SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Blois v. Blois*, 2017 NSSC 78

Date: 2017-03-29
Docket: 1201-069398
Registry: Halifax

Between:

Alicia Blois

Applicant

v.

Christopher Blois

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice R. Lester Jesudason
Heard:	September 26, November 3 and December 8, 2016
Last Written Submission:	March 21, 2017
Summary:	Parents operated under a shared parenting arrangement for several years in relation to seven-year-old daughter. Both parents in military. Mother posted and relocated to Ontario. Mother seeking to have daughter relocate to Ontario.
Key words:	Mobility, Relocation, Best Interests, *Gordon v. Goertz* analysis, Separation Agreement, Shared Parenting
Legislation:	*Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3.

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Written Release:	March 29, 2017
Counsel:	Judith A. Schoen for Alicia Blois Kelsey E. Hudson for Christopher Blois

BY THE COURT:

INTRODUCTION:

[1] Sometimes judges in family law cases must choose between "bad" and "worse" when deciding with which parent a child should primarily live. Unfortunately, often in such cases, both parents have let their own conduct or interpersonal conflict negatively impact on their child.

[2] While this choice can be difficult, it can be even more difficult to choose between "great" and "great". In these cases, both parents have made commendable efforts to give their very best to their child, and to provide an environment where he or she can flourish.

[3] It is the latter type of case which is before me where I have been asked to decide whether a seven-year-old child should be permitted to relocate to Ontario with one "great" parent, over the objection of her other "great" parent. The decision is made that much harder given that her parents have been equally shared parenting time with their daughter since she was three years old. Both parents now seek primary care of her due to one of them being posted to Ontario by their common employer, the Department of National Defence/Canadian Armed Forces ("DND/CAF").

FAMILY HISTORY:

[4] The girl at the heart of this proceeding is Abbigail Blois ("Abbi"). She was born on January 21, 2010. She is in Grade 1 at the Elmsdale District Elementary School. Her parents and/or extended family member have described her as being "very smart", "old for her age", "shy" and "reserved". Clearly, she has brought much joy to all of their lives.

[5] Her parents, Alicia and Christopher Blois, have successful careers in the military. Both clearly love their daughter and have a very close relationship with her.

[6] The parties separated on October 14, 2012 when Abbi was approximately 2 years and 9 months old. To their credit, for several years, they were able to successfully co-parent her without requiring the court's assistance. Specifically, they entered into a separation agreement in March 2013 under which they agreed to a shared parenting arrangement which provided that each would have roughly equal parenting time with Abbi. The parties also arranged to live approximately twenty minutes apart.

[7] Paragraph 16 of the separation agreement addressed what would happen if either parent was posted by DND/CAF outside of Nova Scotia. It states:

> The parties further agree that in the event one parent gets posted outside of the province of Nova Scotia, in the course of their employment, <u>the other parent shall make every reasonable effort to obtain a posting in the same geographic area as the aforesaid parent keeping the child's best interest a priority.</u>

> The parties further agreed that if either parent is posted to another province they must notify the other parent thirty days in advance of the change of residence and provide the other parent with the new address and when the change is to take place. [Emphasis added].

[8] In early 2016, things took a twist. Specifically, Ms. Blois notified Mr. Blois that she would be getting posted out of the province, but was unsure as to the specifics. She subsequently notified Mr. Blois on or about March 30, 2016, that she was going to be posted to Borden, Ontario, and would be seeking the ability for Abbi to relocate with her.

[9] The parties subsequently had some exchanges over the issue but were unable to reach agreement on Abbi's proposed relocation. Consequently, Ms. Blois filed an interim motion seeking permission for Abbi to relocate with her to Borden, Ontario, for her anticipated move in early August 2016.

PROCEDURAL HISTORY:

[10] The procedural history of this file is somewhat unusual. Ms. Blois' interim motion was filed on May 25, 2016. Only an hour of court time was requested so the matter was scheduled on my docket for June 14, 2016. On the eve of the hearing, however, counsel agreed that an hour would be insufficient time for the hearing and requested that it be adjourned but that they appear instead for a pre-hearing organizational conference.

[11] At the pre-hearing organizational conference of June 14, 2016, discussions ensued about the issues in dispute, how much time would be required to determine them, the witnesses who would be called, and the disclosure which should be produced in advance of the hearing. Counsel agreed to have further discussions about these issues and then notify me as to when the parties would be available for a hearing.

[12] A tentative date for a hearing was subsequently scheduled in August 2016. However, shortly before same, it was again agreed that it would not proceed. The parties requested a further pre-hearing organizational conference before me which I accommodated on August 8, 2016. At that time, I was advised by counsel that the parties had been working towards a comprehensive agreement on all issues in dispute but, for reasons I will come to later in my decision, a tentative agreement fell apart in late July 2016. Ms. Blois then went ahead and relocated to Borden on July 31, 2016.

[13] In light of Ms. Blois' relocation, counsel also advised that the parties no longer required an interim hearing but were instead requesting a full day for a final hearing on parenting arrangements. Both sides also requested additional disclosure. Counsel also agreed that, in addition to local witnesses, they would likely call an out of province witness from DND/CAF who could speak to its posting policies.

[14] In an effort to potentially accommodate an early date, I agreed to double-book myself for a full day to hear this matter in late September. I cautioned the parties that if my other matter was not completed, this matter would have to be rescheduled.

[15] On August 19, 2016, counsel for Mr. Blois sent me a letter enclosing an interim Order in which the parties agreed that Abbi would visit Ms. Blois in Ontario for the last part of the month and be returned to Mr. Blois' care by September 4, 2016. The parties also agreed in the Order that Abbi would remain in Nova Scotia and attend the Elmsdale District Elementary School pending further Order of the Court, or an agreement by the parties.

[16] The hearing was scheduled before me on September 26, 2016. In advance of same, several evidentiary objections were raised by Ms. Blois' counsel in relation to various paragraphs of affidavits filed by Mr. Blois on the basis that they violated the requirements for affidavit evidence as outlined in ***Waverley (Village Commissioners) v. Nova Scotia (Minister of Municipal Affairs)***, [1993] N.S.J. No. 151.

[17] I canvassed the objections with counsel at the outset of the hearing on September 26, 2016. The objections were resolved by agreement with certain paragraphs being struck, and certain objections being withdrawn. That agreement was read into the record which I will not repeat herein.

[18] On September 26, 2016, I heard evidence from the parties and their local witnesses. Ms. Blois also sought to introduce evidence from an out of province witness from DND/CAF who was not present in court, but was apparently available to give *viva voce* evidence by phone. Mr. Blois objected to this evidence on various grounds including late notice, the witness had known Ms. Blois personally for several years, and the witness had some specific information about the case which came directly from Ms. Blois which may not make her a neutral witness. After discussing the issue, it was agreed that the individual would not be called but that counsel would attempt to find another mutually satisfactory person from DND/CAF to give evidence on its posting policies and that a new date be set for the receipt of that evidence. I therefore agreed to book an additional hour for the hearing to be concluded on November 3, 2016. I also encouraged the parties to consider whether it was possible to present the evidence from the individual from DND/CAF through an agreed statement of facts as opposed to requiring that individual to testify in person. Finally, I gave the parties deadlines for filing post-trial submissions in advance of the November 3, 2016, date.

[19] On October 25, 2016, Ms. Blois filed a new affidavit. No permission was sought by opposing counsel or the court prior to her doing so. Counsel for Mr. Blois objected to its filing which resulted in me having further exchanges with counsel. In a letter dated October 26, 2016, I indicated that, if Ms. Blois was seeking to rely upon the new affidavit, she should make the appropriate motion for permission to file new evidence. In that letter, I also expressed concern whether, in light of this new development, the hearing could be completed in the one-hour window allotted on November 3, 2016.

