SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *H.P. v. P.P.*, 2023 NSSC 251

Date: 20230911
Docket: 1201-069243
Registry: Halifax

Between:

H.P.

Applicant

v.

P.P.

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice R. Lester Jesudason
Heard:	September 27, 2022, February 9, 10 and March 31, 2023, in Halifax, Nova Scotia
Final Written Submissions:	May 26, 2023
Written Decision:	September 11, 2023
Summary:	Parents separated shortly after their son's birth in October 2008 and divorced in September 2016. As provided for under the Corollary Relief Order, the mother had primary care of the son until August 2018 when he was suddenly placed in the sole care of the father after the mother attempted to murder the son by poisoning his dinner. She claims she did so while suffering deteriorating mental health and experiencing a "psychotic break". The son was ten years old at the time. Mother pled guilty to attempted murder of the son. A consent variation order from 2019 provided that the mother have no direct contact with the son but could have limited contact with him in the father's discretion through letters, cards, and gifts.

The mother served a period of incarceration and is now on probation. She identifies as Indigenous. She says her Indigenous community has supported her through a journey of self-healing over the last several years and that her mental health has significantly improved.

Mother filed a variation application and an interim motion seeking six months of supervised parenting time with the son, now almost fifteen years old, through the Supervised Access and Exchange Program at Veith House. She sees this as the first initial step towards her reintroduction into the son's life. After this is completed, she seeks to review the ongoing parenting arrangements.

Father strenuously opposes the mother's request. He says that the son has stabilized under his care and lives a normal and happy life as a teenager. He asks that the son's peaceful and stable life not be disturbed.

The parties agreed to a have a voice of the child report completed. Before it was completed, the father advised the son that the mother tried to murder him in 2018. Father testified that he felt the son had a right to know this information before participating in the voice of the child report. The voice of the child report indicates that the son does not want any expansion of his existing contact with the mother.

Issue: Should the mother be granted interim parenting through Veith House?

Result: Mother's request denied. It currently is not in the son's best interests to be forced to have direct contact with the mother through Veith House or otherwise. While the mother is understandably anxious to re-establish her relationship with the son, just like she needed time to process and heal from the traumatic events of August 2018, the son's best interests deserve him being given a similar opportunity. His best interests require him being given the opportunity to process

and navigate the newly learned upsetting information with the potential support of professional assistance.

Parties directed to explore therapeutic counselling for the son to help him process any trauma arising from the newly learned information about what happened to him in August 2018 and to also obtain possible recommendations as to the next step, if any, towards reintegrating the mother into the son's life.

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Counsel:	Leslie Hogg, Fenessa Williams and Shirley Mailman for H.P. Gerard Quigley for P.P.

By the Court:

1.0 INTRODUCTION

[1] Sometimes hurt people, hurt people. In other words, sometimes those who have been harmed themselves, end up harming others. When the person who inflicts that harm is a parent, and the recipient of that harm is their young child, it can be particularly hard to understand.

[2] Unfortunately, such is the case before me. It involves a mother, H.P., who says she experienced significant harm and trauma in her life which led to her suffering a mental breakdown, and then attempting to murder her ten-year-old son. She admits that what she did was a most horrific act. She plead guilty to her crime and was sentenced to incarceration for two years less a day. She has served her time and is now out on probation.

[3] The mother says that, over the past few years, with the support of her Indigenous community, she has engaged in a journey of self-healing and is no longer in the dark place she was when she tried to murder her son. She asks to now be given the chance to rebuild her with relationship the son who turns 15 in October. She filed an interim motion asking me to order that she be allowed to have in person supervised parenting time on a temporary basis with the son through the Supervised Access and Exchange Program at Veith House. She suggests that this would be an appropriate first step to rebuilding the mother-son relationship.

[4] The father, P.P., implores me to not allow this to happen. He says that allowing in person contact by the mother would risk causing grave emotional and psychological harm to the son and isn't in the son's best interests.

[5] This is a difficult and tragic case. While many may completely condemn the mother for what she did, I feel empathy and compassion for her. I accept that she has done much over the last few years to improve her own mental health and is in a better place now. I commend her Indigenous community for rallying behind her and supporting her through her journey of self-healing. However, regardless of my empathy and compassion for the mother, my focus must be on the son's best interests. His best interests simply don't support the mother having in person supervised parenting time through Veith House at this stage of his life. The following decision explains my reasons for coming to this conclusion.

2.0 FAMILY AND LITIGATION HISTORY

2.1 *Family History*

[6] The parties met in 1997 and started dating shorter thereafter. They married in June 2008 with the son being born in October 2008. The parties separated shortly after his birth but didn't get divorced until September 2016. Their Consent Corollary Relief Order ("CRO") provided that, amongst other things, the parties would have joint custody of the son and that the regular parenting schedule would have the son in the mother's primary care. The father's parenting time was limited to every second weekend from Friday after school until Monday morning, and every Tuesday after school until drop-off on Wednesday morning. The father would also have such other parenting time as agreed between the parties.

[7] The parenting schedule appeared to be working relatively well until late 2017/early 2018. On November 27, 2017, the mother advised the father that she planned to relocate with the son to Prince Edward Island on July 1, 2018. Then, in late January 2018, the mother unilaterally took the son out of the school he had been attending since primary and suggested that she would be home schooling him. The father strongly opposed both of the mother's decisions.

[8] A contested hearing was held before Justice Pamela MacKeigan on March 9, 2018. Both parties were represented by counsel. Justice MacKeigan ordered that the son be returned to his original school in Halifax. She also ordered that the son would not be subject to any home schooling program.

[9] On June 27, 2018, the father claims that he was contacted by the vice-principal of the son's school who advised that the mother had announced to the school that she was picking up the son and permanently moving to PEI with him.

[10] An urgent court appearance was set before Justice Elizabeth Jollimore on June 29, 2018. Again, both parties had counsel. The parties were able to agree on the parenting arrangements for July with the son spending time with the mother in PEI, and time with the father in Nova Scotia. Justice Jollimore set another appearance before her on July 16, 2018, and a Case Management appearance before Justice Jim Williams on August 23, 2018.

[11] The parties had a telephone appearance with Justice Jollimore on July 16, 2018. Counsel advised that they were close to reaching an "interim agreement" on parenting but still had some details to work out.

[12] The parties appeared with counsel before Justice Williams for Case Management on August 23, 2018. The mother advised she was still in PEI and hadn't yet secured a residence in Halifax. She proposed using Bryony House as a temporary residence for her and the son if she was not permitted to relocate with him to PEI. Justice Williams scheduled a three-day variation hearing on my docket for February 2019. He also scheduled a half-day hearing before himself on August 30, 2018, to determine the son's primary residence and where he would go to school in September 2018, pending the final variation hearing before me.

