidence and benefited from the *viva voce* evidence of the parties, I conclude Mr. Patrick is generally rigid in his approaches to tasks and sets a high standard for himself and those around him.

[33] I am satisfied he has difficulty with defusing situations of interpersonal conflict. In my view, his tendency to involve police when in a dispute with a neighbour or a 'lady in a parking lot' are evidence of this pattern.

[34] When viewed in isolation, many of the incidents, although described negatively by Ms. Kehoe, may depict reasonable and appropriate responses by Mr. Kehoe, the frequency of interactions of this kind for Mr. Patrick is reflective of poor interpersonal skills on the part of Mr. Patrick.

[35] The Court is satisfied that Mr. Patrick is credible.

[36] He took responsibility for his poor judgment when appropriate. He did not minimize his failings.

[37] I accept that he was an involved parent while the couple were together and remains involved. He was not an observer when it came to meeting the domestic duties in the home he shared with Ms. Kehoe whether that was childcaring or household chores.

[38] I also accept that Ms. Kehoe is a loving and caring parent. Clearly, while she was on parental leave and Mr. Patrick was working from home, she did significantly more to care for the children. One would expect a stay-at-home parent to be more involved when the other parent is “working”.

[39] It is clear from the evidence that Ms. Kehoe is close to her parents, and they are very involved in her life and had been involved in this couple’s life.

[40] I am satisfied, as the parties’ relationship deteriorated so did their trust of each other. This is not surprising.

[41] Mr. Patrick says he owned a home in Lower Sackville when they were dating. He says he sold it at the insistence of Ms. Kehoe because she did not want to live in Lower Sackville, a community he says she described as of a lower socio-economic demographic. Mr. Patrick sold the home and the parties moved into an apartment in the city. They later purchased a home near her parents.

[42] He says when the ‘new home’ was renovated, the changes Ms. Kehoe wanted were done but his priorities were not met. He considered not moving into the home as a consequence but nevertheless did.

[43] Mr. Patrick offers the foregoing as an example of how he was controlled, and of his needs being neglected in the relationship. He says his self-esteem suffered as a consequence of his relationship with Ms. Kehoe.

[44] I must assess the evidence of behaviour of Mr. Patrick that has generally been described as evidence of family violence. Given the description encompasses a wide range of situations and can be particularly emotive, it is necessary to examine the factual basis for assertions of this nature. Having said

that, any evidence of ‘family violence, abuse or intimidation’ is always concerning,

[45] It is necessary to assess the behaviour complained about and the contrasting interpretations of this behaviour and the related events complained about.

- **The Assault and Breach Charge**

[46] On or about October 27, 2022 the Applicant called the Justice of the Peace Centre and requested an emergency protection order. The order was granted and directed that Mr. Patrick leave the home and not have contact with Ms. Kehoe. The hearing before the Justice of the Peace was *ex-parte*, meaning Mr. Patrick did not participate and did not have an opportunity to respond to Ms. Kehoe’s allegations. Mr. Patrick testified before me that Ms. Kehoe misrepresented the facts to the Justice of the Peace.

[47] On November 9, 2022, the *ex-parte* order was reviewed by a Justice of the Supreme Court. Both parties participated in a hearing before a Supreme Court Justice. The Justice vacated the order. Mr. Patrick returned to the home on a part-time basis. On November 10, 2022 Ms. Kehoe filed the subject application, which initiated these proceedings and which application she signed on November 9, 2022.

[48] The evidence establishes that a short time later on or about November 19, 2022 the parties engaged in what Mr. Patrick described as a tug of war over bedding for the bed in the master bedroom. He says Ms. Kehoe was approaching him. He says he raised his hands to stop her, and she fell. He says he then left the room. These events or some version of them resulted in Mr. Patrick being charged with assault.

[49] He says he was to sleep in the master bedroom for the first time in a long period after sleeping in the basement. He says it was contemplated the Applicant would vacate the room. This is agreed upon by the parties.

[50] Ms. Kehoe says he grabbed her in the course of these events. The police were subsequently informed. Mr. Patrick was charged with assaulting Ms. Kehoe and was placed on a condition limiting his contact with Ms. Kehoe and requiring him to leave the home.

[51] On a later date , on or about January 21, 2023 Mr. Patrick says he was having difficulty contacting Ms. Kehoe through a third party to effect an exchange of the children so he says in contravention of his undertaking, he contacted her to confirm the arrangements. This resulted in his being charged with a breach of his undertaking not to contact her.