[20] Counsel had further discussions on the issue of Ms. Blois' proposed new evidence. They eventually suggested that the issue could be resolved by allowing Mr. Blois to file a further

affidavit in response, and that both parties would be permitted to conduct brief cross-examinations on the new affidavits when they appeared on November 3, 2016. Mr. Blois then filed a new affidavit on November 1, 2016 (Exhibit 6).

[21] When the parties appeared on November 3, 2016, I raised the issue of the new affidavit evidence with counsel. After hearing from them, I agreed to permit both new affidavits to be admitted as evidence. I did so on the express indication by counsel that both parties agreed that they wished to proceed on this basis, and they also agreed that neither side would be prejudiced by allowing the new evidence in. The parties were subsequently cross-examined on their new affidavits.

[22] Counsel also entered a letter from Retired Major Steve Kiropoulos of DND/CAF which they stipulated should be treated as an agreed statement of facts with respect to DND/CAF's posting policies without the need to call Mr. Kiropoulos (Exhibit 7). It covered such topics as "compassionate status and compassionate postings", "contingency cost moves", "screenings for postings", whether Members could resist postings, DND/CAF's attempts to relocate "married service couples" who are separated, the impact of separation agreements on postings, etc.

[23] Given that the November 3, 2016, appearance was only scheduled for an hour, and I had several other matters booked subsequently that day, this matter had to be adjourned for closing oral arguments on December 8, 2016.

[24] The parties appeared on December 8, 2016, at which time counsel made their closing oral arguments. I indicated that I would be reserving my decision. Before doing so, I confirmed that the parties had already reached an agreement with respect to Christmas Holiday arrangements for Abbi. I was advised that the parties did have an agreement under which Abbi would spend the majority of the Christmas Holiday with Ms. Blois.

[25] At my invitation, the parties subsequently sent me a further agreement on future Christmas Holiday parenting arrangements in March 2017.

AGREEMENTS OF THE PARTIES:

[26] The parties agreed to certain things which were to be treated as an agreed statement of facts or agreed upon parenting conditions. These include, but are not limited to, the following:

- The parties will continue to have joint custody of Abbi and make major decisions together relating to her medical care, dental care, education and general well-being.

- Either party can have access to information from third party professionals and, if required, each parent will provide the necessary consents to the other parent or third party provider to facilitate this.

- Abbi will have reasonable telephone and electronic contact with each of her parents as arranged by the parties.

- Christmas Holiday Parenting Arrangements:

  Should Ms. Blois have primary care of Abbi in Ontario, she will have care of Abbi for the first two days and last two days of Abbi's Christmas School Break. Mr. Blois will have Abbi for the remainder of the Christmas School Break.

  Should Mr. Blois have primary care of Abbi in Nova Scotia, he will have care of Abbi for the first two days and last two days of Abbi's Christmas School Break. Ms. Blois would have Abbi for the remainder of the Christmas School Break. However, if Ms. Blois comes to Nova Scotia for Christmas, Mr. Blois will have Abbi for a visit on Boxing Day which shall be an overnight visit.

- The parties will engage a professional counsellor to assist Abbi deal with the significant transition in her parenting arrangements irrespective of the outcome of my decision.

- Since their separation agreement of March 2013, the parties' shared parenting arrangement has generally consisted of a week on/week off arrangement with exchanges taking place on Friday. Each parent also had a midweek overnight during the week when Abbi was in the other parent's care.

- Abbi is enrolled in the Elmsdale District Elementary School in Grade 1 and is also enrolled at Carmie's Daycare in Elmsdale which has been providing daycare for her since she was at least two years old. She will continue to go to the Elmsdale District Elementary School pending a final determination of parenting arrangements and can also continue to go to Carmie's Daycare as needed.

- To the extent this case involves a "mobility issue" both parents should be considered custodial parents who are entitled to respect.

- Both parties acknowledge that the other party is a good parent and that Abbi has a close and loving relationship with both of her parents.

- Given Abbi's young age, her preferences in terms of parenting arrangements should be given little to no weight.

[27] I commend the parties for reaching agreement on the above points. In my view, the parties' willingness to make agreements in these difficult circumstances demonstrates the quality of their parenting, their ability to prioritize Abbi's needs, and the respect that each party has for the other party as a parent.

POSITIONS OF THE PARTIES:

[28] Ms. Blois' position is that Abbi should be permitted to relocate to Borden and be in her primary care. She proposes that, in addition to the agreed upon Christmas Holiday time, Mr. Blois have block parenting time with Abbi during the summer, March Break and various holidays/special occasions, including the Victoria Day weekend. She also proposes that the parties alternate having Abbi on other special occasions such as Easter Weekend and Thanksgiving Weekend. Finally, she proposes that Mr. Blois can have additional time with Abbi should he travel to Ontario and that he would have reasonable phone and electronic communication access with her.

[29] Mr. Blois' position is that Abbi continue to live with him in his primary care. He proposes that, addition to the agreed upon Christmas Holiday time, Ms. Blois have block parenting time during the summer, March Break, any time she is in Nova Scotia or he is in Ontario, as well as any additional agreed upon parenting time. He also is agreeable to Ms. Blois having reasonable telephone and electronic access with Abbi including FaceTime and Skype access.

ASSERTIONS OF THE PARTIES:

a) Ms. Blois

[30] In support of her position, Ms. Blois makes a number of assertions including, but not limited to, the following:

- For the first two years following her birth, she was Abbi's primary caregiver due to Mr. Blois' frequent sailing schedule which required him to be away for extended periods. She therefore claims that she was, out of necessity, solely responsible for making day to day parenting decisions during that period.

- When the parties entered into their separation agreement, both parents felt it was more important, in Abbi's best interests, that she maintain close proximity with each of her parents, as opposed to maintaining proximity with her extended family. Ms. Blois says that there have been no unanticipated changes since then so that I should give significant deference to what the parties agreed to in the separation agreement.

- She is committed to supporting Abbi become independent and promotes expectations in this regard. She has established, and wishes to maintain, a very close relationship with Abbi while recognizing the importance of Abbi's relationship with Mr. Blois in the future.

- While Mr. Blois has a close connection with his extended family, and has promoted relationships within that context (as she has also done), these relationships are less important than the parent/child relationship.

- Mr. Blois has only paid "lip service" to the terms of the separation agreement. Although he asserts that he has requested a posting to Ontario, he has not complied with DND/CAF's posting procedures and policies for such requests. Ms. Blois believes that Mr. Blois can be posted to Borden should he choose to do so.

- Mr. Blois is sometimes unavailable to look after Abbi during his parenting time. For example, he plays hockey and basketball during the year and he and his father run a landscaping business. Consequently, he often relies on his mother or other family members to look after Abbi when she is in his care.

- Since her move to Borden, Mr. Blois has already demonstrated resistance to supporting a long distance relationship between her and Abbi. She is therefore fearful that if Abbi remains in his care, her relationship with Abbi will be significantly curtailed.

- Her new employment position involves her working from 8:00 a.m. until 4:00 p.m. with no travel. She has arranged after school care for Abbi and suggests that time with her is more structured than Mr. Blois' time with Abbi as he frequently passes off Abbi to family members to look after her.

- She is a positive, motivated female role model for Abbi and takes an active role in providing Abbi with discipline, social development, travel and learning opportunities.