[13] The mother says that she was extremely upset following the Case Management appearance before Justice Williams. She claims that the "court system" failed her and that the judge ordered her to come back to Halifax and find a place to live within one weekend failing which he would place the son in the father's interim care pending the final hearing before me.

[14] The mother says she was "in shock and panicked". She says that she felt that she had no way out of "this dark hole". She says she didn't have the financial ability to find an apartment and deal with the cost of moving from PEI to Halifax in short order. She claims that the thought of losing primary care of the son was too much for her to deal with and this brought up all her past trauma which included an abusive history with the father (which the father adamantly denies) and sexual assaults by other men. She says the thought that the judge would return the son to the father's care became "all-consuming". She says, according to her therapist, she suffered a "psychotic break".

[15] On August 25, 2018, the mother attempted to murder the son. She says she doesn't recall all the details and that what she does recall may not be reliable. She agrees that she ground up 20 tablets of anti-anxiety medication (Ativan), mixed them with honey, and then put this in the son's meatloaf dinner. She says that she then tried to take her own life but, at some point, snapped out of it. She then called 911 to obtain help for the son while trying to get him to throw up the poisoned food which he had ingested.

[16] Fortunately, the son survived. The mother was arrested and incarcerated while the son was placed in the temporary care and custody of the PEI Child Protection Services. The father travelled to PEI on August 27, 2018, and the child protection authorities released the son to his sole care on August 28, 2018. The son has been in the father's care ever since without any telephone or in person contact with the mother.

[17] The half-day hearing before Justice Williams proceeded on August 30, 2018, to determine the son's residence and where he would go to school in September 2018. The mother didn't appear or file any evidence. Her lawyer advised that she didn't have instructions. Justice Williams rendered an oral decision. He granted an "interim variation order" which stated, amongst other things:

- The father would have sole custody and primary care of the son;
- The mother would have no contact with either the father or the son unless it was first consented to by the father and arranged through both parties' counsel;
- The mother shall file with the Nova Scotia Supreme Court (Family Division) copies of all order and reports from PEI concerning herself including, but not limited to, all orders relating to her court proceedings in the PEI Provincial Court, as well as the PEI Child Protection Office;
- The parties would proceed to a three-day final variation hearing before me on February 25, 26 and 27, 2019, at which time either party could move to vary the Order or request it be made a Final Order.

[18] This case first appeared before me on January 14, 2019. Again, the mother didn't participate. Her counsel filed a motion to withdraw but advised that the motion documents hadn't yet been served. I directed that the mother be personally served with the motion documents and scheduled the motion before me on February 4, 2019.

[19] On February 4, 2019, the mother's lawyer appeared and confirmed that the mother had been served with the motion documents but still hadn't provided her with any instructions. She agreed to remain as the mother's counsel of record in case the mother got in touch with her before the start of the three-day variation hearing on February 25, 2019. She agreed to postpone dealing with her motion to withdraw until then.

[20] On February 25, 2019, the father, his lawyer, and the mother's lawyer appeared for the start of the variation hearing. The father had filed his evidence. The mother hadn't filed any evidence and her lawyer proceeded with the motion to withdraw as her counsel. I was informed that the mother was incarcerated in PEI and was awaiting sentencing.

[21] Given that I had no direct evidence as to the status of the criminal proceedings, nor was I provided any of the relevant child protection records from PEI, it was agreed that I would issue a further interim variation order which essentially maintained the existing terms of Justice William's prior interim variation order and reschedule the final variation hearing to July 10, 2019. The mother's counsel was allowed to withdraw on the direction that the mother would be served with all the materials including a letter explaining what happened, and the date for the final hearing. The mother would also be advised that if she wished to file any evidence contesting what the father was seeking in a final order, she had to file her evidence no less than 30 days before the hearing.

[22] The mother subsequently retained new counsel in late June and the parties made a joint request to reschedule the July 10, 2019, variation hearing to a new date on September 23, 2019. I granted their request.

[23] On September 23, 2019, counsel for the parties appeared and advised that the parties had reached agreement on a Final Consent Variation Order. I was also advised that the mother had plead guilty in PEI to the charge of "attempt to murder [the son] by administering a noxious substance" and was to remain incarcerated until June 26, 2021, after which she would be subject to an additional three years of probation on various terms and conditions. The terms and conditions included that she have no contact with the son except with the consent and under the direction or supervision of the Supreme Court of Nova Scotia (Family Division).

[24] The terms of the new Final Consent Variation Order were read into the record by counsel and the Order was subsequently forwarded to me and issued on December 5, 2019. The terms included:

- The father would have sole decision-making for the son;
- The father would provide the mother with information on any major health or medical matter concerning the son as soon as reasonably practicable;
- The father would provide the mother with annual updates on the son's previous school year normally no later than one month following the end of the school year;
- The mother would have no contact with the son unless it was first consented to by the father;

- The father would permit the mother to exchange cards, letters, drawings, etc., with the son on special occasions and holidays as long as they were deemed appropriate by the father;

- The father would consider additional reasonable requests by the mother to send cards, letters, drawings, etc., to the son but it would be in the father's sole discretion whether such additional documents are provided to the son;

- The father will accommodate, to the best of his abilities, any additional requests from the son to communicate to the mother by way of cards, letters, drawings, etc. but it would remain in the father's sole discretion as to whether such additional communication is made; and

- The mother must provide the father with copies of all relevant orders and reports from the Supreme Court of Prince Edward Island, as well as the Prince Edward Island Provincial Correctional Centre, including, but not limited to, all Probation Orders and reports, as they arise, as soon as reasonably practicable. In the event that either party seeks to vary the terms of the Order, the mother must file these documents with the Supreme Court of Nova Scotia (Family Division).

[25] On May 5, 2021, the mother filed a Notice of Variation Application seeking to vary the December 5, 2019, Consent Variation Order. She asserted that there had been a change of circumstances and sought a new order with respect to ongoing parenting arrangements and her contact time with the son.

[26] On February 25, 2022, the mother filed an "interim motion" seeking:

- An Order for the completion of a Voice of the Child Report; and

- An Order for supervised visitation between her and the son at Veith House

[27] The matter proceeded through various pre-trial organizational conferences. The father was self-represented for most of them while the mother had counsel from Nova Scotia Legal Aid. Given that the father initially opposed the obtaining of a Voice of the Child Report ("VCR"), a short hearing was scheduled to determine same on April 19, 2022. A second hearing was set for June 16, 2022, to determine the mother's request for interim parenting time through Veith House.

[28] The father eventually agreed to a VCR being ordered to determine the son's views and preferences about the ongoing parenting arrangements. Indeed, after

retaining counsel, he filed his own motion requesting a VCR on April 13, 2022. A Consent Order for a VCR was therefore granted on April 19, 2022.