[52] Ms. Kehoe says he repeatedly called her in his efforts to reach her and this is why he was charged. I infer this is why she complained to the police about the calls.

[53] The evidence establishes that during the term of the undertaking, the parties had earlier each initiated contact with the other to arrange or to confirm parenting arrangements.

[54] In response to the criminal charges and his appreciation of the seriousness of the charges, his desire for self-improvement and presumably for the consequences of a criminal record, should that be an outcome of proceedings in criminal court Mr. Patrick participated in the Domestic Violence Court program. It was agreed by the parties in summation that a crown referral to this Court is required and was granted and judged appropriate.

[55] Mr. Patrick accepts his response in both situations that gave rise to the charges was inappropriate.

[56] Absolute discharges were eventually granted to Mr. Patrick after entering a plea of guilty to both charges.

[57] Mr. Patrick participated in counselling and continues to do so on a voluntary basis. Mr. Dube, his current counsellor testified.

[58] Mr. James Dube is an expert in the field of domestic violence counselling, capable of giving opinion evidence on the subject of family violence. He has extensive related experience.

[59] Mr. Dube's treatment report appears in exhibit 14 at tab 2. He concluded:

Again, our intervention as a system must be proportionate to the risks involved. This situation requires little in the way of state intervention to protect the children or either partner. The risks to the children are further reduced by the fact that the parents have no plans to reconcile and are limiting contact between them. Currently, the parents

communicate through a co-parenting software application and exchange the children through a third party unless they agree on an alternative arrangement. These practices can continue without much harm being done to anyone involved.

[60] On cross-examination Mr. Patrick was asked about the interactions between the parties which resulted in Mr. Patrick calling the police to complain about others or others calling the police to complain about Mr. Patrick.

[61] Mr. Patrick agreed he called the police after his car was bumped by another vehicle in the parking lot of a retail business. He says as a precaution, he took a photo of the plate of the other vehicle. In his view, the other driver became upset when he did this, and that reaction motivated Mr. Patrick to call the police. The other motorist apparently called the police as well.

[62] There is no evidence of anything further resulting from the calls.

[63] Mr. Patrick was asked to explain why a neighbour called the police 'about him'.

[64] He said a basketball originating from the neighbour's property was repeatedly hitting his house and Ms. Kehoe asked him to communicate with the neighbour to have it stop. He says he did.

[65] Another call involved a contractor and had its origin in the fact the contractor, working on an adjacent site, was carelessly piling construction material against Mr. Patrick and Ms. Kehoe's home. Mr. Patrick's response included his calling the police to address the situation.

[66] Mr. Patrick was described by Ms. Kehoe as having cut his hand when angry and having broken a glass door when in an argument with his father.

[67] Mr. Patrick explained that his father suffered a stroke, that his father's mental capacity had been impaired as a result and that managing his father's behaviour had become challenging.

[68] Mr. Patrick described that on the occasion in question, he was attempting to transport his father to a doctor's appointment. He said his father resisted as they left his father's residence. The glass in the door broke as a result of Mr. Patrick's father's resistance. He says there was no anger or aggression on his part, although clearly his father's behaviour had become unpredictable.

[69] Ms. Kehoe agreed she was not present and had no personal knowledge of what actually occurred.

[70] Mr. Patrick accepted responsibility for his conduct on another occasion. He agreed he acted inappropriately when he placed some of the Applicant's clothing in the bathtub with the intention of soaking the clothing.

[71] I accept Mr. Patrick's evidence offered in response to questions posed and relating to the various allegations.

[72] I am satisfied Mr. Patrick was credible and reliable when addressing these situations. He did not minimize his errors in judgment and behaviour.

[73] I am also satisfied that Ms. Kehoe wanted Mr. Patrick out of the home, and this impacted her response to him and her interpretation of events in the relationship. The presence of both parties in this emotionally charged situation was unhealthy for everyone.

- **Parenting Plans to Consider**

[74] The parties' interim consent order on parenting issued May 25, 2023 following a settlement conference on April 6, 2023. A separate consent order resolving ownership of property and responsibility for family debts also flowed from that settlement conference. The Court had earlier issued a consent order providing for both parties to have direct access to third party service providers including teachers, doctors, dentists, healthcare professionals, childcare providers and coaches.

[75] Ms. Kehoe was granted primary care and residence of the children under the interim parenting order. The order also provided that Mr. Patrick would be responsible for parenting exchanges and the parties would communicate with one another via "Our Family Wizard".

