**SUPREME COURT OF NOVA SCOTIA**
**Citation:** *McCluskey v Tobin*, 2023 NSSC 404

**Date:** 20231214
**Docket:** *SFHMCA* No. 101736
**Registry:** Halifax

**Between:**

Andrew McCluskey

*Applicant*

v.

Claire Tobin (Polomark)

*Respondent*

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| **Judge:** | The Honourable Justice Cindy G Cormier |
| **Heard:** | February 21, 2023, March 30, 2023, April 14, 2023, May 3, 2023, and June 6, 2023 |
| **Final Written Submissions:** | Applicant – August 11, 2023<br>Respondent – November 24, 2023 |
| **Counsel:** | Andrew McCluskey, self-represented<br>Peter Katsihtis, for the Respondent |

**By the Court:**

[1] The child, born in September 2011, was 11 years old when the matter was heard between February 2022 and June 2022. She turned 12 in September 2023. In May 2022, Mr. McCluskey (the father) filed an application to address alleged denial of parenting time beginning in February 2022.

[2] In June 2022, Ms. Polomark – formerly Ms. Tobin – (the mother) had left Nova Scotia with the child. The mother travelled with the child to British Columbia and in early August 2022, the mother requested permission to relocate to British Columbia with the child. The father opposed the relocation request.

**Agreements**

[3] The parties have agreed that if the child is permitted to relocate, the relocation would qualify as a change of circumstances. They have also agreed that if the child is NOT permitted to relocate, there has also been a change of circumstances.

[4] The issue of arrears was addressed by agreement of the parties on April 21, 2021, and their consent agreement is reflected at paragraph 4 of the Order issued

March 15, 2022 and remains in force. This issue will not be revisited in this decision.

**Issues**

1. Should the child be permitted to relocate to British Columbia with the mother?
   a. What, if any, legislative presumptions apply to the mother's relocation application?
   b. What, if any, credibility findings are appropriate?
   c. Has the mother's conduct resulted in the child's alienation from the father?
   d. What weight, if any, should be accorded to the testimony of each of the two experts?
2. What is the appropriate parenting arrangement for the non-residential parent? How will travel expenses be apportioned?
3. What is the appropriate custodial arrangement between the parents?
4. What amount of child support should be paid by the non-residential parent?

**The father's position**

[5] On May 19, 2022, Mr. McCluskey (the father) filed a Notice of Application pursuant to section 37 of the *Parenting and Support Act*. Arguing that the denial of parenting time was sufficient to prove a change of circumstances, he sought a variation of parenting and child support: primary care of the child; to deal with

contact time or interaction with the mother; and a temporary suspension of the table amount of child support paid by him to the mother for the child.

[6] The father alleged that since February 2022, the mother had denied him his court ordered parenting time with the child, which included Fridays to Mondays two out of three weekends and every Wednesday night. He claimed his total amount of parenting time was approximately 35% or more of the total parenting time with the child.

[7] On or about **June 23, 2022**, the father served the mother with his Notice of Application. It was also around that time that the father suggested to the mother that they retain a private counselor, doing so after the school had offered the child counseling services and he argued the mother had failed to arrange for the child to participate in any counseling.

[8] The mother suggested she contacted the school, but she believed the father would arrange the child's counseling. According to the parties' court order, the mother had the authority and responsibility to make health care arrangements for the child.

[9] There is no dispute that the mother left the jurisdiction with the child on or about June 28, 2022. The father has stated **the mother later advised him she had**

**arrived in British Columbia with the child on July 4, 2022**. I find the mother left the jurisdiction without adequate notice to the father and without his consent or a court order. The mother interfered with the father's anticipated block summer parenting time with the child which he had anticipated would be scheduled pursuant to the current court order.

[10] On December 13, 2022, the father amended his Application to include requests to address: decision making responsibility and custody; to prevent relocation of the child which the father also confirmed in a letter to the court dated April 11, 2023; and the father requested: "the Court address the matters of contempt regarding denial of parenting time, phone contact time, failure to communicate on changing the child's school to home schooling; and leaving the province with the child without consent."

[11] The father has asked the Court to place the child in his primary care and to grant the mother supervised parenting time with the child at Veith House, either in-person or virtual with a review scheduled in six months. The father also requested the child be ordered to return to her former elementary school.

[12] In his submissions filed **August 11, 2022**, the father proposed the following:

(a) I will have primary care of the child and all decision-making responsibility;

(b) The mother is to initially have supervised phone, Face Time or in person parenting time with the child once or twice a week for up to a total of two hours initially until the child has seen a properly qualified counselor and it is determined it is in the child's best interests to increase parenting time and remove supervision.

(c) The child will receive counseling as previously ordered, paid by the mother.

(d) The mother shall enroll in parenting classes and provide proof to the court of completion before supervision can be removed providing the child's counselor recommends it.

(e) If the mother remains in British Columbia, after a period of six months and following counseling for the child and a period of supervised visits for the mother, the child will visit her mother every Christmas, March break and for a four week block of parenting time in the summer that is from the start of the last week of July to the end of the third week of August and one additional week of the mother choosing in October each year provided that she ensures the child keeps up with her daily schooling requirements during that week.

(f) Non-supervised parenting time will commence only after the mother has taken court ordered parenting classes and received approval from the child's counselor.

(g) If the mother chooses to return to Nova Scotia additional time will be provided with the guidance of the child's counselor. Ideally working toward an alternating weekly schedule.

(h) The child's dog […] should remain with the child and travel with her between homes. I have made provision to welcome [the child's dog] […] into our home while the child is here, and we will tend to his veterinary expenses when he is with us.

(i) The child would return to public [elementary] school in Nova Scotia […].

(j) The order will need to have strict enforcement clauses so that I will be able to ensure the order can be enforced by police if the mother does not return the child.

(k) As I will have primary care and control of the child her mother will have to start paying child support.

(l) Flights for the child or her mother for them to see each other will have to be paid for by the mother as she has chosen to leave Nova Scotia.

[13] In addition, the father has asked for the following:

(a) The court proceed with contempt proceedings against the mother for failing to return the child to Nova Scotia. If found guilty the outcome (sentencing) to be placed as suspended sentence until the child reaches the age of 18 unless the

mother breaches the court order. On said breach all applicable penalties for contempt be enforced immediately.

(b) Upon a decision that the child is returned to Nova Scotia and placed in my care, that the mother have three calendar days to comply.

(c) The mother be fined $1000 per day for every day she fails to comply.

(d) After five days of non-compliance, the mother be formally charged with child abduction under criminal code 282.

(e) After five more days of non-compliance police, child protection services and any appropriate authority be required to enforce our court order and intervene.

**The mother's position:**

[14] At one point in her materials, the mother claimed she left the jurisdiction with the child on or about June 28, 2022, and she did not tell the father as she feared he would prevent her from leaving.

[15] The father claimed that **on or about August 3, 2022**, he received a letter from the mother indicating she wished to relocate with the child to British Columbia before school started. The father stated that the mother provided him with a mailing address he believed was her parent's address. I accept the father's evidence.

[16] The mother has requested the following:

(a) Primary care of the child.