[29] At the mother's request, the interim hearing for Veith House parenting time was adjourned by agreement because it was learned that the VCR report would not be completed until July. The hearing was rescheduled for September 27, 2022, and I gave the parties new filing deadlines. Based on the parties' estimates of the time required, only a half-day was scheduled for the interim hearing.

[30] The VCR wasn't completed until August 2, 2022. It was conducted by Stacy Darku. Ms. Darku interviewed the son twice. She also spoke to both parties and interviewed three teachers from the son's school.

[31] Ms. Darku noted that the son's views, at times, somewhat shifted back and forth and were incongruent. For example, during her first interview, she noted that the son stated with conviction that, while he did not want to see or talk with his mother, he would be okay with continuing to receive gifts and cards from her. However, during the second interview, he responded with a firm "no" when asked about whether he would like to receive cards and gifts from his mother and also stated, "Why would I want to see her if she tried to kill me and who does that?". Ms. Darku noted that this last statement was very similar to what the father said when she spoke to him. While this caused Ms. Darku some concerns about possible coaching by the father, she noted that overall, the son was consistent on being resistant to having verbal communication or in person contact with the mother on both occasions when she interviewed him.

[32] Under the heading, "Summaries, conclusion, and, when appropriate, recommendations", Ms. Darku stated, amongst other things:

> Throughout the interview process, [the son] was very open in sharing his views about this mother, visitations, and the court process. His views fluctuated from the initial session and the last session. There may have been coaching or discussions about his mother from his father as this was indicative by the narrative that both him and his father used during the interviews, which were quite similar.
> …
> Overall, [the son] expressed his resistance on verbal communication or seeing his mother and that remained consistent throughout the interview process.
> …

> After meeting with [the son], his school faculty, and speaking to both of his parents, I recommend that [the son] to have contact with his mother only via letters and cards. Letters shall only be read with [the son] and a mental health provider to ensure that the language and narrative is appropriate for [the son]. As for access, I recommend there be no in-person nor telephone access between [the mother] and [the son] until [the son] has received the appropriate counselling to process the separation from his mother and the traumatic incident that had occurred [Emphasis added].

[33] The interim hearing commenced on September 27, 2022. Ms. Darku was cross-examined by both parties. There wasn't sufficient time to complete the evidence of the parties so further court time had to be found. I also pointed out that neither party had filed any evidence addressing the contents of the VCR or, for that matter, filed any recent evidence for the hearing after it was rescheduled to obtain the VCR. For example, the mother's last affidavit was over seven months old. I had no evidence from either party as to how the VCR, which both parties had eventually pushed for, impacted on their parenting position. Thus, it was agreed that I would give both parties the opportunity to file updated evidence.

[34] The hearing resumed on February 9, 2023. It required significantly more time than the parties initially estimated and the mother had to switch counsel twice because two of her former counsel left Nova Scotia Legal Aid. To get the hearing completed in a more timely manner, I squeezed its continuation over additional slots of time I made available on February 10 and March 31, 2023. The parties then filed written closing submissions, the last of which was filed on May 26, 2023.

3.0 ISSUE:

[35] The sole issue I must decide is whether the mother should be granted interim parenting time with the son through Veith House?

4.0 ANALYSIS:

4.1 Parties' Positions

a) Mother's Position

[36] The mother seeks in person supervised parenting time though the Supervised Parenting and Exchange Program at Veith House in Halifax. Veith House offers a free service which provides a safe, child-centred environment that is professionally supervised by staff so that parents may visit with their children. The supervisor

makes notes of the visits which can be provided to the parents and the Court to assist in determining long-term parenting arrangements.

[37] In her pre-trial submissions dated September 25, 2022, the mother sought that Veith House parenting time continue for a period of 6 months after which the access supervisor would provide the parties and the court with a report outlining how the ongoing parenting time was going. She describes this initial interim request for parenting time through Veith House as a "first step towards reinstating contact with the [son]". After the initial 6 months of Veith House access, she sought to have a further discussion about what the next step in her parenting time would be taking into consideration the report prepared by the access supervisor from Veith House.

[38] While the mother has requested that a report be prepared from Veith House after 6 months, my understanding is that Veith House no longer prepares formal reports. Rather, it provides records of all visits and, if there are any issues of concern noted during visits (i.e. critical incidents), they are documented by staff in the records.

[39] In support of her request, the mother makes various arguments. I have considered them all and summarize some, but not all of them, as follows:

- Before the tragic incident of August 2018, she was the son's primary caregiver and had a very close relationship with him. During the days leading up to her attempting to harm the son, she was significantly stressed and unaware of the extent of her deteriorating mental health. She says that upon being ordered to return to Nova Scotia from PEI with the child, she suffered a significant mental break which led to her to attempting to end her own life and the son's life. She emphasizes that, despite her mental break, and her poor recollection of the event, she ultimately was the one who called 911 to help him.

- The incident took place during a time when her mental health was unchecked. She argues this isn't a case of a reckless or careless parent attempting to harm a child and then asking for parenting time. Rather, she says it's a tragic situation of a loving mother suffering from a mental health crisis, making a terrible decision in one moment, and having to learn how to live with the consequences of her actions.

- She says she has taken full responsibility for her actions and pled guilty to attempting to murder the son. She was sentenced to two years less a day and was released on parole on June 25, 2021. She has completed her parole and

has been on probation without any incidents. Her probation ends in October 2023.

- She emphasizes that, over the last few years, she has undergone significant personal growth through participation in counselling, education, and programming sessions. She provided extensive details of same. She's also been heavily involved in the Indigenous community and says her mental, emotional, and physical health have all significantly improved. She identifies as a proud and involved member of the Indigenous community and says that this community has been integral to her rehabilitation, personal growth and healing, and has assisted her through cultural teachings, ceremonies, and events. This is why she now seeks supervised access through Veith House. The father has provided no evidence why supervised access in such a setting would be inappropriate.

- She says that it's imperative for the son to understand his Indigenous culture and heritage and that she's eager to expose and teach him about same. She is engaged in various traditional and cultural practices, all of which have greatly benefited her. She wishes to teach and pass these along to the son. Her community has expressed their support for the son as well.

- She asserts that the father is not supportive of the son's Indigenous heritage and continues to deny and ignore same. The evidence shows he's unwilling, ill-equipped, and doesn't feel it's important for the son to connect with his Indigenous heritage. The mother says that, if left to the father, the son will not be able to meaningfully engage with his rich Indigenous heritage and culture, and that exposing him to same is undoubtedly in his best interests and is something only she can provide. She would love to be able to be present to answer any questions the son may have about his Indigenous heritage and teach him what she has learned in person. Terminating her access with the son will strip him of any possible positive influence and exposure to his Indigenous culture.

- She asserts that supervised parenting time is not solely for her benefit, but is also important for the fulsome development of the son as a healthy, Indigenous young adolescent living in Mi'kma'ki, the ancestral and traditional lands of the Mi'kmaq people.