[76] The interim order contemplated changes to the parenting arrangement when Mr. Patrick obtained 'suitable accommodations'.

[77] As stated, Ms. Kehoe wants her primary care and residence of the children confirmed in the final parenting order and Mr. Patrick wants shared parenting.

[78] The interim order does not structure a decision-making process relevant to the children's care.

[79] Ms. Kehoe suggests that Mr. Patrick's personality causes her a level of discomfort and concern. She says equally sharing parenting time is unworkable. She says that equally sharing decision making responsibilities relevant to the children is also unworkable. However, she nevertheless proposes significant parenting time for Mr. Patrick and proposes that the parties be subject to an obligation to consult one another about issues affecting the children.

[80] Clearly, Mr. Patrick disagrees with the suggestion that his parenting time and decision-making role should be less than that of Ms. Kehoe. He says they have been working together in an appropriate way for many months.

- **Family Violence Defined**

[81] The *Parenting and Support Act* ('PSA'), R.S.N.S. RSNS 1989, c 160, the *Divorce Act*, RSC 1985, c 3 (2nd Supp) and the *Children and Family Services Act*, SNS 1990, c 5 (the so-called child protection legislation) all contain recently revised and expanded definitions of 'family violence'. A reference to 'family violence' in this decision is meant to include "abuse and intimidation".

[82] These recent legislative amendments reflect society's increased awareness of the detrimental impact of direct and indirect exposure to a wide spectrum of behaviour on the current and long-term health and well-being of children and parents. As a consequence, courts must carefully weigh evidence to determine the presence of this behaviour within the context of the family.

[83] The decisions of Justice Forgeron in *N.K. v. R.E.*, 2021 NSSC 13 and Associate Chief Justice Jesudason in *Pennell v. Larkin*, 2022 NSSC 233 contain discussions of the integration of a Court's assessment of the risk of domestic violence into the structuring of a parenting arrangement consistent with the best interests of children. The Supreme Court of Canada in *Barendregt v. Grebliunas*, 2022 SCC 22 provides Courts with helpful guidance on the consideration of evidence of family violence on the assessment of the best interests of children. I have considered these decisions.

[84] In *Barendregt v. Grebliunas*, 2022 SCC 22 the Supreme Court cautioned:

[142] Since Gordon, courts have increasingly recognized that any family violence or

abuse may affect a child's welfare and should be considered in relocation decisions: see *Prokopchuk v. Borowski*, 2010 ONSC 3833, 88 R.F.L. (6th) 140; *Lawless v. Lawless*, 2003 ABQB 800, at para. 12 (CanLII); *Cameron v. Cameron*, 2003 MBQB 149, 41 R.F.L. (5th) 30; *Abbott-Ewen v. Ewen*, 2010 ONSC 2121, 86 R.F.L. (6th) 428; *N.D.L. v. M.S.L.*, 2010 NSSC 68, 289 N.S.R. (2d) 8, at paras. 22-23 and 35; *E.S.M. v. J.B.B.*, 2012 NSCA 80, 319 N.S.R. (2d) 232, at paras. 55-57. Courts have been significantly more likely to allow relocation applications where there was a finding of abuse: Department of Justice, *A Study of Post-Separation/Divorce Parental Relocation* (2014), at ch. 3.3.4.

[143] The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 I.J.C.Y.F.S. 493, at p. 497.

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[146] The recent amendments to the *Divorce Act* recognize that findings of family violence are a critical consideration in the best interests analysis: s. 16(3)(j) and (4). The *Divorce Act* broadly defines family violence in s. 2(1) to include any violent or threatening conduct, ranging from physical abuse to psychological and financial abuse. Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child.

[85] It is also necessary for trial Judges to not over-emphasize historical shortcomings and fail to compare and balance the advantages and disadvantages of competing parenting scenarios before it (*Weagle v. Kendall*, 2023 NSSC 47 at para. 60). As further observed in *Barendregt*:

[97] But, even with a wealth of jurisprudence as guidance, determining what is "best" for a child is never an easy task. The inquiry is "highly contextual" because of the "multitude of factors that may impinge on the child's best interest": *Canadian Foundation for Children, Youth and the Law*, at para. 11; *Gordon*, at para. 20.