(b) Permission to relocate to British Columbia, the Vancouver area with the child;

(c) Possession of the child's passport;

(d) An Order specifying the child permanently resides in British Columbia, along with a specified period of access with her father in Nova Scotia;

(e) Continued supervised virtual parenting for the father and child through Veith House;

[17] The following requests were made by the mother – however when the mother was cross-examined after she heard expert testimony, the mother agreed there was no need for ongoing supervision of the father's parenting time or a "fail safe" alternate residence for the child to go to if she felt unsafe:

(a) The father's in-person parenting time with the child would be in British Columbia, supervised by Dr. MD. The mother offered to provide accommodations for the father while he was visiting in British Columbia;

(b) In person supervised visits and counseling take place with an agreed upon counselor present;

(c) Upon the child returning to Nova Scotia to allow in person parenting time for the father, KM be the child's designated / alternate caregiver while the child is in Nova Scotia [after hearing Dr. MD's testimony the mother agreed this provision was no longer necessary];

(d) The child be immediately transitioned to the care of her half brother M or to KM in Nova Scotia or an individual identified by the mother in Nova Scotia, if at any point the child no longer chooses to reside with the father while "visiting" Nova Scotia- [after hearing Dr. MD's testimony the mother agreed this provision was no longer necessary]; and

(e) The child be assured access to the services of a staff person at Veith House if she experiences any fear or concerns (presumably in relation to her virtual contact with her father).

(f) An assessment be completed prior to finalizing any on-going parenting arrangements for the child and father, and in particular the child "must feel safe and reasonably accepting of fulfilling the visitation schedule";

(g) The child must be permitted to contact her mother with the child's cellular telephone at any time.

[18] Also prior to hearing expert evidence, the mother suggested the following ongoing parenting arrangements after reunification between the father and child:

> (a) Weekly telephone calls, approximately once per week with the child's father as determined by the child;
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> (b) March break or alternating Christmas: Christmas vacation starting 2023; or March break visitation 2024.
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> (c) Four weeks in the summer: scheduled to start approximately in the first week of July for four weeks. With the mother responsible for "flight booking logistics" and an "equitable arrangement for sharing costs for the child to commute" back and forth between Vancouver and Halifax.

[19] On November 24, 2023, the mother's legal counsel filed a brief on the mother's behalf confirming the mother was seeking to retain primary care of the child and to be permitted to relocate to British Columbia, with "access" for the father "including by telephone and social media." The mother's final submissions state:

> The mother has put forward a reconnection plan between the child and her father to be facilitated by Dr. MD and would commence with the court's decision, although the mother was prepared to start this sooner.

Later in my decision, I include excerpts from the mother's and the expert's testimony.

**Early court intervention**

[20] On August 11, 2022, the mother did not participate in the scheduled court conference, but she had legal counsel appear on her behalf. The mother's legal counsel advised the Court that the mother was in British Columbia with the child and the mother wished to relocate to British Columbia with the child. The mother

took the position that both she and the child were afraid of the father and the child had been refusing to attend for the father's parenting time.

[21] On August 11, 2022, I directed the mother's legal counsel to advise the mother that I had directed her to return the child to Nova Scotia forthwith and that on a without prejudice basis, the father agreed to the mother's request that he attend counseling with the child.

[22] I confirmed that the Variation Order granted September 20, 2018 and issued September 24, 2018, as confirmed by Order granted April 21, 2021 and issued March 22, 2022, continued to be in force and that the order should be followed until an interim hearing could be held or until further Order of the Court. The order allowed for the father to care for the child if the mother was unavailable.

[23] In her affidavit sworn on September 12, 2022, the mother stated in part:

> Returning to reside to (sic) British Columbia became more favourable during my visit given that I had previously been let go from me job in Nova Scotia as a Campus Administrator with Nova Scotia SPCA and have not been able to obtain employment since my last day of work on September 15, 2021.
>
> I have recently secured a position with Edge Decking and Railing commencing in September 2022I and have the support of extended family in British Columbia to assist in the transition.
>
> …
>
> I also briefly discussed with MD the current situation as part of an explanation as to if this process could be done by video or Skype, so he is aware of the current circumstances…

**September 21, 2022**

On September 21, 2022, the parties confirmed the child had not returned to the jurisdiction per my previous direction given on August 11, 2022 to the mother through the mother's legal counsel. I granted an order requiring the child to return to the jurisdiction **by October 1, 2022**.

[24] In addition, on a without prejudice basis, I ordered the parties to attend counseling with Michael Donaldson (herein referred to as MD) the counselor they had suggested, as they stated he had indicated he was available to meet with their family. I directed the mother to appear in person at an interim hearing scheduled for October 19, 2022.

[25] After being directed to return the child to the jurisdiction on August 11, 2022, and then ordered to do so on September 21, 2022, the mother failed to return the child to the jurisdiction. The mother has claimed she did not understand that the court order I granted on September 21, 2022 was effective as of that date, suggesting she believed the order would only be in force once it was issued.

[26] I do not accept that the mother misunderstood the court's directions given on August 11, 2022 or that she misunderstood that the order granted on September 21, 2022 was effective as of the date it was granted. She was aware the order granted

on September 21, 2022 specified the child must be returned to Halifax Nova Scotia **by October 1, 2022**. The father represented himself and the mother's lawyer did not file the order with the court to be issued until November 3, 2022.

[27] The mother failed to return the child to the jurisdiction. Meanwhile the mother retained Dr. Madeleine De Little (herein referred to as Dr. MD) to meet with the child on October 6, 2022. Dr. MD completed what she has described as a "View of the Child Report" dated October 10, 2022. The mother filed the report with the Court several days in advance of the interim hearing.

[28] Two days in advance of the Interim Hearing scheduled October 19, 2022, the mother's legal counsel filed a motion to be removed as solicitor of record for the mother.

**Interim Hearing October 19, 2022**

[29] On October 19, 2022, I denied the mother's legal counsel's motion to withdraw as solicitor of record for the mother. The mother failed to appear in-person at the interim hearing as she had been directed to do, but she did participate virtually. The mother confirmed she had NOT returned the child to the jurisdiction.

[30] According to *Plumley* v. *Plumley*, 1999 Can 11 13990 (OntSC), at an interim hearing, the burden is on the relocating parent to prove it is in the child's best interests to relocate. At the interim stage, when relocation is requested, courts have often considered factors such as whether: there is a genuine issue for trial; are there compelling interests to allow the relocation; would there be a disruption caused by the relocation; are material facts in dispute; and whether the proposed move is long distance. After considering the evidence available at that time, I granted another order requiring the child to return to Halifax Nova Scotia.

[31] On a without prejudice basis and with the consent of the father, I included the following orders in the second interim order requiring the child's return to the jurisdiction:

1. Upon the child's return to the jurisdiction the father would not have any contact with the child except as arranged through Veith House, or an alternate supervised access program acceptable to the parties, or for counseling services; and

2. The father would not attend and / or he would not be in the vicinity of the child's school or the mother's home.

At no point did I make any findings of fact to suggest I accepted that the mother or the child had presented any reliable evidence that they had a valid reason to be afraid of the father.

[32] Based on representations from both parties, the parties' consent, and my belief that MD had agreed to do so, I also ordered:

1. That the father and the child attend counselling sessions with MD.

I do not accept there was any room for the mother to misunderstand that the sessions with MD, the child, and the father were always intended to be in person, upon the return of the child to the jurisdiction of Halifax, Nova Scotia.