- If Abbi remained in Nova Scotia, visits to Ms. Blois' residence in Borden will be to a relatively unfamiliar environment in that Abbi will have minimal opportunity to establish routines and social connections in Ms. Blois' new community. In comparison, if Abbi lived with her, Abbi would be able to develop routines and relationships in Ms. Blois' community and, when she travelled back to Nova Scotia, would also be coming back to an environment to which she was familiar and comfortable.

b) Mr. Blois

[31] In support of his position, Mr. Blois makes a number of assertions which include, but are not limited to, the following:

- Almost all of Abbi's extended family reside in Nova Scotia. If Abbi relocated to Ontario, she would not have the support of her extended family who have played a significant role in her life.

- Contrary to what Ms. Blois claims, he has demonstrated a willingness to facilitate contact between Abbi and Ms. Blois after she relocated to Borden including accommodating daily telephone calls, agreeing to a two-week trip for Abbi to visit Ms. Blois in August 2016, accommodating a Thanksgiving Weekend visit in Nova Scotia, and agreeing to Abbi spending the majority of the last Christmas Holiday in Ms. Blois' care.

- Mr. Blois says that Ms. Blois has been less than forthcoming in communication with him throughout this proceeding. For example, he emphasizes that, while the parties were exploring a potential resolution of where Abbi would live, he heard from a third party in late July 2016, that Ms. Blois had begun a new relationship about three weeks prior with a new partner, Paul Baker, and was intending to move with him to her new home in Borden. This was the first Mr. Blois had heard of Mr. Baker. Mr. Blois was very concerned that Ms. Blois did not disclose this information during the time they were trying to reach an agreement on Abbi's future living arrangements. As a result, a tentative settlement fell apart at the last minute requiring this matter to proceed to a hearing.

- If Abbi was to relocate to Ontario, this would place a greater financial burden on him as the "access parent" than it would place on Ms. Blois if she was the "access parent". Specifically, Mr. Blois would incur additional costs travelling back and forth to Ontario and finding accommodation in order to exercise parenting time with Abbi. Ms. Blois' family, on the other hand, resides in Nova Scotia. She therefore will likely be returning to Nova Scotia in any event to spend time with her family on certain special occasions and, when she does, has a place to stay so would not have to incur additional accommodation costs.

- He, like Ms. Blois, is a positive role model for Abbi and has demonstrated that he is committed to helping her develop relationships with her friends from school and other children. He has engaged Abbi in extracurricular activities and assisted her when she has demonstrated shyness or anxiety. He has also developed and maintained Abbi's relationship with extended family on both sides.

- He denies that he has "passed off" Abbi to other family members during his parenting time. Rather, he says that there have been times when both he and Ms. Blois have made use of his mother to look after Abbi during their respective parenting times. He says that Abbi has a particularly close relationship with his mother and generally spends one night a week with his mother and step-father. Mr. Blois claims this relationship is one both he and Ms. Blois supported and that this is not "passing off" Abbi but, rather, is facilitating her maintaining a close relationship with her extended family.

- While he does engage in sports and runs a business with his father, he has generally done so during Ms. Blois' parenting time. If he was given primary care of Abbi, he would cut back on these activities to ensure that he is fully available to look after her.

- He disagrees that Ms. Blois has effectively been the primary care parent. Rather, as stipulated by the parties at the hearing, and as outlined in their separation agreement, the parties have operated under a shared parenting arrangement for the last several years with both being active caregivers in Abbi's life.

- Abbi has extended family and friends in Nova Scotia. If she relocated, she would be required to make new friends which Mr. Blois feels would be difficult for her to do given her issues with shyness and anxiety. He says that, given those issues, removing Abbi from her friends and extended family would cause her further undue anxiety and stress. Mr. Blois believes that Abbi has already experienced upheaval as a result of the end of the shared parenting arrangement and that causing her further upheaval from relocating to Borden is not in her best interests.

THE LAW:

[32] The leading case on the issue of parental mobility is the Supreme Court of Canada case of ***Gordon v. Goertz***, [1996] 2 S.C.R. The Supreme Court of Canada, in paragraph 49, outlined a two-stage test for determining whether a parent was entitled to relocate with a child. The first stage is a threshold issue which requires that the moving parent establish that there has been a material change of circumstances affecting the child which was either not foreseen or could not have reasonably been contemplated at the time the original parenting order was made (s. 17(5) of the *Divorce Act*). If that threshold is met, the second stage requires "embarking on a fresh inquiry into what is in the best interests of the child" and involves considering and balancing all the relevant factors in determining whether or not the proposed relocation is in the child's best interests. A "full and sensitive inquiry" into the best interests of the child is required.

[33] It should be noted that, in ***Gordon v. Goertz***, there was an existing parenting order in place which was sought to be varied. In the present case, there is no existing parenting order although the parties have been operating under a separation agreement which provides for a shared parenting arrangement.

[34] Notwithstanding this distinction, as noted by our Court of Appeal in ***Blennerhassett v. MacGregor***, 2013 NSCA 77, the principles and approach from ***Gordon v. Goertz***, are not confined to variation applications but also apply to initial parenting applications. Of course, where there is no existing order, the moving party does not have to meet the threshold first stage of establishing a material change of circumstances and the judge can move straight to a determination of what parenting arrangement is in the child's best interests.

[35] Thus, the key factors and principles listed in paragraph 49 of ***Gordon v. Goertz,*** modified by me for an original application, and the particular facts of this case, can be stated as follows:

1. I must embark on an inquiry into what is in Abbi's best interests having regard to all the relevant circumstances relating to her needs and her parents' abilities to satisfy them.

2. The only issue is Abbi's best interests in the particular circumstances of this case.

3. The focus must be on Abbi's best interests, not the interests or rights of her parents.

4. I should consider:

a. the existing custody arrangement and relationship between Abbi and each parent;

b. the desirability of maximizing contact between Abbi and both parents;

c. Abbi's views, if appropriate;

d. Ms. Blois' reason for moving, only in the exceptional case where it is relevant to her ability to meet Abbi's needs;

e. the disruption to Abbi of a change in custody; and

f. the disruption to Abbi consequent on removal from family, schools and the community she has come to know.

[36] The statutory context for the application before me is s. 16 of the ***Divorce Act.*** I am obliged to only take into consideration Abbi's best interests as determined by reference to her condition, means, needs and other circumstances (s. 16(8) of the ***Divorce Act***). In arriving at my decision, I must give effect to the principle that Abbi should have as much contact with each parent as is consistent with her best interests and, for that purpose, should take into consideration the willingness of each parent to facilitate such contact (s. 16(10) of the ***Divorce Act***). This statutory direction is consistent with the factors stated in paragraph 49 of ***Gordon v. Goertz***.

[37] Given the overlap between the ***Gordon v. Goertz*** principles and the best interests of a child, judges have sometimes applied a "blended approach" when analyzing the various factors (e.g. ***Blennerhassett v. MacGregor***, 2013 NSCA 77).

"Best Interests"

[38] Plainly, under both the ***Divorce Act*** and ***Gordon v. Goertz***, the big picture when determining parenting arrangements involves a consideration of the child's best interests.

[39] The concept of best interests is often stated as a self-evident principle without any further consideration as to what it truly means. Those who have commented on what it means have articulated it far more eloquently than I can.

[40] For example, in ***Young v. Young***, [1993] 4 S.C.R. 3, McLachlin J., as she then was, stated the following in paragraphs 202 to 206:

> 202 First, the "best interests of the child" test is the only test. The express wording of s. 16(8) of the Divorce Act requires the court to look only at the best interests of the child in making orders of custody and access. This means that parental preferences and "rights" play no role.