- During her period of incarceration, the father has had primary care of the son while she has only had very limited and indirect access to the son. She

claims that the father hasn't even upheld the limited contact provided for in the 2019 Consent Variation Order.

- She says that the 2019 Consent Variation Order significantly limits her parenting time and essentially amounts to a termination of her parenting time with the son. She argues that there is a presumption that the son having access with both parents is in his best interests and that the father hasn't met the burden of establishing that a termination of her parenting time is in the son's best interests.

- Arranging for parenting time through Veith House would allow her access with the son to be facilitated in a controlled place where the safety of the son is paramount. There would be no risk of exposing the son to physical or emotional harm. It would allow the son to know that he has two loving parents who want to be involved in his life.

- While she acknowledges that the son told Ms. Darku that he does not wish to see her see, and she is disappointed with the outcome of the VCR, she feels that Ms. Darku didn't thoroughly discuss or investigate the concerns about coaching by the father. She questions whether the son's views and preferences as described in the VCR are actually his independent wishes.

- She says that if her request for parenting time through Veith House is declined, she would be open to other methods of communication to foster a connection and relationship with the son including telephone or video calls or reunification and parenting visits through the Mi'kmaw Native Friendship Centre.

b) Father's Position

[40] The father adamantly opposes the mother having interim parenting time at Veith House or otherwise. In support of his position, he makes various arguments. I summarize some, but not all of them, as follows:

- He says that since he has been responsible for the care of the son, the son has experienced prolonged stability. The son now experiences as "normal" a life as has been possible given the trauma to which he was subjected. He is currently living a very happy, healthy life as a teenager whose needs are being well-met. The son should be able to continue to live his happy life without any further upset. He receives regular communication from the

mother and is free to reach out to her when he's ready. The son has told him that, in in no uncertain terms, he's not ready for this now.

- He is the parent who has exclusively been involved in the day-to-day care of the son for close to five years. Since the mother was incarcerated, the son has only received letters, cards, and drawings from her, but has neither seen nor spoken with her. It's in the son's best interest that the *status quo* and stable life that he currently enjoys not be disturbed or threatened by allowing in person parenting time with the mother.

- He argues that the son's emotional and psychological well-being will be severely impacted if the mother's request is granted. The mother's request for in person supervised parenting time is really for her own comfort as opposed to the son's. He says that while her desire to be reunited with the son is understandable and natural, and may be part of her own healing journey, this doesn't displace the paramountcy of the son's best interests. While the mother may have the best of intentions, allowing her request would severely risk negatively impacting on the son's emotional and psychological well-being. Risking this at this crucial stage of his life, particularly after he has stabilized from the tragic circumstances of August 2018, simply isn't in his best interests.

- While he agrees that Veith House will provide a structured setting whereby visits will be monitored, this does not mitigate the inherent risk that contact with the mother will trigger negative emotional and psychological impacts for the son. The need for stability for the son is particularly strong given that he experienced the most extreme insecurity while in the mother's care. It isn't in the son's best interest to have contact with the mother accelerated solely at her request.

- The VCR report confirms that the son doesn't wish to speak with or see his mother at this time. The son's preferences should be respected and not discounted or undermined. The father denies coaching the son in relation to what to say for the VCR report. To the contrary, he says he told the son to tell Ms. Darku exactly what he felt and to answer honestly.

- The father says his own views as to the son's best interests should be given considerable weight. He has been exclusively caring for the son for over four years. He relies on ***Young v. Young*****, [1993] 4 SCR 3,** where the Supreme Court of Canada stated, "The custodial parent normally has the best vantage point from which to assess the interests of the child, and thus will often

provide the most reliable and complete source of information to the judge on the needs and interests of that child": paragraph 117,

- The father says he doesn't seek to deny the son having exposure to his maternal side of the family. For example, he agrees that the son's maternal grandmother is still free, as she has been doing for the last several years, to contact the son through texting and by having both electronic and in person contact with him. He points out that the maternal grandmother had a video call with the son close to his last birthday during which he opened the gifts that were sent to him by her. The father supports such contact with the maternal grandmother continuing. What he's opposed to is the mother now being given in person contact with the son.

- The son's safe and peaceful life should be allowed to continue. He barely remembers the mother and has clearly stated to Ms. Darku that he does not wish to have extended contact with her beyond what exists. The son has indicated to Ms. Darku that he is happy, doing well just as things are, and that living with the father is good. Rather than completely terminating the mother's parenting time, the existing 2019 Consent Variation Order wisely provides a "middle ground" that allows communication between the mother and the son through letters, cards, gifts, etc., which bridges the gap until the son is ready for more contact. This isn't the time to introduce instability into the son's life by allowing in person supervised parenting time by the mother.

4.2 Counselling

[41] Initially after the incident of August 2018, the son was not advised about what the mother had done to him. According to Ms. Darku, when asked about he recalls about the incident, he advised, "I remember the meatloaf tasted bad" and also recalled looking around the ambulance while being transported. Besides these details, the son couldn't recall any more specifics of what happened.

[42] The father says that that he arranged for the son to see a counsellor at the IWK Mental Health Services within approximately six months of the incident for a couple of sessions. He said the son had little memory of what happened and was adamant that he didn't want to participate in counselling. The father spoke with the counsellor and says he was left with the understanding that if there was a change in the son's view, and he was ready for counselling, they could return. The father also says that, based on the advice he received, he simply told the son that "mummy" will be away for a long time because she is sick and is getting help.

[43] The father says that following the trial commencing on September 27, 2022, he had another conversation with the son about the option to talk to a counsellor and told him that this can be a healthy option. He says that the son still doesn't appear ready for counselling but knows this option is always available to him.

[44] During the trial, I also learned that shortly before the VCR was completed, the father advised the son of the tragic details of August 2018, and that the son now knows that the mother tried to kill him. When the father was asked why he decided to do this after several years of not discussing the details with the son, the father testified that he felt it was only fair to the son for him to be aware of this information so he could make informed decisions when participating in the VCR.

[45] In light of the son's recent understanding of the harm done to him by his mother, I raised the issue of whether consideration had been given to obtaining professional assistance for the son to help him process and navigate this upsetting information. I did so because the son had, by all accounts, a very close and trusting relationship in the past with the mother and I was concerned that him now learning, years later, that the mother tried to secretly kill him, could potentially be shocking and traumatic information for him to process on his own at this stage of his life. Furthermore, given the importance of the trust and attachment implicit in any parental-child relationship, I was concerned about the long-term effect this information could have on the son if he didn't get any professional assistance to help support him deal with what had happened. I also questioned whether, as a teenager, without getting help to support him after learning about what had happened to him years ago, could this potentially negatively impact on his healthy long-term development and ability to form trusting and secure relationships as and adult in the future. I therefore gave both parties time to consider the issue of exploring possible counselling for the son, and to provide additional evidence and submissions on this issue. I will therefore now briefly summarize their positions on same.

a) Mother's Position

[46] The mother fully supports the son receiving counselling. She testified that she believes he needs some sort of counselling to give him the tools to deal with trauma which will undoubtedly manifest itself at some point. She says she was hoping to give him those tools as part of her M'ikmaq culture. She also testified, however, that she has concerns about forcing the son to go to therapy at this time.