[33] The order I granted specifying the child must return to the jurisdiction did allow the child to continue to live with her mother if her mother returned to live in the jurisdiction with her. In addition, the order allowed the mother to make alternate interim arrangements for the child to live with someone of her choosing upon the child's return to Nova Scotia to attend counseling and in-person contact with her father.

[34] Although the child's status quo parenting arrangement was court ordered and in place for years, prior to the child beginning to refuse to attend for her parenting time with the father in or around February 2022, on a without prejudice

basis, and I would say out of desperation the father consented to have restrictions placed on his parenting time in the hopes the mother would arrange for the child's return. The mother did not.

[35] As stated by Pazaratz J. in *F.K. v. A. K.*, 2020 ONSC 3726, 43 R.F.L. (8th) 411, at para. 52, and accepted by the parties:

> ...courts must exercise caution before changing an existing arrangement that children have become used to, particularly where the change is sought on an interim motion. There is ample authority for this requirement. To refer to but one example, in *Grant v. Turgeon* (2000), 5 R.F.L. (5th) 326 (Ont. S.C.), at para. 15, MacKinnon J. stated that
>
> > "generally, **the status quo will be maintained on an interim custody motion in the absence of compelling reasons indicative of the necessity of a change to meet the children's best interests**. That is so whether the existing arrangement is *de facto* or *de jure*." As was stated by Benotto J., as she then was, in *Davis v. Nusca*, [2003] O.J. No. 3692 (Div. Ct.), at para. 8, "the basic principle of maintaining the status quo until trial … is extraordinarily important in family law cases."
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> [27] Pazaratz J. went on to say at para. 52 of *F.K. v. A.K.* that the **need to exercise caution is heightened where the existing parental arrangement has been determined by a court order**, and that the level of required caution is further heightened if the court is being asked to change a final parenting order on a temporary basis. While the court has the authority to grant a temporary variation of a final order in the appropriate circumstances, **the evidentiary basis to grant such a temporary variation must be compelling. The onus is on the party seeking a temporary variation to establish that in the current circumstances the existing order results in an untenable or intolerable situation, jeopardizing the child's physical and/or emotional well-being, and that the proposed new arrangement is so necessary and beneficial that it would be unfair to the child to delay implementation**.

In this case, the mother did not establish any compelling reasons for the Court to change the status quo at the interim hearing.

[36] The child had always lived with her mother primarily and the father had always been substantially involved (as found by J. MacDonald in or around 2017). The father had care of the child approximately 35% of the time until February 2022 when things began changing between the father and the child. The father attributed the change to the mother's interference and to her ultimate plan to move to British Columbia.

[37] I determined the matter would require a full hearing on the merits and that the child should be returned to the jurisdiction pending the outcome. For many different reasons, I decline to accept an argument suggesting that after leaving the province without permission and by refusing to return the child as ordered, the mother has established a new "status quo" in British Columbia and the child should be permitted to remain in British Columbia.

**Contempt of court, file OTH-127771**

[38] On October 19, 2022, pursuant to Civil Procedure Rule 89.03, I cited the mother for contempt of court. I read the mother her related rights and warnings on the court record. Because a contempt hearing is a quasi-criminal proceeding, the issue must be treated with the seriousness that comes with such a proceeding

"where the sanctions are a potential period of incarceration and a loss of access to children," *Soper* v. *Gaudet*, 2011 NSCA 11.

[39] I scheduled a separate pre-trial conference on November 1, 2022, and a contempt hearing in early November 2022. I directed the mother to appear in person at both appearances.

**November 1, 2022**

[40] On November 1, 2022, the mother failed to appear in person as directed by me. The mother's legal counsel, whose motion to be removed as solicitor of record had been denied on October 19, 2022, appeared on the mother's behalf.

[41] I was advised that the child had not been returned to the jurisdiction as ordered following the interim hearing held on October 19, 2022. The issue of the father registering the Orders granted on September 21, 2022, and on October 19, 2022, in British Columbia, was discussed.

[42] The practicalities of the father arranging for the child's return to Nova Scotia was a live issue for the father in this case as it was in *Godin* v. *Godin*, 2013 NSSC 316. Subject to the condition that the mother's legal counsel draft the orders arising from previous court appearances on September 21, 2022, and October 19,

2022, I granted the mother's legal counsel's motion to withdraw as solicitor of record for the mother.

[43] The mother once again failed to appear in person for the contempt hearing. The mother requested an adjournment to retain new counsel to properly review the allegations against her. The contempt issue was adjourned to February 21, 2023.

**Christmas 2022**

[44] In April 2023, Dr. MD, testified. Dr. MD stated that she understood the child would be going to Nova Scotia to visit her father for the Christmas holidays in 2022.

[45] However, on January 6, 2023, Dr. MD wrote a letter suggesting there should be a **formal agreement guaranteeing the child would be returned to the mother** in British Columbia before the child visited Nova Scotia. It appears Dr. MD was suggesting the Court grant the mother her request for interim relocation with the child to British Columbia, and that absent the "formal agreement guaranteeing" the child would return to mom in British Columbia, the child would not be visiting her father in Nova Scotia.

[46] At paragraph 48 of *R.* v. *Bingley* 2017 SCC 12, the Court commented about expert evidence in part as follows:

> [48] Concerns about the reliability of the underlying science are particularly heightened when, as here, the scientific foundation is not self-evident and the proposed expert evidence goes to key elements of the crime before the court. Although there is no longer an absolute bar on opinions on the ultimate issue before the trier of fact, the closer the expert evidence approaches the ultimate issue, the greater the need for special scrutiny: Mohan, at p. 25; J.-L.J., at para 37.

Later in my decision I review what Dr. MD stated was available to her when she wrote her report dated October 10, 2022, and her letter dated January 6, 2023

**February 21, 2023, adjournment**

[47] On February 21, 2023, the mother failed to appear in person at the commencement of the final hearing on the merits. The mother appeared virtually with her proposed new legal counsel and requested an adjournment. After some lengthy discussions with her legal counsel, the mother advised the Court she would return the child to the province of Nova Scotia as of **March 13, 2023**.

[48] Relying on the mother's promise to return the child to the jurisdiction, the Court granted an adjournment of the hearing to March 30, 2023. However, the mother failed to return the child to the jurisdiction as promised on the court record. I noted that in the mother's affidavit sworn March 15, 2023, she stated in part that the child was "scheduled to go snowboarding the weekend of 11 March 2023."

[49] The trial continued on March 30, 2023; April 14, 2023; May 3, 2023; and concluded on **June 6, 2023**. The father's written submissions were filed in June and August 2023. Due to the mother's new lawyers' valid health concerns, the mother's final written submissions were not filed until **November 2023**.

**Parties' circumstances**

[50] In the spring of 2023, the mother reported "they" (I understood to be the mother and the child), were living in Pitt Meadows, "in the lower mainland, in the Vancouver area." They were residing about forty minutes from Vancouver.

[51] The mother stated the child was in grade six. In her affidavit sworn in March 2023, the mother indicated she was anticipating enrolling the child in arts school and the "next intake" was in grade eight. Evidence suggests the child was initially homeschooled and it is not entirely clear when or if the child began attending school on a full-time basis. No school records were filed with the Court.

[52] The counselor, Dr. MD, met with the child and she understood from the child and / or mother that initially the child was at home and going to school a couple of days per week and then the child had transitioned to being in school full time. Dr. MD stated that she understood the child was "slowly developing friends… friendships."