> 203 Second, the test is broad…it has been left to the judge to decide what is in the "best interests of the child", by reference to the "condition, means, needs and other circumstances" of the child. Nevertheless, the judicial task is not one of pure discretion. By embodying the "best interests" test in legislation and by setting out general factors to be considered, Parliament has established a legal test, albeit a flexible one. Like all legal tests, it is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do.
>
> 204 Third, s. 16(10) provides that in making an order, the court shall give effect "to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child." This is significant. It stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider. By mentioning this factor, Parliament has expressed its opinion that contact with each parent is valuable, and that the judge should ensure that this contact is maximized. The modifying phrase "as is consistent with the best interests of the child" means that the goal of maximum contact of each parent with the child is not absolute. To the extent that contact conflicts with the best interests of the child, it may be restricted. But only to that extent....
>
> …
>
> 206 I would summarize the effect of the provisions of the Divorce Act on matters of access as follows. The ultimate test in all cases is the best interests of the child. This is a positive test, encompassing a wide variety of factors. One of the factors which the judge seeking to determine what is in the best interests of the child must have regard to is the desirability of maximizing contact between the child and each parent. But in the final analysis, decisions on access must reflect what is in the best interests of the child. [Emphasis added].

[41] Similarly, in ***Burgoyne v. Kenny***, 2009 NSCA 34, Bateman J.A., as she then was, stated:

> **25** …Each case must be decided on the evidence presented. Nor is determining a child's best interests simply a matter of scoring each parent on a generic list of factors. As Abella J.A., as she then was, astutely observed in *MacGyver v. Richards* (1995), 11 R.F.L. (4th) 432 (Ont. C.A.):
>
> > 27 Clearly, there is an inherent indeterminacy and elasticity to the "best interests" tests which makes it more useful as legal aspiration than as legal analysis. It can be no more than an informed opinion made at a moment in the life of a child about what seems likely to prove to be in that child's best interests. Deciding what is in a child's best interests means deciding what, objectively, appears most likely in the circumstances to be conducive to the kind of environment in which a

> particular child has the best opportunity for receiving the needed care and attention. Because there are stages to childhood, what is in a child's best interests may vary from child to child, from year to year, and possibly from month to month. This unavoidable fluidity makes it important to attempt to minimize the prospects for stress and instability.
>
> ...
>
> 29 Deciding what is best for a child is uniquely delicate. The judge in a custody case is called upon to prognosticate about a child's future, and to speculate about which parenting proposal will turn out to be best for a child. Judges are left to do their best with the evidence, on the understanding that deciding what is best for a child is a judgment the accuracy of which may be unknowable until later events prove -- or disprove -- its wisdom. [Emphasis added].

[42] In ***Foley v. Foley***, [1993] N.S.J. No. 347 (S.C.), Justice Goodfellow identified, in paragraph 16 of his decision, "a number of areas of parenting that bear consideration in most cases" when considering the bests interests of a child. Judges have often cited the factors from the ***Foley*** case for guidance in assessing a child's best interests.

[43] In the present case, both parties referred to ***Foley*** factors in their closing submissions. Thus, I will also do so although, as wisely stated by Justice Bourgeois in ***Weatherby v. Muise***, 2015 NSCA 42, I caution that "assessing what is in the best interests of a child is not a rigid exercise which obligates a trial judge to undertake a magic incantation of strictly worded considerations" (para. 21). Rather, it involves considering and weighing all the relevant factors.

Statutory Direction

[44] As noted earlier, s. 16(8), requires me to only take into consideration Abbi's best interests as determined by reference to her condition, means, needs and other circumstances. Section 16(9) requires me to only consider past conduct where it is relevant to parenting ability. Finally, s. 16(10), provides that Abbi should have as much contact with each of her parents as is consistent with her best interests and, for that purpose, I should take into consideration the willingness of each parent to facilitate such contact.

Physical Environment

[45] The evidence does not lead me to conclude that either parent's home is superior to the other's. Obviously, Mr. Blois' home and physical environment are known to Abbi while, in the case of Ms. Blois, her home is relatively new. However, there has been no suggestion that Ms. Blois' new home or physical environment are in any way inadequate to meet Abbi's needs.

Discipline

[46] The evidence suggests that both parents engage in appropriate discipline of Abbi and do not simply accede to her wishes when she is resistant. Furthermore, neither party suggested that the other parent does not appropriately discipline Abbi. Rather, as expressly agreed, both acknowledge that the other is a good parent.

Role Model

[47] I conclude that both of Abbi's parents are positive role models for her. They both have successful careers in the military while, at the same time, are supportive and loving parents to their daughter. No doubt, Ms. Blois is a very positive female role model for Abbi both in terms of being a nurturing mother, as well as being a successful career woman. That does not mean, however, that Mr. Blois is also not a positive role model for her. Again, the parties expressly agreed that the other is a good parent and that Abbi has a close and loving relationship with both of them. In my view, each brings much to the table when it comes to being positive role models for their daughter.

Wishes of the Child

[48] As noted earlier, the parties agreed that, given her young age, this factor should be given little to no weight. I agree.

Religious and Spiritual Guidance

[49] No significant evidence was presented on this factor.

Assistance of Experts

[50] No expert evidence was presented. However, the parties agreed that they both would support obtaining professional assistance for Abbi to help her deal with the transition in parenting arrangements regardless of the outcome of my decision. Again, this demonstrates that both parents are sensitive to Abbi's needs and are willing to work together in ensuring that they are appropriately met.

Time Availability of Each Parent

[51] I conclude that both parents have appropriate time availability for Abbi under their respective plans for her care.

[52] Ms. Blois testified that her new position involves working from 8:00 a.m. until 4:00 p.m., Monday to Friday, with no travel required. She may also be invited to human resources training symposiums from time to time but indicated that their attendance is optional, although potentially beneficial to her career. She indicated that invitations to same would be known long in advance so, if necessary, she could make arrangements for Abbi's care.

[53] Ms. Blois also indicated that the school she is proposing Abbi attend is less than a kilometer from her new home so she could respond quickly should Abbi need anything during the school day. Abbi's proposed new school also offers before and after school childcare which she would use, as required.

[54] Mr. Blois also works 8:00 a.m. until 4:00 p.m. Monday to Friday. He indicates that he has always made himself available to look after Abbi and, should she be in his primary care, he would be prepared to cut back on his sporting and business activities to ensure he is fully available to look after her.

[55] While he agreed that Abbi has weekly visits with his parents while in his care, he says this is simply to foster her close relationship with her grandparents, particularly his mother. His mother gave evidence supporting same in her affidavit in which she deposed that she has a "very close relationship" with Abbi and that her weekly visits with Abbi were not to assist Mr. Blois with parenting, but rather, were at her request so she could spend extra time with her granddaughter (Exhibit 3, Tab 3, Paragraphs 31-33).

[56] Mr. Blois also indicated that Abbi's daycare provider, who has been supplying child care since Abbi was very young, continues to provide before and after school care as needed. Mr. Blois indicated that Abbi has a strong bond with her daycare provider.

Cultural Development

[57] Neither party presented any significant evidence that independently relates to this factor.

Physical and Character Development by such things as Participation in Sports

[58] I am satisfied that both parents assist Abbi in physical and character development through such things as participation in sports. They agree that Abbi is shy and reserved at times so prefers individual as opposed to group sports.

The Emotional Support to Assist in Development of Self-Esteem and Confidence

[59] While Abbi clearly is a bright and delightful young child, both parties recognize that she can be shy and reserved especially in group situations. As noted above, both parents acknowledge that Abbi is somewhat hesitant to play group sports. Members of Abbi's extended family gave similar evidence. For example, Ms. Blois' mother, testified that Abbi is very shy going to a place she does not know but then warms up. Similarly, Mr. Blois' mother described Abbi as being reserved and very shy and not liking big groups.

[60] Mr. Blois also gave evidence about Abbi being resistant to attending birthday parties of other children including those for her cousins and that, even when she attends, she can sometimes be hesitant to participate. For example, with respect to her cousins' birthday party, Abbi apparently got quite upset at the thought of going to a party where there would be other children who she did not know. Mr. Blois said she was coughing, crying and became hysterical. He was eventually able to calm her, but Abbi did not end up going to the party.