[86] This is a 'PSA' proceeding. Section 2 (da) of the PSA defines concerning behaviour in the family broadly:

(da) "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;

- **Best Interests: Circumstances to Consider**

[87] Section 18 of the PSA directs the Court to give paramount consideration to the best interests of children after considering the impact of any family violence, abuse or intimidation and the following circumstances *inter alia* when making a parenting order:

Section 18

(5) In any proceeding under this Act concerning decision-making responsibility, 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.

(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including

- (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 or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

- (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, including the child's Aboriginal upbringing and heritage, if applicable;
- (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 or guardian;
- (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, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;
- (ia) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child; and
- (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.

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(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.

(8) In making an order concerning decision-making responsibility, 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).

- Shared Parenting Defined

[88] The Federal Child Support Guidelines, SOR/970175, hereafter referred to as the Guidelines at s.9 provide that where each parent exercises not less than 40% of parenting time with a child over the course of a year, the parents have shared parenting. A parent is defined as having a ‘majority of parenting time’ when a parent exercises more than 60% of parenting time over the course of a year (s.2(1) of the Guidelines).

[89] The concept of shared parenting in the Guidelines relates to the allocation of parenting time, not the allocation of decision-making responsibility.

[90] As stated, the parenting plan proposed by Ms. Kehoe clearly provides that she would have more than 60% of the parenting time available with the children.

[91] The current interim order requires transitions for the children Wednesday and Thursdays of each week and every second weekend on Friday and Sunday. Each Wednesday they are picked up after school by Mr. Patrick and each Thursday they are dropped at school by him.

[92] On alternate weekends, the schedule provided that they be picked up after school and returned to their mother by 4:00 p.m. on Sunday.

[93] The evidence is that these exchanges have been successful and smooth since August 2023 when Mr. Patrick obtained his own home and his living arrangement stabilized. Following separation, Ms. Kehoe remained in the home and Mr. Patrick had limited financial flexibility to purchase a home.

[94] Ms. Kehoe proposes that other exchanges will occur on special occasions such as Christmas, Easter and for the school winter break. In addition, she proposes some block parenting time for each parent over the summer, i.e., two non-consecutive weeks of uninterrupted parenting time over the summer.

[95] An examination of her proposal confirms the number of exchanges required to give effect to this proposal is no more than would be necessary for some common shared parenting arrangements which provide for alternating and uninterrupted weeks of parenting by each parent.

[96] Often in cases where one parent seeks shared parenting and the other opposes the same, the opposing party will claim that because the parties do not communicate well, shared parenting should not be ordered.

[97] Implicit in this position is that less parenting time for the 'other' parent by definition results in the need for less contact and less communication between the parents. Respectfully, this conclusion does not always follow.

[98] The need for increased contact and communication between parents is often conflated with the sharing of parenting time with the result that shared parenting is often viewed as necessitating more contact between the parents than if one parent had more than 60% of the parenting time.

[99] The conflating of the two often results in a structured parenting plan that is not shared but nevertheless, requires no less contact between the parents as would a shared parenting plan.

[100] That conclusion more logically flows from a shared decision-making regime which requires parents to consult one another about issues such as education, health care, scheduling the children's medical appointments and school related matters. However, shared parenting, i.e., the existence of shared parenting does not necessarily give rise to the same obligation on each parent to communicate with the other. It does not follow that shared parenting necessarily requires parents to have a higher level of cooperation than would be required if one parent had 60% or more of the parenting time.

[101] Although Ms. Kehoe suggests Mr. Patrick is a deficient parent, she supports his having significant parenting time over the course of the year. The template schedule she proposes would have the children with Mr. Patrick for (5) overnights in a fourteen (14) day period. That is three (3) overnights every second weekend

and each Wednesday overnight. This represents approximately 1/3 or more of available overnights. In addition, she proposes that major holiday periods such as Christmas, Easter and school breaks would be equally shared. Over the summer, she proposes that each parent have two (2) one week block periods of parenting time.

[102] Shared parenting time may result in a very different approach to determining the child support obligations of parents. I am satisfied both parties fully understand the potential financial consequences of shared parenting being ordered or not. The presumptive rule for determining the amount of child support payable by a parent not in a shared parenting arrangement and who does not have 40% of the parenting time is governed by Section 3 of the Guidelines:

Presumptive rule

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

[103] Section 9 of the Guidelines provides that when there is shared parenting time, the quantum of child support must be determined by taking into account the following:

Shared parenting time

9. If each spouse exercises not less than 40% of parenting time with a child over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared parenting time arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[104] Neither party suggests they should have sole custody. They recognize they should have joint custody of their child.