**The child's circumstances in British Columbia**

[53] Evidence from the mother's witnesses suggests that during the summer of 2022, the mother, the child, and the child's half brother M spent some time on Savary Island in British Columbia with the mother's long-term friend. The mother did not provide any sort of timeline indicating where the child had resided and when.

[54] In her affidavit sworn in March 2023, the mother suggested the child was "looking forward to my son M (the child's half brother) also joining us in British Columbia in the near future," suggesting that the child's half-brother, who had been in British Columbia in the summer of 2022, was not residing in British Columbia with the mother and the child.

[55] At one point in her evidence, the mother stated she left Nova Scotia without notifying the father because she was afraid the father would stop her from leaving the province with the child. At another point in her evidence, the mother claimed she travelled to British Columbia to visit family and friends, then while she was in British Columbia she recognized the various benefits, claiming that: the child's emotional health improved; she appreciated the family support available; she had

found employment; she was in a new relationship; and then she decided to stay in British Columbia with the child.

[56] At another point in her evidence, the mother suggested she needed to be in British Columbia to care for her elderly mother and father. Her parents did not testify and there is no supporting evidence regarding her claim.

[57] Further, the mother suggested she needed to remain as a support for her brother, MP, whose wife had passed away. MP swore an affidavit, and he did not suggest he needed the mother as a support; however, he acknowledged he enjoyed the extended time he had been able to spend with the mother and child.

[58] The father believed the mother moved to British Columbia in part to alienate him from the child. He believed that initially the child's older half brother, M, travelled with them and that they changed addresses several times.

[59] The mother acknowledged she did not want the father to have her address when she travelled to British Columbia with the child. She stated she was concerned that the father would contact police and ask them to complete wellness checks on the child.

[60] I find the mother provided the father very little information about the child. When cross-examined, the mother suggested she did not know the child's cellular

telephone number or the child's email address. Upon review of the Veith House reports, I noted that on one occasion the child told the father she did not know the name of her school, only how to get to her school.

[61] It was only when the mother's legal counsel was cross-examining the father that the mother introduced information to the father about the various programs the mother claimed the child was enrolled in in British Columbia, including tumble gymnastics; extreme cheer and dance; musical lessons; and a program at Jem's Athletics.

[62] The father reported that he continued to live with his spouse, KL, who did not testify at trial. KL has four children from a previous relationship V (22), L (21), C (16), and K (14) and the two youngest of KL's children, C and K, spend time at their home every other week. He stated that V and L's time at their home was becoming "more random" given their ages and work schedules.

**Witnesses**

[63] Various objections to affidavit evidence were reviewed prior to each lay witness who was present for cross-examination. These were mostly references by the father and / or the mother, but also references by other lay witnesses and comments allegedly made by the child to them were mostly excluded from the

evidence due to concerns related to the reliability of those statements in the context of the ongoing conflict between the parties.

**The mother's lay witnesses'**

[64] The father waived cross examination on a number of the mother's witnesses including: LSB (lifelong friend) and her daughter, DS; JS (intimate partner); MP (mother's brother), and JP (mother's brother). Their affidavit evidence was considered, but I offer the following comments with respect to weight.

[65] LSB's and DS's factual evidence about their contact and ongoing friendship with the mother and the child was considered; however, I have attributed no weight to LSB's observations regarding the mother's and the child's "demeanors" when they arrived in British Columbia or her impressions about the father's presentation when she reached out to him about his contact with the child. I have also attributed no weight to DS's observations regarding the child not speaking with DS about her father.

[66] I have considered JS's affidavit, sworn in March 2023, wherein he indicated he had been in a relationship with the mother since October 2022 and he had been spending time with the child most weekends and two to three days during the

week. At the conclusion of the trial in June 2023, it was unclear to me what the nature of the relationship between JS and the mother was.

[67] I have considered MP's affidavit suggesting he has been grateful for the opportunity to see more of his sister and the child and that he sees the child every week or two. I accept that because the mother has failed to return the child to Nova Scotia as directed and as ordered by the Court, he has enjoyed spending more time with the child. I also accept that he would like to include his sister and the child in many future family events, including a family trip to Hawaii.

[68] I have considered JP's affidavit. I accept that because the mother has taken the child to British Columbia and the mother has failed to return the child to Nova Scotia as ordered by the Court, that he and his family members have had the opportunity to see the child every week. I note he would also like to include the child on a family trip to Hawaii. It is unclear to me whether either of the mother's brothers are aware the mother was ordered to return the child to Nova Scotia.

**Expert witnesses**

**Michael S. Donaldson MD, M.A. RCT, CCC – expert witness**

[69] Michael Donaldson (herein referred to as MD) is a registered counseling therapist with a Master of Arts degree in counseling. He has been working in the field as a therapist since 1995 and as a supervisor of counseling services in various locations since 2015. He has been in the field for twenty-five years. MD offers individual, couple, and family therapy. MD indicated he had completed Voice of the Child Reports; Parental Capacity Assessments; and general Custody and Access Assessments.

[70] With the consent of the parties, MD was qualified as an expert witness. He was qualified to give evidence in the following areas: domestic violence, childhood sexual abuse, family dynamics, family reunifications, and family mediation.

[71] With respect to this matter, MD advised he had completed a Preliminary Report dated December 20, 2022. He clarified he did not have the opportunity to follow through with in person counseling with the child and the father. He advised that because he had not been able to meet with or speak with the child in person, his concerns were presented to the Court "without prejudice."

[72] MD advised that in advance of finalizing his report, he had met with or spoken by telephone with the following persons: the mother for one hour; the father for three in person interviews; KT, the father of the child's two older half

siblings, G and M; and the father's mother, JC, by telephone. MD confirmed he was still prepared to provide counseling for the child and the father to reunite, "were the child to return to Nova Scotia."

[73] MD confirmed he is not prepared to provide virtual services to the child. He stated he had never advised either party he was prepared to provide virtual counseling services to the child. I accept his testimony.

[74] MD was asked about the comment he had made about the child's stating to her therapist, "**I wish he would just drop everything."** He confirmed he had opined that the statement did not seem to be a statement "typical of a ten-year-old child (the Court recognizes the child turned 11 just weeks before she made the comment to Dr. MD) who had previously enjoyed a reportedly close relationship with her father."

[75] MD also confirmed his opinion that the characterization of the father as a dangerous person and a risk to the child without supervision, "did not resonate with the information gathered." MD went on to indicate that he did not see the father's efforts to maintain contact with the child after her refusal to attend his parenting time, as problematic. He opined that if there was a disruption in the

relationship between the father and the child, it was unlikely it was a consequence of the relationship between the father and the child.

[76] With respect to reunification, he stated in part:

> That there is very little available information regarding the impact of a forced removal of a child from their primary residence has on children. KT related that in his situation the children were very confused at first however they quickly adjusted to being back in Halifax and the familiarity of extended family, friends and school.
>
> There are a number of factors that would need to be taken into consideration with the two primary factors being the **child's attachment / relationship with her father prior to his being denied parenting time with the child and the mother's willingness to positively facilitate the child's return**. (my emphasis)

MD did not have the opportunity to meet with the child as the mother did not return the child to Halifax Nova Scotia as ordered. As a result, in person counseling with MD, the child, and the father did not take place. In addition, in person contact through Veith House did not take place.