[61] Mr. Blois also gave evidence about Abbi being shy to participate in activities with other children. For example, he gave evidence about Abbi attending another birthday party where the children were bowling. Abbi would not bowl until the other children left. He also gave evidence about her refusing to go to T-ball and how he and Ms. Blois worked together and were eventually able to convince her to go. However, when Abbi got there, she refused to participate.

[62] When asked by Ms. Blois' counsel if he simply accedes to Abbi's wishes, Mr. Blois disagreed. He said if he simply did that, there would be many events Abbi would not attend at all. He said he tries to encourage her to go to various events and attempts to make her feel more comfortable but, at the same time, does not force Abbi to go if she shows strong resistance.

[63] Ms. Blois also does not dispute that Abbi can be shy and reserved particularly with non-family members. She also acknowledged that Abbi has expressed jealousy about her new relationship with Mr. Baker. Ms. Blois indicated that she and Abbi have an open relationship about this issue and that Abbi's jealousy stems from the fact that Mr. Baker gets to live with her while Abbi currently does not. Thus, Ms. Blois indicated that she will ensure that Abbi has one on one time with her, and will know that she is her mother's number one priority, but that there will also be other times when Abbi will have to share Ms. Blois' time with Mr. Baker.

[64] I conclude that both parents recognize that Abbi has some anxiety issues when it comes social settings, particularly ones which involve people she does not know. They seem to have the skills necessary to emotionally support Abbi in developing self-esteem and confidence and, as noted earlier, have agreed to obtain counselling for her to assist Abbi with the significant transition to her parenting arrangements regardless of the outcome of this proceeding.

The Financial Contribution to the Welfare of the Child

[65] Neither party suggested that this factor was significant with respect to the parenting issues I must decide. There was some evidence that indicated that both parents have been sharing, or are willing to share, certain costs in relation to Abbi's care although there is no formal agreement with respect to same. Counsel indicated that the parties hoped to work out specifics on sharing costs and child support depending on the outcome of my decision. Thus, I do not find this factor to be particularly significant to my initial determination on parenting.

The Support of an Extended Family

[66] Abbi and her parents have extended families who clearly love and support them. Both of Abbi's grandmothers filed affidavits and were cross-examined during the hearing. The love they have for Abbi was quite apparent from their testimony. Other family members were also present during the hearing to support the parties.

[67] Notably, almost all of Abbi's extended family lives in Nova Scotia. Both sets of grandparents live near Halifax and she has aunts, uncles and cousins who also reside in Nova Scotia, and, according to Mr. Blois, live relatively close by to where he lives.

[68] Mr. Blois indicated that his mother and step father live within a 20 minute drive of his home as does his father. His sister also lives about 20 minutes from him with her children, Abbi's cousins. Mr. Blois' mother was used by both parties to provide care for Abbi when requested and Abbi had regular weekly overnights with Mr. Blois' parents.

[69] Ms. Blois' parents also saw Abbi regularly when both parties lived in Nova Scotia and have a close relationship with her. Ms. Blois indicated that the only relative of hers in Ontario was a first cousin who lives about an hour away from her new home. No evidence was given to suggest that Ms. Blois' first cousin has a significant or established relationship with Abbi.

The Willingness of Each Parent to Facilitate Contact with the Other Parent

[70] This factor closely relates to s. 16(10) of the *Divorce Act.*

[71] Both parents provided me with evidence with respect to the proposed contact they would facilitate with the other parent should Abbi be in his or her primary care. Clearly, they have turned their mind to this issue and both realize it is important that Abbi maintain significant and meaningful contact with the other parent. They appropriately recognize that, on account of their living in two different provinces, this presents logistical challenges and requires effort and commitment from each of them. However, based on my assessment of the parties, and the evidence presented to me, I conclude that both are up to meeting those challenges.

[72] Ms. Blois testified that she has given considerable thought to how to maintain Abbi having frequent visitation with both of her parents and attached a draft Separation Agreement prepared by her counsel to her affidavit dated September 2, 2016 (Exhibit 1, Tab 3, Exhibit "B"). I accept Ms. Blois as being genuine when she asserts that, should Abbi be permitted to relocate to Borden, she is willing to facilitate contact between Abbi and Mr. Blois as proposed in the draft separation agreement.

[73] Ms. Blois goes on to suggest, however, that the opposite cannot be said to be true with respect to Mr. Blois. She claims that he has already demonstrated "resistance" to supporting a long distance relationship between she and Abbi. She says this causes her to fear that her relationship with Abbi would be significantly curtailed should he be given primary care of Abbi.

[74] While I accept that Ms. Blois may honestly have these fears, I do not conclude that the evidence demonstrates, on a balance of probabilities, that her fears are established, or that I should speculate that they will likely materialize in the future. Specifically, while I accept that there were some initial difficulties in coordinating daily phone contact between Abbi and Ms. Blois, it appears that, by the last day of the hearing of December 8, 2016, the parties had been able to resolve same. Indeed, when I raised the issue of telephone contact, Ms. Blois' counsel indicated that she believed that the issue had been worked out between the parties. Mr. Blois' counsel agreed and indicated that, despite some initial hiccups, the parties have now got into a rhythm with respect to coordinating Ms. Blois' telephone contact. Thus, the parties agreed to simply having a condition in any Order that they would have reasonable telephone and electronic access as arranged by the parties without requiring me to direct anything more specific.

[75] Furthermore, since Ms. Blois moved to Ontario, it appears that Mr. Blois was able to work with Ms. Blois to coordinate Abbi having time with Ms. Blois which included an approximately two-week long visit to Ontario in late August/early September, 2016, Thanksgiving Weekend access with Ms. Blois and her parents, as well as Christmas Holiday access. It also appears that Ms. Blois has had daily telephone contact with Abbi.

[76] I recognize that there was an issue around a request Ms. Blois made to have Abbi in her care for her birthday (October 23rd) which the parties were unable to coordinate. When I review that evidence in its totality, I do not conclude that Mr. Blois was being unreasonable in terms of trying to accommodate Ms. Blois' request. Ms. Blois only made the request approximately ten days before her birthday. Mr. Blois already had planned a trip to Cape Breton but, after receiving Ms. Blois' request, eventually agreed to change his plans so that Abbi could go to Ontario to be with Ms. Blois. While he did indicate that he would not be available to fly to Ontario with Abbi, he was agreeable to someone else travelling with Abbi to Ontario. He also helped Abbi pick out a birthday present for Ms. Blois. Thus, while it was unfortunate that the trip never materialized, given the relatively short notice of the request, and the measures which Mr. Blois subsequently took to accommodate it, I do not conclude that this incident demonstrates that he is unwilling to facilitate reasonable access between Abbi and Ms. Blois.

[77] Thus, I conclude that, while coordinating visits will take effort and commitment by both parties on account of their geographical separation, both parents are willing to facilitate Abbi having significant and meaningful contact with the other parent.

The Interim and Long Range Plan for the Welfare of the Child

[78] Mr. Blois' interim and long range plan for Abbi's welfare is largely a continuation of what is already in existence. Specifically, he proposes that Abbi continue to live in his home, maintain existing relationships with extended family on both sides, continue to go to the same school, continue to go to the daycare provider she has been going to since she was very young, and continue her existing relationship with friends.

[79] Ms. Blois, on the other hand, proposes an interim and long range plan which, on account of Abbi's relocation to Ontario, naturally involves a number of changes for Abbi in terms of a new home, new community, new school, and needing to make new friends.