[47] In her closing submissions of May 5, 2023, the mother submits that while she believes that counselling is an important healing step for the son, that the ordering of same should not delay her request for supervised parenting being ordered now. She says this is because of her belief that any counsellor will need an

undetermined amount of time to gather all the relevant background facts, and to build a rapport with the son before making any conclusions or recommendations. She says that delaying her reunification with the son is not fair to her because it effectively punishes her for the father's lack of insight to address the son's need for counselling before now. She therefore suggests that counselling could be ordered alongside her request for supervised parenting time through Veith House.

b) Father's Position

[48] The father agrees that the son recently learning that the mother had tried to kill him years ago would be traumatizing to him but believes that the son's trauma has been "buried". He testified that he agreed that a counsellor could be helpful to the son in addressing his underlying trauma, and also coming up with recommendations as to how any ongoing contact with the mother should occur. He also testified that he would follow any court order directing such counselling but said he doesn't feel that the son should be forced to undergo counselling should he not want to do so.

[49] In his written submissions of January 26, 2023, his counsel says:

> "[The father] is aware of the trauma suffered by [the son] and has sought counselling for him, but, to date, [the son] does not appear ready to engage in this. It is expected that at some point he will benefit from professional counselling to deal with the separation from his mother and the traumatic incident he has survived, but that day does not appear to be today".

5.0 ANALYSIS

5.1 Legislation and Law

a) Divorce Act

[50] The legislation which governs my decision on parenting is the *Divorce Act*, RSC, 1985, c. 3 (2nd Supp).

[51] Section 16(1) of the *Act* provides that when making a parenting order, I must take into consideration only the son's best interests.

[52] Section 16(2) notes that I must give primary consideration to the son's physical, emotional and psychological safety, security, and well-being.

[53] Section 16(3) provides a lengthy list of factors which must be considered when determining the son's best interests. I will summarize them as covering areas such as the son's needs, the son's relationship with each parent and other family

members, each parent's willingness to foster the son's relationship with the other parent, the history of child care, the son's views and preferences giving due weight to his age and maturity, the son's cultural, linguistic, religious and spiritual upbringing and heritage, each parents' parenting plan, the ability and willingness of each parent to care for and meet the son's needs, each parents' ability and willingness to communicate with the other on matters affecting the son, and the impact of any family violence.

[54] Section 16(5) directs that when determining the son's best interests, I shall not take into consideration the past conduct of either parent unless the conduct is relevant to the exercise of their parenting time.

[55] Section 16(6) directs that when allocating parenting time, I shall give effect to the principle that the son should have as much time with each parent as is consistent with his best interests. While many have referred to this section as the "maximum contact principle", in the recent Supreme Court of Canada case of ***Barendregt v Grebliunas,* 2022 SCC 22,** Justice Karakatsanis suggests that the maximum contact principle is more appropriately referenced as a "parenting time factor" which is more neutral and that the focus must continue to be a child-centric inquiry of what is in a child's best interests: para. 135.

[56] Conducting a best interests analysis is highly contextual because many factors may "impinge on the child's best interests": para 97 of ***Barendregt.*** Furthermore, determining best interests simply isn't a matter of scoring each parent on a generic list of factors. Rather, one must analyze the best interests factors using a balanced and comparative approach: ***DAM v CJB,* 2017 NSCA 91**.

[57] The current proceeding is the mother's variation application. To vary the 2019 Consent Variation Order, she bears the burden of establishing a "material change" which justifies varying the order in the son's best interests. The current hearing was conducted as an "interim hearing" only. Generally, one would not have an "interim variation hearing" of a final order. This case, however, is an unusual one which has been treated, in some respects, unusually. For example, before the current proceeding came before me, "interim variation orders" had been granted of the original CRO most likely because of the unique circumstances of the case even though one generally doesn't vary final orders on an interim basis. The mother then filed an "interim motion" on February 25, 2022, seeking supervised parenting time through Veith House. During the course of the several pre-trial conferences held in this matter (which should form part of any record), the parties agreed that the matter be conducted as an interim hearing, as opposed to a final hearing. Thus, I have proceeded on that basis partly because both parties

acknowledged that, even if I granted the mother's request for a reintroduction into the son's life through 6 months of supervised parenting time at Veith House, she would likely be seeking a further final hearing to determine the appropriate next step with respect to possibly varying the parenting arrangements on a long-term basis. Thus, even though I recognize that the somewhat unusual treatment of this case may not squarely fit within the nice and neat legal boxes that most variation applications do, the son's best interests deserved moving the matter forward on a reasonable basis to determine what the next temporary stage, if any, should be to allow the mother to be reintroduced into his life. While I agreed to treat this case somewhat unusually at the request of the parties, I emphasize that my decision now does not represent a final decision on the merits of the mother's variation application.

[58] Interim hearings are treated differently than final hearings. Subject to a child's overall best interests, the court often considers the *status quo* which will generally govern unless it isn't in the child's best interests. At an interim hearing stage, the court generally considers what temporary parenting arrangement is the least disruptive and most protective and supportive of a child, all within the context of their best interests, until a final hearing is conducted: ***Marshall v. Marshall,* 1998 CanLii 3191 (NSCA).** Such interim decisions are intended to stabilize a child's situation and provide appropriate day-to-day care arrangements until the matter can be heard in full: ***Mosher v. Gosby,* 2016 NSCA 10, paragraph 14.** Generally, interim hearings do not provide the quality or volume of evidence that is provided at a final hearing. Thus, generally the status quo will be maintained until the evidence clearly demonstrates that maintaining it isn't in a child's best interests: ***Hewitt v. McGrath,* 2010 NSSC 275.**

5.3 Review of Best Interests Factors

(a) The son's needs, given his age and stage of development, such as his need for stability;

[59] The son turns 15 in October. He has had to endure a tumultuous separation of his parents but, by all accounts, is currently a happy teenager who has stabilized under the father's care over the last few years. His needs are being well-met. Ensuring continued stability is an important consideration at this stage of his life.

(b) the nature and strength of the son's relationship with each parent, each of his siblings and grandparents and any other person who plays an important role in his life;

[60] While there is no doubt that, in the past, the son had a close and loving relationship with the mother, he has had no direct communication with her for close to five years. According to Ms. Darku, the son doesn't recall many parts of his childhood when residing primarily with the mother prior to the August 2018 incident. He was also unable to articulate anything that he had done or any positive memories of his childhood while living primarily with the mother. The son has an ongoing relationship with his maternal grandmother which the father says he supports continuing.