[105] The parties agree it is in the best interests of the children that the children have significant time with each parent.

[106] In *Gibney v. Conohan*, 2011 NSSC 268, I had occasion to review a range of criteria that may assist the Court to determine whether parenting time of 40% or more to each parent is in the best interests of the children. Those criteria remain relevant. For ease of reference, I repeat that discussion:

[88] Notwithstanding complaints the parents herein have about each other's parenting choices from time-to-time, they agree that the other is capable of parenting their children to a level within the range of appropriate parenting.

[89] Shared custody is defined by the Federal Child Support Guidelines at [s. 9 SOR / 97-175](#) as amended and by [s. 9](#) of the [Nova Scotia Child Maintenance Guidelines, N.S. Reg. 53/98](#) as amended. It is defined by the amount of time a spouse/parent exercises a right of access to, or has physical custody of a child. When that reaches forty percent a shared custody situation exists. The arrangement implies a greater role for the parents in the management of the child (ren) and may impact on the child support obligations of the parents. The leading case on the latter issues is *Contino v. Leonelli-Contino*, [2005 SCC 63 \(CanLII\)](#), [2005] S.C.J. No. 65; 2005 SCC 63. Although the word custody denotes decision making authority there is no statutory direction on how decision-making authority associated with shared custody (parenting) is to be allocated.

[90] The '[Act](#)' at s. 18(4) directs that "the father and mother of a child are joint guardians..of the child" unless otherwise ordered. A wide range of descriptions of the decision-making authority are possible in a shared parenting arrangement. All decisions need not result from an agreement reached by the parties. Day to day decisions affecting a child are typically made by the parent exercising "access to, or having physical custody " of the child. Other decisions require a consensus to be effective but this is not always the case. The current state of the law is that in most cases, regardless of the parenting arrangement, joint custody is ordered. Most parents accept the obligation and need to consult each other and to keep each other informed on all issues affecting their child(ren).

[91] Jurisprudence on the issue of whether shared parenting should be ordered is very fact specific. I agree with the comments of Justice Wright in *Hackett v. Hackett* [2009] N.S.J. 178, at paragraph 13:

13. It is all well and good to look at other cases to see how these principles have been applied, but the outcome in other cases is really of little guidance. Every case must be decided on a fact specific basis and nowhere is this to be more emphasized than in custody/access/parenting plan cases. To state the obvious, no two-family situations are ever the same.

[92] Within the assessment of the best interests of a child when shared parenting is proposed a number of factors frequently prove important. These factors are refinements to the best interests analysis discussed earlier. The factors are the following:

1. The proximity of the two proposed homes to each other is an important factor to consider. This is relevant to assessing how shared parenting will impact on all aspects of a child's life, including what school the child will attend, what recreational or social relationships will be disrupted or preserved and how available each parent will be to the other should shared parenting be ordered;
2. The availability of each parent to the child on a daily basis and the availability of stepparents is an important consideration. A court should also consider the availability of members of the respective extended families and whether a shared parenting arrangement impacts negatively or positively on a child's relationship with the extended family;
3. The motivation and capability of each parent to realize their parenting opportunity for the best interests of the child. If a parent is not truly motivated to use the parenting opportunity to enhance the child's relationship with him/her, that weighs against shared parenting;
4. Whether a reduction in transitions between households can be achieved by a shared parenting arrangement. This is particularly important when transitions frequently give rise to conflict between the parents;
5. Whether "mid-week" parenting time or contact with the other parent can be structured without disrupting the child. This contact might be after school or after supper time, for example, the objective being the elimination of extended periods without contact between the child (ren) and a parent and it is an opportunity for a child to share life's experiences with both parents in a timely way. The easier and less disruptive "mid-week" access is to arrange, the more attractive shared parenting becomes;
6. The opportunity, if any, that shared parenting provides for each parent to be involved in decisions pertaining to the health, educational and recreational needs of the child; the level of interest each parent has in participating in decision making in these areas is relevant to this assessment. As the opportunity increases so does the case for shared parenting;
7. The extent to which shared parenting enhances the development of a routine in each parent's home. In many cases, the more traditional every other weekend schedule for the non-primary care parent means a routine cannot be developed;

8. Shared parenting imposes responsibility on each parent to share the parenting burden and to be involved in decisions pertaining to the health, educational and recreational activities of the child and requires an assessment of each parent's willingness to assume their share of that responsibility after entrusted with it. Shared parenting is about more than sharing the child's time, it is very much about sharing the daily responsibility of parenting;