[77] I found MD's testimony straightforward, credible, and consistent with the evidence as a whole.

**Dr. Madeleine De Little PhD (teaching)., RTC., MTC., RCS., CCC**

[78] When asked about her training and experience Dr. Madeleine De Little (herein referred to as Dr. MD) indicated she had over 30 years experience. She qualified that:

> …I've been working with children since 1972, I think, as a school teacher both in England and here. Particularly with special needs children and emotionally different children. And then, for 34 years, I've been a counselor here in Vancouver and in (inaudible), in Columbia. And I've kind of, my formal education is a little convoluted, but I've got bachelors and then I did a masters, but its not in counseling, it's in social policy. Then I went to school and got a diploma in counseling and then I got, I went and wrote a book called When Words Can't Reach which is all about a way of working with children that is primarily to explore trauma and to transform trauma. And so, with that, with the book and then I went back to school to Simon Fraser University to get a PhD in teaching in arts education and adult education, teaching this way of working around the world. So, and I teach therapists and psychiatrists in about six countries, including China and Thailand, and I teach here and in England as well, And I supervise therapists all over the world.
>
> …
>
> I'm semi-retired now, but up until this year, I've been working primarily with children and families doing child counseling, family counseling, and all gamut, all, all aspects of children's issues, from autism to, to anxiety, depression, obsessive compulsive disorders, all sorts, the whole gamut, the whole gamut of symptoms that you would find in mental disorders and family dynamics. (my emphasis throughout).

[79] In her report dated October 10, 2022, Dr. MD stated she had been working as a therapist since 1989. She had worked in schools and in private practice. Dr. MD described herself as "a child and adult therapist focusing on complex trauma and early attachment losses." Dr. MD indicated the focus of her work was to "transform the early defences / behaviours that we build up to keep safe but that have become problematic e.g., road rage, alcohol use, defiant behaviour, select mutism etc."

[80] Dr. MD stated she had previously completed approximately six "View of the Child" reports (Dr. MD suggested was comparable to "Voice of the Child" reports

in Nova Scotia). When asked if she had previously been qualified to give expert evidence, she stated she believed she had been qualified as an expert to give evidence approximately three times on custody and access related issues and the last time was in 2006.

[81] Dr. MD stated that her approach to completing a View of the Child report is to:

> Listen to their opinions. I want to listen to, to listen to their yearnings for whatever it is that they want and to listen with respect and gentleness and kindness and **not judge, not judge other parents**, but just **purely to ascertain exactly what they're feeling, what they want, how they want to, where they want to be in terms of parenting, which parent they want to be with**…(my emphasis)

Dr. MD also stated that when she completed the View of the Child Report with the child who is the subject of this proceeding, she employed "the latest neuroscientific research in my practice by working in metaphors using figurines in a sand tray."

[82] Dr. MD was qualified as an expert in relation to custody and access; on View of the Child reports; and in providing counseling services.

[83] Dr. MD initially indicated she became involved with the child in late October 2023, but later clarified she met with the child on October 6, 2022 for a two-hour session and used the "sand tray" method with the child. Then on October 7, 2022, she completed the report which is dated October 10, 2022.

[84] Dr. MD stated she had met with the child without first discussing any of the issues with either parent. In comparison, in Nova Scotia each parent is given an opportunity to identify issues in writing and to put their plan in writing for the assessor to review. In addition, ideally each parent has an opportunity to transport the child to one of the two appointments scheduled with the assessor who has been chosen to complete the Voice of the Child Report.

[85] Dr. MD stated that she understood from the child that the "rupture in the relationship" between the child and the father occurred in December 2021 – when the father did not allow the child to travel with her mother to British Columbia to see the child's maternal grandparents.

[86] When Dr. MD was asked about the child's perception of her father refusing the child's request for her to travel to British Columbia with her mother in December 2021 into January 2022, Dr. MD agreed it would be a bad idea for one parent (the mother) to plan vacation time (in British Columbia) when the child had an expectation she might accompany the mother, while at the same time knowing the other parent (the father) planned to have parenting time with the child in Nova Scotia. Dr. MD suggested that ideally the parents would work together.

[87] The mother on the other hand claimed she had never planned to take the child to British Columbia with her. Given the mother's previous history of travel with the child to British Columbia, I find the mother could have and should have anticipated the child would want to travel to British Columbia with the mother. I find the mother did suggest to the child that she could accompany her to British Columbia if her father agreed, and that the mother did anticipate that the father would not be keen on missing his holiday parenting time with the child, that he would say no, and that the child would be disappointed.

[88] Even if the mother had no intention of taking the child, I find it is most likely that the child believed that if her father agreed then she would be able to go with her mother to British Columbia. It is not a far stretch to expect the mother could anticipate the child would be disappointed she could not go with the mother to British Columbia if the father said no, which he did, and that the child would consider it to have been her father's decision and not her mother's.

[89] According to Dr. MD, the child advised Dr. MD at the first session on October 6, 2022 that **her mother going to British Columbia to visit her maternal grandparents without her "was the turning point for me."** The child stated: "**how could anyone do that to their daughter?**" Once again, the quote

included in Dr. MD's report filed as evidence at the hearing on October 19, 2022, is not a statement I would expect of an 11-year-old child. (my emphasis)

[90] Dr. MD stated that with respect to her father's refusal to allow her to go with her mother to British Columbia in December 2021 / January 2022, the child told her:

> **...she refused to go and visit with her dad. She dreaded her access time with him and would avoid being around when he came to pick her up**. She describes how he would follow the school bus home or come into the school to get her and how she has run away from him and / or hidden in the school washrooms until he left. On another occasion the principal had to get involved when the dad's partner came to pick her up and the child refused to get off the bus and go with her. The principal became involved for 30 minutes but did not make the child get off the bus and go with the dad's partner. As the child recalled this incident, she started to **cry with relief** because of the support she had from the principal.

I am uncertain why Dr. MD concluded that when the child cried about the school incident that she was crying with relief? With respect to the child's statement about what happened at the school, I prefer the evidence of the vice principal and the Principal which is discussed below.

**The sand method**

[91] In her report dated October 10, 2022, Dr. MD reviewed the use of the "sand method" during her first two-hour session with the child on October 6, 2022. She reported that the first animal the child identified was her dog. The child then

identified the mother as the adult horse because she is gentle, kind, and powerful; herself as the foal; her half brother M as a polar bear and then later identified another aspect of M as a turtle.

[92] The child reportedly cried as she described her other half brother G as a "stubborn donkey" stating that she missed him (in or around 2015 G chose to live with KT instead of the mother), and in the opposite corner to the horse (her mother) she placed her father "the grizzly bear". Stating "I feel like he gives me that look that I don't like, it's pretty scary."

[93] Dr. MD stated that "of significance was the closeness of the foal to the adult horse and the distance between the foal and the grizzly bear." Dr. MD indicated that when she asked the child to create a picture of how she wanted the family to be, the child "placed all the animals in one corner, leaving the grizzly bear (her father) in another." It is unclear to me whether Dr. MD explored with the child about why she wanted her father placed at a distance from the others.

[94] Could it be because he told her she could not travel with her mother to British Columbia during his parenting time over the holidays? Could it be because she was uncomfortable with the notion of spending time with her father after refusing to attend for his parenting time?