[61] Both from what the son told Ms. Darku, and the father's own evidence, he and the son are closely bonded. The son told Ms. Darku that "he really enjoys living with his father".

(c) each parent's willingness to support the development and maintenance of the son's relationship with the other parent;

[62] The mother doesn't seek to remove the son from the father's primary care. Currently, there are no concerns that she won't support the son maintaining and developing his relationship with the father.

[63] The mother claims that the father hasn't abided by the existing terms of the 2019 Consent Variation Order which provided limited contact between her and the son. For example, she says he has not provided the son with appropriate cards/letters she sent to the son almost every month and failed to consistently provide her with updates in relation to the son.

[64] The father denies the mother's assertions. He admits he was late once or twice with annual updates as required under the 2019 Consent Variation Order but says that, besides one letter which he decided not to provide to the son, he has encouraged the son to read any letters/cards provided by the mother but that the son has generally refused to do so. He says he has kept the letters/cards should the son wish to read them in the future. He also testified that, at his insistence, he encouraged the son to provide the mother with a Mother's Day card in 2019 which the mother acknowledged receiving. He says the son no longer asks about the mother.

[65] I'm not persuaded by the mother that the father has been consistently unreasonably preventing the son from developing and maintaining a relationship with her. The 2019 Consent Variation Order understandably gives him considerable discretion when it comes to providing and allowing written communication between the mother and the son. His evidence is that he has been

providing the son with the opportunity to receive the written communications from the mother but the son generally doesn't wish to read same.

[66] Even if the mother had persuaded me that the father is not actively pushing the son to maintain and develop a positive relationship with her, this must be considered in the overall context of a parent who, to their horror, found out the other parent tried to kill their son. This resulted in the father having to pick up the pieces from the damage done to the son and, on short notice, assume full-time care of him. To the father's credit, he has done so in a positive way by solely ensuring that the son's needs are consistently well-met over the last close to five years. When viewed in that overall context, any reluctance on the father's part to actively promote the son's relationship with the mother, and trust her again to spend time with the son, becomes far more understandable.

(d) the history of care for the son;

[67] There is no dispute that, after the parties separated shortly after the son was born, the mother became his primary care giver. However, since the tragic event of August 2018, the father has been solely providing for the son's care.

(e) The son's views and preferences, giving due weight to his age and maturity, unless they cannot be ascertained;

[68] The parties agreed to have the son's views and preferences determined through a VCR. In her supporting affidavit sworn on February 25, 2022, asking the court to order a VCR, the mother says, amongst other things:

> "If he chooses not to want to see me, on his own volition, I would respect that decision but I verily believe that [the son] wishes are for renewed contact." (paragraph 191).
>
> "A voice of the child report would be an appropriate mechanism to allow for [the son's] voice to be heard in this process with the support, and unbiased report of a third party." (paragraph 194).

[69] As noted, Ms. Darku's VCR makes it clear that the son is adamant that he doesn't want any in person contact with the mother at this time.

[70] The mother disputes Ms. Darku's findings and asserts that Ms. Darku went beyond her expertise and scope of the report in providing opinion evidence that was not appropriate. She also suggests that the son's views have been coached.

[71] I agree with the mother that, in some respects, Ms. Darku exceeded the scope of what she was ordered to do. Specifically, the Consent Voice of the Child Report Order indicated that the purpose of the report was to obtain the views and preferences of the son respecting custody and parenting arrangements and directed that the report shall be prepared in accordance with the *Voice of the Child Report Guidelines.*

[72] I agree with the mother that the Order didn't authorize Ms. Darku to make recommendations as to the ultimate parenting arrangement nor did it expressly authorize Ms. Darku to interview teachers at the son's school. Ms. Darku did both. I therefore expressly give no weight to those portions of her VCR.

[73] However, I accept that Ms. Darku did appropriately interview the son to determine his views and preferences. While there may be some concerns about coaching, Ms. Darku didn't conclude there was actual coaching – something which the father adamantly denies. Furthermore, as noted by Ms. Darku, the son consistently maintained that he doesn't want in person contact with the mother now and was consistent both times when interviewed that he did not want any expansion of the existing contact he is having with the mother.

[74] The son was close to 14 years old at the time he participated in the VCR. He will be 15 years old soon. When I consider the evidence, I'm not persuaded at this interim stage, that the son's views and preferences should be given little to no weight for any of the reasons suggested by the mother. Indeed, the mother was pushing to have those views and preferences heard and, in her affidavit filed in support of her request for a VCR, expressly stated that she would respect the son's views and that a VCR was the best way to obtain same. By all accounts, the son is a mature teenager. In a few years, he will be an adult. I conclude that his views and preferences should be given appropriate weight when I weigh all the factors which go to his best interests.

(f) The son's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

[75] The mother identifies as Indigenous and specifically being a member of the Mi'kmaq community. She says she has immersed herself in the Indigenous community becoming an Indigenous Medicine Keeper who can call on many people, including Indigenous Elders, for support. She identifies the son as an Indigenous child and, as noted earlier, feels it imperative that she be given the opportunity to teach him about his Indigenous culture and heritage particularly because the father denies that the son has any such culture and heritage.

[76] The father doesn't accept that the son has Indigenous heritage and culture because the son does not have a "status card" which he believes is a requirement for an individual to have Indigenous heritage. He describes the son as Caucasian having both European and Acadian heritage.

[77] In response to questions from me, the father acknowledged that he wasn't aware that a person could have Indigenous heritage even through they may not be recognized by the Canadian government as having "status". He clearly had no meaningful understanding of our country's long colonial history, including the devastating impacts of enfranchisement, Residential Schools and the "Sixties Scoop" on the Indigenous population. He was likewise unfamiliar with any of the "Calls to Action" from the ***Truth and Reconciliation Report*** released in 2015. He was unsure whether the son had any understanding of his Indigenous heritage. When I asked the father what he would do if the son had questions about this heritage in the future, he responded that it would depend on the nature of questions, and that he might seek assistance from the Mi'kmaw Native Friendship Centre. The father said he also supports continued electronic, phone and in person contact between the son and his Indigenous maternal grandmother, which has occurred periodically over the last several years.