9. Related to the preceding is a consideration of the employment and career benefits that may accrue to each parent as a result of a shared parenting arrangement and a more equal sharing of the parental responsibilities;

10. Whether improvements in the standard of living in either or both households may accrue as a consequence of a shared parenting arrangement;

11. The willingness and availability of parents to access professional advice on the issue of parenting;

12. The "elephant in the room" in many custody/access disputes is frequently the financial consequences of the court's custody/access order and the extent to which the allocation of parenting time creates a winner or loser. Three factors must frequently be assessed: a) whether a parent's proposed parenting plan is really about the child support consequences that flow from a shared parenting arrangement or the alternative; b) the manner in which a primary care parent can use his/her position to have power and control of parenting; and c) whether a parent will abuse the parenting opportunity as a result of anger or insecurity, for example. The parenting regime is often not changed to shared parenting because the parties are too conflictual, notwithstanding that the conflict may result from a power imbalance in the parents' relationship flowing from the parenting arrangement in place. Courts must be cognizant of this dynamic;

13. An assessment of the parenting styles. That assessment should consider the questions posed by Justice MacDonald in *C.(J.R.) V. C.(S.J.)* 2010 NSSC 85, at paragraph 12:

-- What does the parent know about child development and is there evidence indicating what is suggested to be "known" has been or will be put into practice?

-- Is there a good temperamental match between the child and the parent? A freewheeling, risk-taking child may not thrive well in the primary care of a fearful, restrictive parent

-- Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline?

-- Does the child respond to the parent's attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?

-- Is the parent emphatic [empathetic ?] toward the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?

-- Can the parent examine the proposed parenting plan through the child's eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?

-- Has the parent made changes in his or her life or behaviour to meet the child's needs, or is he or she prepared to do so for the welfare of the child?

Decision Making Responsibility Defined

[107] As observed parenting arrangements have two components: (a) the sharing of parenting time and (b) the sharing of decision making.

[108] Until the recent amendments to both the PSA and the Divorce Act, these statutes did not define ‘decision-making responsibility’. These ‘new’ definitions now accentuate the need to distinguish the allocation of parenting time from the allocation of decision-making responsibility and emphasize the need to consider the workability of the structure put in a parenting order to manage both of these aspects of a parenting order.

[109] *The Parenting and Support Act* defines decision making responsibility between parents:

s.2(ba) “decision-making responsibility” means the responsibility for making significant decisions about a child’s well-being, including in respect of

- (i) health,
- (ii) education,
- (iii) culture, language, religion and spirituality, and
- (iv) significant extra-curricular activities

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17A (1) The particulars respecting care, supervision and development of a child may be set out in a parenting plan for the child.

(2) A parenting plan may assign to one or more parents or guardians the decision-making responsibility for any area of the child's care, supervision and development. [emphasis added]

(3) A parenting plan may cover any areas of the child's care, supervision and development including

- (a) the child's living arrangements including where the child will reside and with whom the child will reside and associate;
- (b) parenting time;
- (c) emergency, medical, dental and other health-related treatments including all preventative-care treatments for the child;
- (d) the giving, refusing or withdrawing of consent to treatments referred to in clause (c);
- (e) the child's education and participation in extracurricular activities;
- (f) the child's culture, language and heritage;
- (g) the child's religious and spiritual upbringing;
- (h) travel with the child;
- (i) the relocation of the child;
- (j) obtaining information from third parties regarding health, education or other information about the child;
- (k) communication between the parents and guardians, as the case may be, regarding the child; and
- (l) a preferred dispute-resolution process for any nonemergency dispute regarding parenting arrangements.

[110] Similarly, the *Divorce Act* defines decision-making responsibility (s.2(1)):

s.2(1) decision-making responsibility means the responsibility for making significant decisions about a child's well-being, including in respect of

- (a) health;

- (b) education;
- (c) culture, language, religion and spirituality; and
- (d) significant extra-curricular activities;

[111] Ms. Kehoe agrees the parties should consult each other on all major decisions affecting the child, whether the parenting arrangement (allocation of time) is shared or not.

[112] The parenting plan proposed by Ms. Kehoe is inconsistent with a belief on her part that Mr. Patrick and she are unable to appropriately consult one another on decisions affecting the children and unable to appropriately parent the children. Her proposed parenting plan is inconsistent with a belief that Mr. Patrick poses a risk to the physical or emotional well-being of the children. I do not believe she is of either view.