[80] Ms. Blois is clearly sensitive to these changes and is committed to helping Abbi with the transition and introducing her to new people and friends. Ms. Blois says that the longer Abbi is with her in Borden, the more she will grow accustomed to her new community and be able to develop new routines and relationships. On the other hand, she says that if Abbi remained in Nova Scotia, she would have only minimal opportunity to establish new routines and social developments with peers in Ms. Blois' new community. Consequently, Ms. Blois feels this may make Abbi resistant to visiting her in Ontario in the long-term.

The Financial Consequences of Custody

[81] While there was some evidence on this factor relating to the parties' willingness to potentially share expenses on account of the new parenting arrangements, neither party suggested that this factor carries significant weight in relation to the parenting issues I must determine. I agree.

Any Other Relevant Factors

[82] Paragraph 16 of the parties' separation agreement of March 2013 is another relevant factor which I believe I should consider and weigh when making my overall determination of what parenting arrangement is in Abbi's best interests. Again, it dealt with the issue of either parent getting posted outside of the province and states:

> The parties further agree that in the event one parent gets posted outside of the province of Nova Scotia, in the course of their employment, the other parent shall make every reasonable effort to obtain a posting in the same geographic area as the aforesaid parent keeping the child's best interest a priority.
>
> The parties further agreed that if either parent is posted to another province they must notify the other parent thirty days in advance of the change of residence and provide the other parent with the new address and when the change is to take place. [Emphasis added].

[83] When the parties entered into the separation agreement, Abbi was slightly over three years old. There was nothing in paragraph 16 which specifies what is meant by "same geographic area" or what are the consequences if either party fails to make "every reasonable effort" to obtain a posting in the same geographic area.

[84] As noted earlier, Ms. Blois submits that the parties themselves agreed that it was in Abbi's best interests that Abbi maintain close proximity to both parents which was more important than her maintaining close proximity to her extended family. She suggests that paragraph 16 of the separation agreement should be determinative of Abbi's parenting arrangements or, at the very least, should be given significant deference as demonstrating what the parties agreed is in Abbi's best interests.

[85] Mr. Blois on the other hand, submits that paragraph 16 has two parts. First, there is a requirement on the non-posted party to make every reasonable effort to seek a posting in a similar geographical location as the posted parent. Second, and more importantly, each party must keep Abbi's best interest a priority which he says is best served by Abbi remaining in Nova Scotia. Finally, he argues that paragraph 16 is essentially unenforceable as it is vague in its interpretation, and silent with respect to any consequences for non-compliance.

[86] Much evidence was spent during the hearing about whether or not Ms. Blois could have resisted her posting to Borden and whether or Mr. Blois complied with the requirements of paragraph 16 of the separation agreement in an effort to also be posted to Ontario.

[87] With respect to the former, Ms. Blois asserted that resisting a posting would have negative career implications for her. Her assertion is supported by the evidence of Mr. Kiropoulos. In his letter, Mr. Kiropoulos indicates that members of DND/CAF cannot really resist postings and, if they do, this is known as "posting avoidance" which can have negative career implications to the point of being released. Mr. Kiropoulos further indicated that, while DND/CAF do try to respect separation agreements which contain mobility clauses, it is not bound by them and there is an onus on a member to apply for a "contingency cost move" (a move for personal situations which does not carry with it negative career implications) or otherwise voluntarily seek a posting consistent with any mobility requirement (Exhibit 7).

[88] Ms. Blois goes on to assert that the evidence establishes that Mr. Blois has failed to comply with paragraph 16 of the separation agreement and suggests that he may have been able to get posted to Ontario if he made more effort to do so in accordance with DND/CAF's posting procedures.

[89] Mr. Blois, on the other hand, testified that he did make various inquiries about obtaining a posting in Borden but was unsuccessful in finding a position. He asserts that there were no openings for someone of his position. In this regard, he attached an email from his Training Coordinator dated May 16, 2016, who indicated that he had spoken to Mr. Blois' Career Manager who confirmed that there are no vacancies in CFB Borden for his position (Exhibit 3, Tab 1, Exhibit "A").

[90] To the extent that neither Mr. Blois' Training Coordinator or Career Manager were made available for cross-examination, the email is hearsay which I do not admit for the truth of its contents. I do admit it for the non-hearsay purpose of providing evidence as to Mr. Blois' efforts to seek a posting in Borden and as evidence which goes to his state of mind as to why he believes no postings for his position were available in Borden.

[91] At the end of the day, however, I conclude that going down a proverbial rabbit hole in my decision by getting into a detailed examination of the evidence presented to me on military posting policies, and each party's evidence on whether or not Mr. Blois may have exhausted all reasonable avenues available to him, is not a useful exercise. I will simply say that I have carefully considered the totality of that evidence and am satisfied that neither party has provided me with sufficient evidence which establishes, on the balance of probabilities, whether or not Mr. Blois could have been posted to Borden or another location which would constitute being in the "same geographic area" as Ms. Blois.

[92] I further conclude that even if paragraph 16 is enforceable, and it can be established that Mr. Blois failed to "make every reasonable effort to obtain a posting in the same geographic area" of Borden, such a finding is not determinative of the issue before me, namely what parenting arrangement is in Abbi's best interests.

[93] Simply put, this case should not be determined on whether or not Ms. Blois could have resisted her posting to Ontario or whether or not Mr. Blois should have made better efforts to be posted with her. To put it another way, it should not be determined on whether or not one or both of Abbi's parents have "sacrificed enough" in terms of their own personal lives or careers or

have violated the terms of a separation agreement entered into when Abbi was three. Rather, my focus must be on what parenting arrangement currently is in Abbi's best interests by reference to her condition, means, needs and other circumstances. In making that determination, my focus must be a child-centered one, which does not turn on whether either of her parents are guilty of having breached a contractual provision of their separation agreement.

[94] As emphasized in ***Gordon v. Goertz,*** I must do a "full and sensitive inquiry" into Abbi's best interests. In my view, this means my determination must go far beyond treating this case as a simple breach of contract exercise between her parents. This is particularly so since Abbi, the child at the focus of my inquiry, is not a party to what her parents may have contracted with each other several years ago. Thus, while I can accept that when Abbi was three, her parents both felt it was in her best interests that, if one parent got posted to another province, the other parent would "make every reasonable effort to obtain a posting in the same geographic area", this does not now tie my hands in determining what parenting arrangement is ultimately currently in her best interests.

[95] Again, as wisely stated by Justice Bateman in ***Burgoyne v. Kenny***, what is in a child's best interests is a fluid concept which may change over time. Thus, what may have been in Abbi's interests when she was three may no longer be in her best interests when she is seven with arguably a different sense of connection to her community. Furthermore, as aptly noted by Justice McLachlin (as she then was) in ***Young v. Young*** and ***Gordon v. Goertz,*** best interests of a child is not based on parental rights or preferences. Thus, it is Abbi's interests which must be paramount as opposed to the interests or rights of her parents. Consequently, determining what parenting arrangement is in Abbi's best interest requires me to weigh **all** the relevant factors, as opposed to simply treating this determination as a strict contractual exercise as determined by Abbi's parents, and what they claim are their respective "rights" under their separation agreement. Thus, while I believe it is appropriate to give a fair amount of deference and weight to the effect of paragraph 16 of the parties' separation agreement as part of my overall balancing of factors, I conclude that it is not solely determinative of what parenting arrangement is currently in Abbi's best interests.

***"Gordon v. Goertz* Factors"**

[96] As I noted earlier, there clearly is overlap between the "best interests" factors and the ***Gordon v. Goertz*** factors. Thus, like our Court of Appeal found in the ***Blennerhassett v. MacGregor***, I do not find that the present case is one where the best interests factors from ***Foley*** collide with those of ***Gordon v. Goertz***. Thus, to the extent I have already examined the evidence relating to some of the ***Foley*** factors which overlap with the ***Gordon v. Goertz*** factors, I will not repeat that discussion. I will, however, go on to examine some of the ***Gordon v. Goertz*** factors which I have not already specifically addressed.