[78] The father's denial and lack of understanding of the son's Indigenous culture and heritage troubles me. It is noteworthy that, under subsection 16(3)(f) of the *Divorce Act*, Parliament chose to expressly require judges to consider a child's Indigenous upbringing and heritage when determining their best interests. This is appropriate given this country's sad history towards its Indigenous people which has significantly contributed to their loss of basic human rights, traditions, language, and other elements of their culture. Indeed, enfranchisement and other policies stripped many individuals of their "official" Indigenous status and contributed to the erosion of their valuable culture and heritage. As a result, many individuals have suffered a loss of their own Indigenous identity. In light of this history, ensuring that a child's Indigenous culture and heritage is preserved and fostered is particularly important. Judges should also be keenly aware of the "Calls to Action" from the ***Truth and Reconciliation Report.***

[79] I agree with the mother that the benefits of ensuring that the son is exposed to his Indigenous culture and heritage is very important and should be given significant weight. I also agree that she is the parent who is best suited to do this. While the father has advised that he continues to support the son having ongoing contact with his maternal grandmother who is free to teach the son about his Indigenous heritage, exposing the son to this aspect of his identity doesn't appear to be a priority for the father. Indeed, the father clearly questions whether the son

has any such heritage based on his misguided views of what constitutes Indigenous "status".

[80] Notwithstanding my concerns, and my conclusion that exposing the son to his Indigenous heritage would be beneficial, this factor alone cannot override an overall assessment of his best interests. The benefits that the mother would bring to the son by exposing him to his Indigenous heritage and culture must be balanced with all the other factors that determine his best interests.

(g) any plans for the son's care;

[81] The mother's long-term parenting plan isn't yet fully known. As noted, she sees her motion for interim parenting time through Veith House as an initial first step towards her reintroduction into the son's life. She seeks this for a period of 6 months and then have the situation reviewed afterwards as to the next step.

[82] The father's plan is to largely continue as he has been doing – meeting all the son's needs in a positive way and building upon the stability and peaceful existence the son has had for the last few years.

(h) the ability and willingness of parent to care for and meet the son's needs;

[83] I accept that the father has consistently ensured the son's needs have been positively met over the last five years while the son has been in his sole care. Obviously, to the extent the mother tried to end the son's life while in her care, this raises considerable concerns about her caregiving ability. However, to the extent she has brought an interim motion seeking supervised parenting time through Veith House, she will not be required to provide day to day care for the son if granted parenting time in such a supervised setting.

(i) the ability and willingness of each parent to communicate and cooperate, in particular with one another, on matters affecting the son;

[84] The parties do not have any communication with each other except through the limited means permitted under the existing 2019 Consent Variation Order. To the extent this is an interim motion for supervised parenting time for the mother through Veith House, the need for interim communication and cooperation is minimal.

(j) any family violence and its impact on, among other things,

> ***(i) the ability and willingness of any person who engaged in the family violence to care for and meet the son's needs, and***
>
> ***(ii) the appropriateness of making an order that would require the parents to cooperate on issues affecting the son.***

[85] As was underscored in the recent Supreme Court of Canada case of ***Barendregt v. Grebliunas*, 2022 SCC 22**, family violence, in any of its forms, whether physical, emotional, psychological or financial abuse is a significant factor to consider when determining the best interests of children.

[86] Clearly, the mother's attempt to murder the son was a most extreme form of violence perpetrated by a parent against a child. I accept that the mother has, to her credit, taken many positive steps to improve her own mental health and circumstances, and that supervised in person parenting time through Veith House reduces the risk of any physical harm being done to the son. However, this does not eliminate the potential risk of emotional or psychological harm to the son by being ordered to attend an unfamiliar setting at Veith House and being forced to re-unite with the mother, against his wishes, who he now understands tried to kill him several years ago when he was a young child.

> ***(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the son.***

[87] I have already gone through the criminal history stemming from the incident of August 2018. I understand that the mother remains on probation until October 2023.

6.0 CONCLUSION

6.1 Veith House

[88] I have carefully considered the evidence, the law, and the submissions of the parties. After applying a holistic and child-centered lens, I conclude that it's not in the son's best interests to have any in person parenting time with the mother through Veith House or otherwise at this interim stage and that the existing contact provisions between the mother and son as outlined in the 2019 Consent Variation Order should continue pending any final hearing.

[89] I come to this conclusion for the following reasons:

- By agreement, this hearing was scheduled as an interim hearing only. The *status quo* for the last close to 5 years is that the mother has had no direct contact with the son given the traumatic incident which occurred in August 2018. The mother has failed to persuade me that it's in the son's best interests to significantly change the existing *status quo* by permitting her to have in person contact with him now. I find that keeping the existing arrangement is the least disruptive and most protective and supportive arrangement for the son which is consistent with his best interests.

- While I can understand the mother's eagerness to reunite with the son, I'm not persuaded that I should simply now let the mother's impatience justify granting what she seeks at this interim stage. Ultimately her impatience cannot trump the son's best interests. His best interests require giving him adequate time to prepare for any reintroduction to the mother to ensure that he is appropriately supported and that that any reintroduction be done in a carefully considered and positive way. While this may require the mother to exercise patience, I hope she appreciates that, just like she needed to be given the necessary time and support to heal from the events of August 2018, and to become prepared for a possible mother-son reunion, so should the son be given that same opportunity.

- While I accept that, after years of self-healing commendably supported by her Indigenous community, the mother is no longer the person she was in August 2018, she should also realize that the son is no longer the same person he was then. He went from being an innocent 10-year-old child who trusted and lived primarily with the mother, to now being a teenager, close to 15 years old, who has exclusively lived with the father for the last several years. He has recently learned that the mother, someone whose job was to protect him, tried to secretly kill him by poisoning his dinner. In such circumstances, many reasonably informed adults may have considerable difficulty understanding how the mother could do this and then come before the court and ask that the son be ordered to see her again in person. If adults could have this difficulty, surely the son, still a child, could be reasonably expected to struggle with learning this extremely troubling information. Indeed, Ms. Darku noted that, during her second interview with the son, he questioned "Why would I want to see her if she tried to kill me and who does that?". Unlike his adult mother, he has not been given any meaningful opportunity to heal from the events of August 2018, or get any therapeutic assistance to help him process and deal with same. It is through the lens of his best interests that I must decide this case. How or even if he can safely

rebuild trust in the parent-child relationship with his mother is a question to which the answer simply cannot be for me to order him now, against his wishes, to meet his mother for the first time in close to five years at Veith House.

- The son's life was effectively turned upside down in August 2018. He went from living primarily with his mother to living exclusively with his father with no in person or telephone contact with the mother. Ordering a quick re-introduction of the mother to his life now through Veith House isn't in his best interests. In my view, doing so would set this young person up for failure and risk exposing him to potential additional trauma. It would deny him, as a child, the very opportunity his mother, as an adult, says was necessary – i.e. the benefit of professional and non-professional assistance to process and understand why the events of August 2018 occurred, and how to deal with same. Thus, while I respect the mother's self-healing journey over the last few years, and her understandable desire to see her son in person again, the son's best interests do not allow me to let this happen at this interim stage.