Summation and Conclusion

[113] I am satisfied that Mr. Patrick does not pose a risk to the health and safety of his children or to Ms. Kehoe. On the evidence before the Court, that concern should have negligible impact on the disposition of the parenting issues to be resolved. The parties have reestablished new homes. They are not at risk of committing family violence against each other.

[114] Turning to the issue of shared parenting and my findings, I observe the following:

- The parties' residences are proximate to one another. Thousands of residents commute each day to work in Halifax from Lower Sackville. Although the school catchments are different, these parents are available to the children each day. The parents agree their children's school will be proximate to Ms. Kehoe. In any case, I find that is in their best interest.
- Ms. Kehoe has extended family available in her neighbourhood. Mr. Patrick does not.
- I am satisfied each parent will maximize their parenting opportunity and the children's lives will be enriched.
- Both parents will be able to meet their duties during parenting time as required by s.18A – 18C of the PSA:

Duties during parenting time

18A Unless otherwise provided by court order or agreement and in addition to the duties under Section 2A, a parent or guardian shall, during parenting time with the child,

- (a) be responsible for the child's day-to-day care and supervise the child's daily activities; and
- (b) have exclusive authority to make day-to-day decisions affecting the child. Requests during parenting time

Requests during parenting time

18B Unless otherwise provided by court order or agreement, a person with parenting time may, at any time, inquire and receive information regarding the health, education and welfare of the child.

Duties during contact time

18C Unless otherwise provided by court order or agreement and in addition to the duties under Section 2A, the person shall, during contact time with the child,

- (a) be responsible for the care and supervision of the child; and
 - (b) comply with the decisions regarding the child made by the person or persons with decision-making responsibility for the child.
- Shared parenting will not have an impact on the transitions between households. Mid-week parenting time is proposed by both parents.
 - Shared parenting will permit each of these very competent parents to participate in decisions involving the children. Each of these parents supports the involvement of the other parent in that decision making.
 - Maximizing the opportunity for the children to have significant time with each parent will expose the child to the sometimes contrasting approaches of the children's parents to day-to-day tasks. This can enrich the children's lives.
 - Significantly, the opportunity for each parent to devote more time to their professional pursuits is a benefit for the parents and the children and these benefits can flow from each parent expending 'equal' time meeting the parenting responsibilities.
 - I am satisfied these parents are both open to access professional services for their

child and for themselves as needed.

[115] The core conclusion the Court must make is what parenting plan is in the best interests of the subject children. The earlier discussion focuses directly and indirectly on this assessment.

[116] The parties are unmarried. As stated *supra*, the best interests assessment is guided by the factors mandated by s.18(5) of the *Parenting and Support Act* (infra at paragraph 81):

18(5) In any proceeding under this Act concerning decision-making responsibility, 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.

[117] I have observed the parents agree the children will receive school in the current school district where Ms. Kehoe lives. They both support the continued relationship between the children and their grandparents and extended family members.

[118] Each parent has a strong bond with the children, is attentive to the children's needs and places a priority on having these needs met. They also have the ability to communicate effectively and to cooperate on issues affecting the children, notwithstanding both parents' ability in this regard had been adversely affected by the fact of this litigation and the sometimes competing legal and parenting positions advanced by each.

[119] I have considered the accusations of family violence, the nature of the alleged behaviour, the frequency of the same and steps taken to address the concern.

[120] I have considered the principle that a child "should have as much contact with each parent as is consistent with the best interests of the child" after considering the impact of family violence, abuse or intimidation.

[121] I am not satisfied Mr. Patrick's parenting time should be the same as Ms. Kehoe's. However, I am satisfied the parenting order should provide a greater opportunity for the children to be parented by Mr. Patrick than is proposed by Ms. Kehoe.

[122] I come to this conclusion because I believe Ms. Kehoe should have a more prominent role in parenting the children than Mr. Patrick and Mr. Patrick's

increased involvement in the children's lives is in their best interests as well.

[123] Ms. Kehoe is more flexible and, in my view, less doctrinaire in her approach to this important role. Overnight mid-week parenting time for Ms. Kehoe during the school year will benefit the children's schooling.

[124] Ms. Kehoe also has the benefit of having her parents more readily available to assist her and Mr. Patrick when the need arises. Mr. Patrick does not have that level of support available to him from his extended family.