The existing custody arrangement and relationship between Abbi and each parent

[97] In ***Gordon v. Goertz,*** Justice McLachlin, as she then was, stated that, when considering a mobility request, the "inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect" (para. 49).

[98] There is no existing order which provides a custody arrangement for Abbi. Rather, the parties have been operating under a shared parenting arrangement as provided for under their separation agreement.

[99] In light of this *de facto* shared parenting arrangement, counsel agreed that the parties should both be considered joint custodial parents whose views are entitled to "great respect". I agree.

[100] Some of my colleagues have suggested that in shared parenting situations, courts are less likely to permit relocations. For example, in ***Wood v. McGrath***, 2009 NSSC 384, Justice Lynch cited with approval from paragraph 18 of *P.R.H. v. M.E.L.*, 2009 NBCA 18 as follows:

> The general trend of the jurisprudence since *Gordon v. Goertz* has been to grant approval for a proposed move, so long as it is proposed in good faith and is not intended to frustrate the access parent's relationship with the child…However, this general trend is most evident in cases where there is a clear primary caregiver for the child or children. A proposed move is less likely to be approved where caregiving and physical custody have been equally shared between parents. (para. 41) [Emphasis added]

[101] Similarly, in *McIntyre v. Veinot*, 2016 NSSC 8, Justice Muise reviewed a number of the authorities which dealt with shared parenting situations and stated at paragraph 137:

> In ***Parent v. MacDougall,*** 2014 NSCA 3, at paragraphs 24 to 26, the court, at least by implication, approved the statement that: "A proposed move is less likely to be approved where caregiving and physical custody has been equally shared between the parents."

[102] While I do not take issue with my learned colleagues' view of the jurisprudence, I hesitate to make any general comments on mobility cases when shared parenting is involved. Indeed, as made clear from ***Gordon v. Goertz,*** while the existing custody relationship should be considered, each case turns on its own unique circumstances and the only issue is the child's best interests.

[103] Thus, I would think that implicit in any resistance to permitting a relocation in a shared parenting situation, is the conclusion that, in a given case, it may be contrary to the child's best interests and the maximum contact principle, to disrupt a successful shared parenting arrangement by placing the child in the primary care of the moving parent, and significantly curtailing the child's contact and relationship with the non-moving parent. Consequently, judges should carefully consider whether or not they should disrupt a successful shared parenting arrangement when faced with a relocation request by one of the parents. However, if the child's best interests requires such a change in the particular facts of a given case, then a judge should not be hesitant to order same even if it means an end to the shared parenting arrangement.

[104] Such a situation is very different than the case before me where both parties agree that, on account of Ms. Blois already having relocated to Ontario, continuing with shared parenting is

simply not a practical option open to me. Thus, to the extent neither party has asked me to consider shared parenting as an option, I have not done so as I agree with the parties that, based on the evidence in this case, shared parenting is presently not a practical option. This may, of course, change in the future should the parties get posted to the same community.

The desirability of maximizing contact between Abbi and both parents

[105] Given that Abbi has had almost equal time with her parents since they separated, it is desirable to maximize the contact she has with each of them on a go forward basis. As noted under my discussion on **"Best Interests"** earlier, both parents are clearly sensitive to this and have provided plans as to how they will help facilitate contact between Abbi and her other parent.

[106] I do note that, given the fact that Ms. Blois' parents and extended family live in Nova Scotia, she may come back to Nova Scotia in any event during certain special occasions. If this was to happen, this may provide more opportunities for Abbi to spend time with both of her parents during special occasions without requiring her to travel out of the province.

Abbi's views, if appropriate

[107] As noted earlier, both parties agree that, given her age, a consideration of Abbi's views or preferences is not appropriate.

Ms. Blois' reason for moving, only in the exceptional case where it is relevant to her ability to meet Abbi's needs

[108] Ms. Blois' move was requested by her military employer. Clearly, she is moving for very valid reasons and cannot be faulted in any way for not trying to resist the posting.

[109] While the parties put into evidence Ms. Blois' reason for moving, I do not conclude that this is an "exceptional case" in which her reason for moving is particularly relevant to her ability to meet Abbi's needs. To the contrary, I find that, from Abbi's perspective, both Ms. Blois and Mr. Blois were able to appropriately meet her needs prior to Ms. Blois' relocation to Borden. Furthermore, Ms. Blois has not suggested that the relocation would somehow allow her to better meet Abbi's needs. I therefore find that Ms. Blois' reason for moving is not something which significantly impacts on her ability to meet Abbi's needs.

The disruption to Abbi consequent on removal from family, schools and the community she has come to know.

[110] There can be no doubt that relocating to Borden would constitute a significant disruption to Abbi's life. She would be going to an entire new community, a new home, a new school, a new before and after school childcare provider, and would need to make new friends. She also would be leaving behind extended family with whom she has close bonds and who have played a significant role in her life.

[111] As well, in Borden, Abbi would be living with a new male adult, Mr. Baker. Ms. Blois and Mr. Baker knew each other as childhood family friends and then lost touch for many years. They reconnected in early July 2016 shortly after which they commenced a romantic relationship. Abbi was first introduced to Mr. Baker in mid-July 2016 and, a few days later, Ms. Blois and Mr. Baker decided that he would relocate with Ms. Blois to Borden which he did at the end of July.

[112] Despite being in a role where I deal with the effects of the breakdown of relationships on a daily basis, I have no reason to question that Ms. Blois and Mr. Baker are committed to each other, and are in a stable relationship despite it being relatively new. Indeed, parents are not expected to put their lives on hold and should be free to enter into new relationships which can be positive developments in their lives. However, my focus is a child-centred one, and must be squarely on Abbi. From her perspective, Mr. Baker was a complete stranger until mid-July.

[113] Both Ms. Blois and Mr. Baker acknowledge that Abbi has expressed jealousy on account of her mother's new relationship with Mr. Baker. I have already referenced Ms. Blois' evidence in relation to same in paragraph 63 and how she has attempted to address same. Thus, I will not repeat that evidence again.

[114] Similarly, in his affidavit, Mr. Baker deposes that while he views things between he and Abbi as being "great", and that she has "warmed up" to him, he knows that Abbi speaks to Ms. Blois about feeling jealous of him from time to time because Abbi is used to having Ms. Blois all to herself (Exhibit 3, Tab 4, Paragraph 11). When I asked him about this, he indicated that he and Ms. Blois are open with each other and have spoken about Abbi's jealousy. He also said words to the effect that "kids are somewhat transparent and you can see if they are upset or if they are happy".

[115] When asked about Mr. Baker' role in Abbi's life, Ms. Blois indicated she saw Mr. Baker as being more of a "step-father figure" to Abbi who would not replace Mr. Blois as her father. While I can certainly understand Ms. Blois' perspective, I must consider the consequent impact on Abbi of being removed from the community she has come to know, in favour of being placed in a new community and environment which includes living with someone who was a complete stranger until mid-July and now, according to Ms. Blois, would be in a "step-father" role to Abbi.

[116] On the other hand, as noted earlier, should Abbi remain in Nova Scotia, she would remain in the same school and daycare she has been going to. She would remain in the only community she has known. She would not be disrupted from being able to spend time with both sets of grandparents and other extended family with whom she is closely bonded. She also would be able to continue relationships with her existing friends. Furthermore, Mr. Blois, while also in a relationship, lives alone so Abbi would remain in a living arrangement to which she is accustomed.