[95] Dr. MD opined that the "pictures speak to the physical and emotional distance that (the child) is currently feeling towards her father and her siblings." The physical distance aspect is self explanatory as the father and half siblings were on the other side of the country; however, I wonder if Dr. MD explored whether the child's emotional distance might be related to feelings of regret.

[96] Dr. MD noted that the child cried "over missing one of her brothers, and her friends but she did not cry for her father." It is unclear how big a factor Dr. MD believes the child's age plays when considering her apparent attachment and / or concern about missing her siblings and her friends rather than a parent. Could this be a natural progression given the child's age and her increasing ability to be away from her parents for longer periods?

[97] In a further report dated January 6, 2023, Dr. MD indicated that her goal in November and December 2022, after writing the View of the Child Report dated October 10, 2022, was to "slowly reconnect the child with her father in a way that is safe and ultimately successful." Dr. MD explained that she began by speaking with the father on three occasions and then arranging a video call between the father and the child.

[98] Dr. MD stated she had met with the child on November 9th, 2022 for counseling, and on November 23, 2022 and December 16, 2022, she met with the

child to facilitate virtual contact between the child and her dad; and on March 8, 2023, she met with the child for a counseling session. When Dr. MD spoke about her work with the child and with the father in November and December 2022, Dr. MD stated in part:

> Yes. But I wanted to begin with when I saw (the child) in November (2022) **was to reunite (the child) with her dad and... over Christmas (2022). So, to start the process, phone calls and then to go to Halifax with her dad for Christmas**, but that didn't pan out and then things started to, to take her on a different track in terms of the court, so… and I, I wasn't, I was not involved after that because there was another person involved with the phone calls. So, I, I'm still, still wanting, if I was still involved directly with (the child) and her dad would to be reunify the two of them carefully, proceeding carefully, cautiously, so that we make it successful. So that she has a lovely relationship with her dad for the rest of her life.

There was no other counselor involved with the Veith House virtual sessions. In addition, the mother did advise when the father raised concerns that there were problems related to connectivity and / or ensuring an optimal environment for the contact to occur.

[99] Then in her letter of January 6, 2023, Dr. MD indicated that she had advised the father that "forcing his child to live full time with him is not a solution to this rupture in their relationship." In her report dated January 6, 2023, Dr. MD explained in part:

> That the "delicate balance of meeting all parties' needs must be done carefully. We cannot rush it or force it. What I am proposing is that given the Christmas holidays have been and gone, that we continue to slowly build the relationship over Facetime etc., so that (the child) is completely comfortable chatting with her father. It is early days and I believe that if we do this slowly and carefully (the

> child) will have a lasting loving relationship with her father which will include spending some holiday time with him, her **step-siblings**, her stepmother, and her friends.
> **In the future when (the child) visits her father I would ask that it is documented officially that she be returned to her mother in British Columbia**. (my emphasis)

In the above-noted quote from her report, Dr. MD left out any mention of the child's **half brothers,** M and G (at least one of whom she had cried about). I understand the child's half brothers were both residing in Nova Scotia when the mother testified.

**Dr. MD's access to information**

[100] Dr. MD stated she was NOT aware the mother had been ordered to return the child to Nova Scotia; however, Dr. MD advised the Court she had understood all contact between the child and the father was to go through Veith House, which is a supervised parenting program. However, Dr. MD acknowledged she was not aware **the term for Veith House was added on a without prejudice basis and was NOT included in the Order following a finding by the Court that there was a risk** to the child or to the mother from the father.

[101] As noted previously, on an **interim without prejudice** basis I included certain terms which are usually used to safeguard persons who have been found to

be at risk. I was clear to the parties that I was doing so after the mother had refused to return the child to the jurisdiction.

[102] I included the terms with the father's consent and for various reasons including but not limited to the following: to encourage the child's return to the jurisdiction; to reassure the child who had been refusing to see her father after she had been treating her father and his family in a very hurtful manner; to gather relevant information (written reports) from a supervised access program regarding the child's interactions with her father and perhaps elicit suggestions on how their relationship could improve; and to allow the Court to determine if the mother would follow the order and return the child to Nova Scotia if every possible safeguard was in place.

[103] It appears the mother has put forth two contradictory arguments regarding what information she may or may not have provided to Dr. MD before and after Dr. MD wrote her Report on October 10, 2022, or her letter on January 6, 2023:

1. As noted previously, the mother claimed she did not know that a court's decisions are effective as of the date the decision is rendered, not as of the date and order is issued. I did not find the mother's claim to be credible.

2. The mother's other position is that she did tell Dr. MD presumably about my direction on August 11, 2022, and / or about the order I granted on September 21, 2022, prior to Dr. MD meeting with the child on October 6, 2022?

[104] However, Dr. MD has stated she did not speak with either parent before completing the View of the Child report in relation to the parties' child. In addition, Dr. MD has stated she did not know about the court order to return the child to Nova Scotia.

[105] I find that when Dr. MD wrote the View of the Child report in October 2022, she was NOT aware the mother had been ordered to return the child to Halifax Nova Scotia. I also find it is more likely than not that Dr. MD was NOT aware the father had agreed to attend counseling with the child and with MD, and the child was expected to do so in Halifax Nova Scotia.

[106] In the same vein, when Dr. MD prepared her letter dated January 6, 2023, I find Dr. MD was not aware of the reasons the Court had given the parties for including limitations on the father's contact with the child, and she was NOT aware that the Court had directed the mother to return the child to Nova Scotia.

**Parental alienation**

[107] When asked about parental alienation, Dr. MD described parental alienation as "an effort on the part of one parent to turn the child against the other parent." Dr. MD stated in part:

> I did not gain any sense from (the child) that her mother was denigrating her father, and neither was there a complete rejection of him by (the child). In her perception **she experienced his alienating behaviour for herself specifically since he refused to let her go see her Grandparents at Christmas and his reportedly aggressive behaviour towards her**. She has left the door open to him.
>
> (The child) would like to have a relationship with her father in the future. **She wishes that he would just be kind to her and not demand her time based on the access agreement.** She said, "if you really, if you really loved me so much that you want to see me again and spend time with me. **Then just drop everything**. **Send me Christmas card or a birthday. Say happy birthday. Hey, Merry Christmas. I hope it's a great one**. Yeah. You have a great birthday. Just start like that."
>
> Future recommendations:
>
> For (the child) to attend a few counseling sessions to resolve some past issues. When (the child) is ready then restorative counseling could be an option between her and her father.
>
> For (the child's) father to show his love unconditionally. (my emphasis throughout)

[108] With respect to Dr. MD's meeting with the child on March 8, 2023, Dr. MD explained that the child presented as "stressed out." Dr. MD believed the child knew court was ongoing as a View of Child Report had been prepared for court purposes.

[109] When asked why she thought the child was "stressed out", Dr. MD stated she understood the child was "stressed out" because she may have to go to Nova

Scotia to live with her father. When it was suggested to Dr. MD that perhaps the child was stressed out for other reasons, such as not seeing her father for a long period and / or as expected at Christmas in 2022, Dr. MD acknowledged that could be.

[110] When she testified in April 2023, Dr. MD acknowledged she was NOT aware that on February 21, 2023 the mother had advised the court that on or about March 13, 2023, she would send the child to Nova Scotia to see her father, or that subsequently, the Court had agreed to adjourn the commencement of a hearing on the merits, with the mother then failing to follow through.