[125] There are opportunities for Mr. Patrick's parenting time to increase in a fluid way. I therefore order, *inter alia*, the following:

- **Contact Time**

Summer

1. The summer will generally be nine (9) weeks in duration. The summer period of in 2024 will be eight (8) weeks and will be equally shared with each parent in alternating blocks of one (1) week of parenting. This shall begin Sunday, July 7, 2024 with the children being with Mr. Patrick for the week beginning July 7, 2024. The weekend ending June 30, the children shall be with Ms. Kehoe regardless of the current schedule. I leave it to the parents to decide on mid-week parenting time for the other parent over the summer. Should it not interfere with the week's activities I recommend but I do not order mid-week parenting time of a few hours or perhaps Wednesday overnight over the summer for the 'other' parent.

School Year

2. Subject to other specific directions regarding parenting time, each parent shall have alternating parenting time every other week from Sunday at 4:00 p.m. to the following Sunday.
3. When a Monday during the 'school year' following a parent's week with the children is a non-school day, the children shall continue in a parent's care until 4:00 p.m. on Monday subject to other provisions of the order that apply for alternating special holidays such as Thanksgiving.
4. Every Wednesday of a 'school week', the children shall be in the overnight care of Ms. Kehoe. A 'school week' is a period within Monday to Friday when the children will be at daycare or school for more than three days. If the school/ daycare protocols permit, Mr. Patrick shall have the option of caring for the children for two (2) hours after school/daycare every Wednesday during a 'school week' and this period will end at 5:00 p.m.

5. On a day when an exchange of the children is to occur, the parent who has physical care of the children in the morning before dropping the children at school or daycare or at a third-party site shall be responsible for the care of the children until they are picked up by or on behalf of the other parent at the conclusion of the period of third party care.

Special Days

6. The parties shall have equal parenting time with the child during the following holiday periods: Christmas, March break, Easter, summer vacation (8-9 weeks) and such other days as they agree or as further ordered by the court.
7. On Mother's day, the child shall be in the mother's care regardless of whether it is her regularly scheduled parenting time. If the child is scheduled to be in the father's care on Mother's day, the father shall drop off the child to the mother on or before 5:00 p.m. on the Saturday evening immediately prior to Mother's day.
8. On Father's day, the reverse shall apply.
9. On either child's birthday, the other parent shall have one and one-half hours with the children.
10. Neither party shall make any disparaging remarks about the other and to the other in the child's presence and neither party shall permit another person to do so.
11. The parents shall keep each other apprised of the child's circumstances, including but not limited to their sporting events and other extracurricular activities.
12. The parties shall have any other reasonable parenting time as mutually agreed upon by the parties. Consistent with the deference the court prefers to demonstrate to the common positions parents achieve the foregoing schedule can be varied by the parties. For example, Mr. Patrick sought a parenting plan that would have the children with him overnight Wednesday and Thursday and every other weekend. It is open to the parents to agree to that as an alternative to what I have ordered. The court reserves jurisdiction to make changes, to interpret and /or to assist in implementing the directions contained herein after hearing from the parties.
13. As a consequence of the foregoing parenting schedule, the parties will not have equal parenting time but they will be in a shared parenting arrangement.

Decision Making

14. The parties must consult one another on major decisions affecting the children.
15. Although the parties shall consult each other on important issues relevant to the children such as education, health, religion and extracurricular activities, on issues relative to the children's education including daycare and on health related issues Ms. Kehoe shall have final decision-making authority subject to the limitation that when relevant, she shall follow the advice of the appropriate professionals unless both parties agree to not follow that advice.
16. I also grant the continuation and/or issuance of a third-party information order, whereby each party may independently access information related to the children from third party service providers.

Extra-Curricular Activities

17. The parents will each have a role in identifying extracurricular activities for the children. Each parent may select one (1) activity for each child. The activity identified should reflect a consideration of the other parent's circumstances and parenting role. This does not preclude the children participating in more than this number of activities. Each parent will be responsible for transporting the children to all activities during their parenting time. The parents are to avoid, wherever possible, scheduling more than one (1) activity for each child on a given day or evening. In addition, given the potential logistical challenges, they must avoid wherever possible, scheduling the children at proximate times in different parts of HRM. That is to say the parents must in good faith consider the potential burden being placed on the other parent when selecting and scheduling the children's activities.
18. I urge the parties to consider other details of implementation for inclusion in the subject parenting order. I reserve jurisdiction to make changes based on submissions or a consensual recommendation from the parties. The parents are best placed to know what will work best for the children and for them as parents in many situations.

O'Neil, J.