DECISION ON PARENTING/MOBILITY:

a) Abbi's Primary Residence

[117] Again, I must choose between two great parents, both of whom have a close relationship with Abbi. Each wants primary care of Abbi and believes her or his plan is best for their daughter.

[118] This case does not turn on the issue of credibility of either parent. Rather, it turns on my assessment of their respective parenting plans and considering which plan best meets Abbi's needs at this stage of her life.

[119] When I consider the totality of the evidence, and what I am obliged to consider under the law, I find that, based on a "full and sensitive inquiry" into Abbi's best interests, Abbi should remain in Nova Scotia in Mr. Blois' primary care. I come to this conclusion primarily for the following four reasons:

1) A relocation to Borden would be a major change and disruption to the day to day life she has known. She is only seven years old and is acknowledged by both her parents, as well as her extended family, as being shy and/or having anxiety when it comes to meeting new people, and being in situations outside her comfort zone.

   Abbi is already dealing with a significant change from the shared parenting arrangement to which she had been accustomed. I am concerned about potentially placing additional stress and anxiety on her by uprooting her now from the only community she has known, and thrusting her into an unfamiliar environment which will not only require her to establish new connections and relationships in a new community, but would also require her to live with a new adult, Mr. Baker, who she is only beginning to know, and towards whom she apparently harbours some initial jealousy.

2) At this point in her life, I believe that maintaining a significant degree of stability and familiarity for Abbi is important. While I recognize that her losing out on physical time with her mother is a very negative change for her, the same could be said in terms of her father, should she relocate to Borden.

   Given that I conclude that Abbi is closely bonded to both of her parents, and that neither parent is inherently superior in his or her parenting abilities, I have decided on the option which maintains more stability and familiarity for Abbi which I believe is most in her best interests. Specifically, by remaining with Mr. Blois, she gets to live in a home she is familiar with where she has her same bedroom, gets to go to her same school, can continue to see the daycare provider with whom she has a close relationship and has been seeing since she was a toddler, gets to continue to benefit from her existing friendships, and can continue to receive the support of her grandparents and extended family who have played a significant role in her life.

3) Almost all of Abbi's extended family on both sides, and her existing relationships, are in Nova Scotia. It is not in her best interests to have that support diminished especially given that both parents recognize that the loss of the shared parenting arrangement she has been accustomed to is already a significant transition for her.

4) While I have given considerable weight to the terms of paragraph 16 of the parties' separation agreement, I conclude that, even if I accept Ms. Blois' arguments that Mr. Blois has failed to comply with same, such a conclusion does not outweigh Abbi's best interests which I find are best met by her remaining in the only community she has known, surrounded by her support network of extended family and friends.

b) Additional Parenting Conditions

[120] I also order the following conditions on parenting, some of which, as noted earlier, were agreed to by the parties:

i) Decision-Making

The parties will continue to have joint custody of Abbi and make major decisions together relating to her medical care, dental care, education and general well-being.

ii) Access to Information

Either party can have access to information from third party professionals and, if required, each parent will provide the necessary consents to the other parent or third party provider to facilitate this.

iii) Ms. Blois' Parenting Time

Summer Parenting Time

Ms. Blois will have Abbi from June 30th to the last Sunday in August at which time she shall be returned to Mr. Blois's care.

Christmas Holiday Access

As agreed, Mr. Blois will have care of Abbi for the first two days and last two days of Abbi's Christmas School Break. Ms. Blois will have Abbi for the remainder of the Christmas School Break. However, if Ms. Blois comes to Nova Scotia for Christmas, Mr. Blois is entitled to have Abbi for a visit on Boxing Day which shall be an overnight visit.

March Break

Abbi will spend her March Break with Ms. Blois.

Victoria Day Weekend

Abbi will spend Victoria Day Weekend with Ms. Blois.

Easter Weekend

The parties will have Abbi on alternating Easter Weekends beginning with Abbi spending Easter with Ms. Blois in 2017.

Thanksgiving Weekend

Abbi will spend Thanksgiving Weekend with Ms. Blois. Should Ms. Blois come to Nova Scotia during same, Mr. Blois shall be entitled to spend a period of four hours with Abbi to accommodate a family Thanksgiving Dinner during a day on which Ms. Blois has not planned to have her own family Thanksgiving Dinner.

Abbi's Birthday

Beginning on January 20, 2018, and every even year thereafter, Ms. Blois will be entitled to come to Nova Scotia and have Abbi in her care for her birthday. Furthermore, if she covers the cost of same, she can fly Abbi up for the weekend closest to her birthday during those same years and shall return Abbi to Mr. Blois' care by Sunday evening.

Ms. Blois' Birthday

Should Ms. Blois cover the costs of same, she will be entitled to have Abbi during the weekend closest to Ms. Blois' birthday of October 23rd. This birthday visit can take place either in Nova Scotia or Ontario as per Ms. Blois' preference.

Other Reasonable Access

Ms. Blois shall have any such other reasonable access to which the parties can agree.

Telephone/Electronic Access

Abbi will have reasonable telephone and electronic contact with each of her parents as arranged by the parties.

iv) Costs for Access

As noted earlier, counsel indicated that the parties were hopeful to agree on their financial contributions towards access costs for Abbi. Thus, unless otherwise provided above, travel arrangements and costs associated with Ms. Blois' parenting time are to be agreed upon by the

parties. In the event, the parties are unable to agree on same I reserve the right to deal with same if I deem it appropriate to do so.

v) Counselling

The parties have agreed that they will look into obtaining the professional services of a counsellor to assist Abbi in dealing with any issues associated with the transitioning of her parenting arrangements.

vi) Future Postings/Relocation

If, for any reason, the parties are living within 50 km of each other, either party can seek to have the parenting arrangements reviewed without establishing a material change of circumstances on no less than 30 days' notice to the other party.

CONCLUSION:

[121] Abbi is blessed to have two great parents who love and support her. They, in turn, are blessed to have a wonderful young daughter who enjoys spending time with both of them. Unfortunately, through neither parent's fault, I was required to make a tough decision as to where Abbi should primarily live given that they cannot agree. I have made a decision which, in my opinion, maximizes stability and minimizes disruption for her which I believe is crucial at this delicate stage of her life and is in her best interests.

[122] I have no doubt that Ms. Blois will be very disappointed by my decision. In her place, I would be as well. I can only emphasize again that my decision has nothing to do with any negatives I see in terms of her parenting abilities, but rather, has everything to do with what I believe is a parenting arrangement which best meets Abbi's needs.

[123] I also caution Mr. Blois that it is incumbent on him to ensure that he does everything reasonably possible to ensure that Abbi maintains her close relationship with Ms. Blois. This would, at a minimum, not only include facilitating the access I have ordered, but would also include being sensitive to the fact that Ms. Blois is missing the daily in person contact that he gets to have with their daughter. Thus, I expect him to make reasonable accommodations for any further requests by Ms. Blois for additional parenting time should it be able to be arranged.

[124] In closing, these parents deserve much praise for their joint efforts in raising their daughter. Abbi, by all accounts, is a delightful young child. I sincerely hope that, despite the significant change to her parenting arrangements, these two great parents will continue to love and support her and ensure that her needs are met so she can flourish throughout all the stages of her childhood. While the geographical distance between them will pose some challenges, I am confident that these parents have the ability to overcome those challenges. I wish them and Abbi nothing but the best in the future.

[125] I would ask Mr. Blois' counsel to prepare the form of Order which reflects my decision which should be consented as to form by both counsel. I also encourage the parties to do their best to resolve any issues of costs so that they can preserve as much of their joint financial resources towards facilitating access costs for Abbi. In the event the parties cannot agree on costs, counsel should sent me written submissions on same no later than three weeks from today.

Jesudason, J.