- While the mother says that the father has failed to establish that proof of harm would occur to the son should supervised parenting time be ordered at Veith House, proof of actual harm need not be established. The overriding test must be the son's best interests. As noted by the Supreme Court of Canada in ***Young v. Young,*** even in the absence of harm, the bests interests of a child may warrant curtailing parenting time. Furthermore, the best interests test requires the court to consider how to best foster the child's overall development and how best to protect the child. To wait until harm has occurred to correct the situation waives the benefit of that prevention and also increases the possibility of error: paragraphs 101-102 of ***Young*****.** In addition, the mother effectively placing the burden on the father to establish actual proof of harm in order to have her request denied, fails to recognize that the current proceeding involves a variation application brought by her where she bears the burden of establishing a material change of circumstances which justifies varying the existing 2019 Consent Variation Order as she seeks. I conclude she has failed to meet this burden at this interim stage.

- The son, as a teenager, is clearly at vulnerable stage of his life. The VCR, which the mother fought for, doesn't support the son having in person contact with her. When seeking same, the mother said that she would respect

the son's wishes and felt that a VCR would be the appropriate way to determine same. The son is now close to 15 years old and Ms. Darku reported he was consistent in not wanting in person contact time with the mother now. In my view, the son's views and preferences deserve considerable weight.

- I accept the father's evidence that the son has had a long stretch of stability in his life since being placed in his care and currently enjoys a peaceful and stable life. I make a finding of fact that it isn't in the son's best interests to be thrust into having in person contact with the mother without being given ample chance to be prepared for any such possible reintroduction.

- While I accept that the mother represents the best entry point to the son learning about the incredibly important aspect of his Indigenous heritage and culture, this cannot supersede me doing what is now in his best interests. As noted, s. 16(2) of the *Divorce Act* requires that the son's physical, psychological, emotional and psychological safety, security and well-being be my primary considerations. In my view, they militate against and outweigh the benefits the mother would bring to teaching the son about his Indigenous heritage and culture through ordering supervised parenting time at Veith House.

- While the mother's motion was specifically for interim parenting time through Veith House only, in the alternative, she asked me in her closing submissions to consider other options for contact with the son including telephone or video calls or in person contact through the Mi'kmaw Native Friendship Centre. I decline ordering same at this interim stage largely for the reasons I have already stated. Simply put, I don't believe it is in the son's best interests to change the existing parenting arrangements at this interim stage.

6.2 Counselling

[90] Notwithstanding that I have declined to grant the mother's interim request for parenting time through Veith House, I remain very concerned about how the son, having recently learned about how the mother tried to kill him, is now expected to process this information largely on this own without professional assistance. While the father has expressed reluctance to force the son through counselling, he testified that he would be willing to take the son to counselling if ordered to do so.

[91] Therapeutic orders for counselling do not appear to have been routinely ordered by judges in the past. However, given the amendments to the *Divorce Act* enacted in 2021, judges now have the express ability to make "parenting orders" which may provide for any matter they consider appropriate including imposing terms, conditions and restrictions which they consider to be appropriate: (subsection 16.1(4)(c)). Furthermore, orders for therapeutic interventions for counselling have become more frequent in recent years when such professional assistance has been determined to be in a child's best interests: e.g. ***R.A. v. M.P.B.*, 2021 NSSC 102, *JH v RH*, 2023 NSSC 237, *Oakley v. Brooks***, [1201-070711, Oral Decision of Justice Elizabeth Jollimore rendered on March 24, 2022].

[92] None of the prior parenting orders in this proceeding, including the 2019 Consent Variation Order, contained any requirement for counselling. In my view, things have materially changed since that Order was granted. The son is several years older and has recently learned that his mother tried to kill him in August 2018. His needs are different now than they were in 2019. He's now almost 15 years old and will be an adult in a few years. He has learned very troubling information from his childhood. While I want to respect the son's sense of autonomy, and the father's preference that counselling not be specifically ordered, the son isn't at the age where the court loses its ability to order things in his best interests even though he may resist same. Indeed, 15-year-olds aren't always fully mature enough to make decisions which are in their best interests including whether to do things which may benefit them. For example, 15-year-olds aren't given the choice of whether they attend school even if they don't wish to go.

[93] Both parents acknowledge that the son undoubtedly will experience trauma from the recent discovery that the mother tried to kill him in August 2018. As the judge whose overriding duty is to do what is in the son's best interests, I'm not prepared to simply sit on my hands and do nothing except cross my fingers and hope that he, on his own, somehow learns to process this newly learned and very upsetting information. I'm not prepared to let him navigate this information through his teenage years and hope he grows up to be a well-adjusted adult without him being given a meaningful opportunity to obtain professional assistance to help him.

[94] Thus, I make a finding of fact that circumstances of changed and that it's in the son's best interests to order that therapeutic counselling for the son be pursued. I order that the father seek out forthwith an appropriate therapeutic counsellor who would be willing to work with the son for the purpose of attempting to help the son process and address any trauma stemming from the events of August 2018 so that he can best move forward with his life. The counsellor must be provided with a

copy of my decision to become familiar with the relevant background of this case. The counsellor should also be willing to consider making recommendations as to how, if at all, to best reintroduce the mother into the son's life. The counsellor will determine whether, based on all the circumstances, including any initial meeting with the son to determine the son's willingness to participate in counselling, whether ongoing counselling is appropriate and, if so, the expected duration for same. If the counsellor determines that counselling isn't appropriate or wouldn't be beneficial for the son at this stage of his life, the counsellor should provide this opinion in writing along with their supporting rationale for coming to this conclusion.

[95] The parties are expected to cooperate with all reasonable requests of the counsellor including meeting with the counsellor as determined appropriate by the counsellor. The father is also expected to take all reasonable measures to encourage and support the son engaging in any such counselling.

[96] Any counselling should take place for at least a period of 6 months, or such other period as the counsellor deems appropriate and, if the counsellor is willing to provide same, they shall provide a written report to the parties after three months outlining the initial progress which has been made, as well as any recommendations for ongoing counselling and next steps towards a possible reintroduction between the mother and the son. Any such report should be filed with the court.

[97] I will also schedule a further 30-minute pre-trial conference on my docket no earlier than 7 months from today to discuss the next step in this proceeding which may involve either party seeking to have this matter move towards a final variation hearing. If, however, the counselling process is fully completed before then, either party may request an earlier pre-trial conference before me.

7.0 ORDER

[98] I reserve the jurisdiction to deal with any implementation issues arising from my decision. I also direct that counsel for the father prepare the appropriate form of Order reflecting my decision which should be consented to as to form only by both counsel. The Order should be sent to me no later than three weeks from today's date.

8.0 COSTS

[99] Both parties have the right to be heard on costs. I encourage counsel to see if they can assist the parties in resolving same. The parties should recognize the

uniqueness of this case which raised a difficult parenting issue requiring a judicial determination. They should also consider whether costs should be in the cause given that this was an interim hearing only. If the parties cannot agree, counsel should also advise in three weeks and I will provide further direction on how the issue of costs will be determined.

Jesudason, J.