**View of the Child Reports**

[111] Dr. MD was asked questions which required her to compare her methodology for her View of the Child report to the methodology the Court understood was expected or recommended when assessors completed Voice of the Child Reports in Nova Scotia. For instance, Dr. MD was asked if she made any attempt to determine whether the child was being influenced by either parent:

> …whether part of your assessment was determining whether the child was influenced, yes or no?
>
> No.
>
> …whether when you met with (the child), the notion was that she got a voice, but she should know that she doesn't get a choice. Was that communicated to her?

> Absolutely.

[112] After the Court summarized for the record what Dr. MD had stated, including her response indicating she did not assess if the child had been influenced, Dr. MD suggested she had not answered the question correctly:

> …we've noted one particular area that you did not focus on was whether the child was influenced or not, and of course, in our jurisdiction we do and that is a primary issue in this matter, so you may be asked questions about that, …
>
> …
>
> Yes. I don't know if I answered your question correctly, then, because I did consider whether she had been influenced.
>
> …

[113] When Dr. MD was asked to comment about the other assessor, MD's observation that the child's statement "**I wish he would just drop everything" did not seem to be a statement "typical of a ten-year-old child"** (recognizing that the child had turned 11 just weeks before she had made the comment), Dr. MD stated in part:

> So, the statement you want me to comment on is MD's. I would **concur on the surface this does not seem to be a statement typical of a ten-year-old child** (once again the Court recognizes the child had turned 11 around that time).
>
> …
>
> So, you have to sit, so lets pull back a bit in terms of the context and I can't say that that is (the child's) words or whether she's been influenced. What I do, what **I can say is that (the child) wants to be with her father. (the child) wants to spend to (sic) time with her father.** That is not, when you think about a child that's been alienated, children who have been really alienated and influenced and may have to say **there's a whole continuance**, but children, generally, when they've been, when there's parental alienation, they don't have anything to do with their dads, nothing, or the other parent, but (the child) does. (**The child) wants to be with her dad. She wants to spend time with him on the holidays**

> **and she, you know, she's not alienated from him, she loves him, it's simply that she doesn't want to live with him**. **So, has she been influenced? I don't know. I honestly don't know**, but it's there's a, there's a sense for me that she, it's not about being influenced, **it's about not trusting him enough**, wanting to build back that relationship and have a long-lasting healthy relationship with her dad.

However, it is clear from the evidence that despite the child's statements, the child has not had in-person parenting time with her father since February 2022. It has in fact been the mothers promises that the Court has been unable to rely on, not the father's promises.

[114] When Dr. MD was asked for her thoughts on the other expert, MD's statement that "there is very little available information regarding the impact of forced removal of a child from their primary residence has on children," Dr. MD stated:

> Well, I don't know about research and when I read this, I did actually look it up, and he's right in a way, there isn't much research, but we can deduce that when you have a child who is very connected, very connected to her mother if she were to be forced to be placed with her dad permanently or at least for some time with little contact with her mum, I, I cant' say this completely 100 percent, but there is a huge risk, huge risk that this relationship with her father would completely break down. So, (the child) is, she would, she would suffer. She would suffer if she were forced. I believe she would suffer. I think she would suffer both ===
>
> …

Dr. MD opined that the child "would suffer if she was forced to live with her dad" and the child's relationship with her father would suffer, both in terms of "her physical, mental, and her emotional state."

[115] Dr. MD acknowledged she did not know all the history between the parents, but stated it was the child's perception of the rift that was important to her. Presumably, Dr. MD is referring to the rift caused by the father's refusal to allow the child to travel to British Columbia with her mother in or around December 2021 and January 2022. In other words, the rift created because dad said no to the child, after mom implied either directly or indirectly that it was all up to dad.

[116] Dr. MD stated: "I've only seen her for counseling once or twice. I've seen her to do the View of the Child Report twice (later acknowledges once), and then I saw her twice again when she was on the phone with her dad, so I haven't really seen her since. Just once, really, or twice since I've wrote the report." She stated:

> My sense is that the, the attachment relationship between the child and mom is stronger than the attachment relationship between the child and her dad. It's not like it's, it's not black and white, but she doesn't miss her dad as much as I am predicting that she would miss her mum. She would miss her mum profoundly, and right now she's not, she's not crying about her dad. She loves her dad, but she's not missing him. **She's missing her friends**, I would say that, but she's not missing her father like I think she would miss her mum.

Dr. MD opined that the child had not turned her back on her father, that she wanted him in her life, that **she wanted to be with him as much as she could over the holidays**.

[117] However, the child has not seen her father in person since February 2022. In particular, the child did not see her father in Christmas 2022 as anticipated; or in

March 2023 as promised by the mother. As noted previously, Dr. MD confirmed she believed the plan was for the child to visit her father at Christmas 2022, but she then learned it didn't work out, and she stated she was not entirely sure why not. She also noted that telephone calls were going to start, but she remarked that they "didn't "pan out."

[118] Dr. MD agreed the mother would have to be willing to encourage the contact between the child and her father. She stated that the father and the child would need **uninterrupted time conducive to having a relationship**. (my emphasis)

**Future planning**

[119] Dr. MD stated that if she was still involved with the family, she would reunify the child and her father "cautiously to make it successful." Dr. MD described the child as very mature for her age, but she acknowledged that "in some ways she's probably not."

[120] When asked about "next steps," Dr. MD suggested the **child should spend a significant amount of time with her father in June and July 2023**. When asked what she would suggest should happen if the mother kept promising to send the child to Nova Scotia but failed to do so. Dr. MD stated she would want to discuss with the mother the effect that would have on the child.

[121] When Dr. MD was asked specifically what she would say to the mother, Dr. MD stated: "she would tell the mother that the child deserves to have a relationship with her father... that not seeing her father would have long lasting effects on the child."

[122] Dr. MD opined that initially the issue between the child and the father appeared to be one of the child's lack of "trust", and now "the child had started to trust her father." The child was not frightened of her father physically; it was a question of trust. Dr. MD stated that she saw huge potential for repairing the relationship between the father and child.

[123] **Dr. MD stated that since the child had talked to her father, the child was ready to visit her father**. She opined that if the child had been sent to visit the father before having the opportunity to reconnect, "it would have been a disaster." Dr. MD suggested **the child needed to have a relationship with her father that does not involve her mother**. Dr. MD advised she was available to provide more therapeutic supervision during the telephone calls between the child and her father. (my emphasis)

[124] Dr. MD confirmed she had not had any access to the Veith House parenting records, and she agreed she would have benefited from reviewing those. Dr. MD

**recommended the parties participate in a parenting program**, such as Parenting after Separation (or Divorce), online, offered by the Government of British Columbia.

[125] Dr. MD stated she was not sure the father's telephone contact with the child required supervision; however, if the father wished to continue to have Veith House facilitate his contact with the child to ensure the quality of the contact, she saw no harm in the service continuing— **if the father felt it would guarantee him time with the child, then it would be fine to keep it going. But her "gut feeling" was the father did not need to be supervised.** Dr. MD stated that further online repair work with the father on video chat and the child in her office may be of some benefit and the child could enjoy time with the father in Nova Scotia.

[126] At the conclusion of Dr. MD's testimony, I advised the parties in part as follows:

> …you should be also booking tickets and making the arrangements and getting her prepared that she's coming. **Regardless of what the decision is, the child's life still goes on and she still needs to know if she's going to see her dad**. Whatever decision I make, she's still going to see her dad, right? If I decide that she's staying in BC, (the mother) has to have some sort of plan for her to see her dad. So far she's failed to put that plan before me or execute it. If she fails to execute it again, or even if make sure it's moving to that, what do you think I'm going to be able to do about that? Right? So, there has to be some serious thought, and, you know, Dr. MD has said very clearly to you, (the father), that she'll work with you. You have, there's nothing barring you from calling her and asking her

> to make arrangements for (the child) to see you and to make those arrangements.
> …
> And in fact, I have an expert telling me that it needs to happen and that this is a really smart little girl, **wants to see her dad, she's doing much better than she was in October (2022), and they should be fine**.
> …
> At the very least, she should be able to scope out that I'll be granting access to him at least a month in the summer, right? You should be able to at least figure that out and be starting to work toward that. Thank you.

## The mother's allegation that the child "does not feel safe" with her father

[127] Dr. MD had indicated in her evidence that the child raised the following concerns about her father dating back to Christmas in December 2021 and early in the year in 2022:

> (The child) does describe some of the conflicts between her and her dad. She says that he would say "**I don't want to say anything bad about your Mum but…" or they would argue about what she wanted to do and what he wanted her to do**.
>
> This past Christmas, "the child" asked her father if she could go to British Columbia to spend time with her (maternal) grandparents who she really loves. Her mother was held up for a week because of the snow, so when it came time to finally leave, her father, according to (the child) said no she could not go as that would have meant him missing out on his time with her. So, her mother went to visit the grandparents in BC and (the child) stayed with her father.
>
> **(The child) says that was the turning point for her. "How could anyone do that to their daughter?" she said to me**. **After that she refused to go visit with her dad. She dreaded her access time with him and would avoid being around when he came to pick her up**. She describes how he would follow the school bus home or come to the school to get her and how she has to run away from him and / or hidden in the school washrooms until he left. On another occasion the principal had to get involved when the dad's partner came to pick her up and (the child) refused to get off the bus and go with her. The principal because involved for 30 minutes but did not make (the child) get off the bus and go with the dad's partner. **As (the child) recalled this incident, she started to cry with relief because of the support she had from the principal**.

[128] The mother has suggested that the child's relationship with her father was negatively impacted by the co-parenting decisions the father made after the Christmas holiday break in 2021, and decisions he made in January 2022 and February 2022. I understand that prior to January 2022, the child was attending the father's specified parenting time without incident.

[129] In cross-examination, the mother's lawyer explored the timeline with the father and he responded in part as follows:

> **Q.** To the father, I want to go back to your Christmas parenting time with (the child) in December of 2021 into 2022, okay? So, you were supposed to have (the child) from Christmas day, correct, the 25th? Correct?
>
> **(THE FATHER):** That's correct, yes.
>
> **Q.** Right. Into January 10th or so?
>
> **A.** Something like that.
>
> **Q.** Okay, but if that, (the mother) was away at that time, correct?
>
> **A.** Yes.
>
> **…**
>
> **Q.** Okay. But there was, but (the mother) contacted you and said that she was being delayed because of a staff shortage at the airline she was flying back?
>
> **A.** I think it was something about snow and that she'd be coming back a week later.
>
> **Q.** A week later, okay. **So, she asked you if you wouldn't mind (the child) staying with you an extra week.**
>
> **A.** I'm not sure exactly how that went. The school break was extended due to covid, so I had (the child) for a little bit longer, and I messaged (the mother) as I didn't know when she was expecting to arrive. She did not, she did not come back, I'm trying to remember now, it's so long ago, but I did inquire, because (the child) would have been on her mother's parenting time and I informed her of that and that my schedule was set. That I could not make last minute change in the schedule to switch things around is what she was asking.

**Q.** Okay, but she, (the mother) was delayed coming back, right?

**A.** Yes, she said for snow and she was coming back a week later.

**Q.** Coming back a week later. So, it was discussed that you would keep (the child) another week?

**A.** Well, I'm not sure about all the details. I do know that I followed the court order at that time.

**Q.** I, I, don't understand your explanation, sir.

**A.** I had (the child) for, I had (the child) longer.

**Q.** Okay.

**A.** And I informed (the mother) that if she was not back during her parenting time that I'd be happy to accommodate, as per our court order, when one parent is not able to look out for our daughter, the other one can.

**Q.** Okay. And, okay... but... Alright, **so. (the mother) then didn't arrive back until January 17th,** you said she was a week late, right?

**A.** I don't know exactly when she returned.

**Q.** But you

**A.** But she was late.

**Q.** Right, yes. She was supposed to get (the child) back January 10th. You said January 10th, so a week late, around January 17th, correct?

**A.** Likely, yes.

**Q.** Okay. Alright. And you started, I, explaining something about work. So, (the mother) asked you if she could have (the mother) on what was, I'm sorry, (the child) on what was supposed to be your parenting time, since she had lost a week given what happened with her not being able to come back. Correct?

**A.** That's correct. I followed the Court order when school resumed, the schedule would start again, and (the mother) did not arrive for her parenting time.

**THE COURT:** Could you answer the question, sir?

**(THE FATHER):** I thought I did. I'm sorry. I'm...

**THE COURT:** …**she asked if she could have (the child ) on your parenting time. Did she ask that? Did you do it?**

**(THE FATHER):** Yeah, she wanted, she wanted to have (the child) on my parenting time. There was some communication between our lawyers. (**the mother) was attempting to use certain clauses of our court order which did not apply** and her counsel was notified of that. **This is similar to covid that created, there was a similar situation where (the mother) did not reciprocate an accommodation as well.** She was stuck with the court order.

**MR. KATSIHTIS:** So, you were, essentially this was pay back?

**(THE FATHER):** No. **I just followed the court order. There's no payback involved**. Proper communications through legal counsel had been submitted and I followed the court order.

**Q. Okay, so, (the mother) gets Summer, well, your parenting time was back on the 19th of January, correct? That's the Wednesday?**

**A.** That sounds about right, yeah.

**Q.** And so, **if (the mother) came on the 17th, she basically had (the child) for her parenting time would have been the 18th of January**.

**A.** I don't know for certain.

**Q.** It would have been a day or two, maybe.

**A.** Somewhere in there.

**Q.** Okay. And, so, and you were supposed to have her on that Wednesday, and (the child) didn't go with you on the Wednesday and we have the police involvement, correct?

**A.** That sounds right, yes.

**Q.** Okay. So then the

**…**

**MR. KATSIHTIS:** So, the 19th of January would have been, was Friday, correct?

**(THE FATHER):** That's correct.

**Q.** And you were supposed to get (the child). She was going to stay with you how long?

**A.** Friday, Saturday, Sunday until Monday morning.

**Q.** Until Monday morning. Okay. Alright... So, basically, (the child) had spent a month with you, did one overnight with (the mother) or maybe two, maybe one, and then she's back with you for a few days.

**A.** That's not correct. Her mother would have had her before the Christmas break started.

**Q.** Right, but that was before your one month of having, you had

**THE COURT:** It probably was three weeks.

**MR. KATSIHTIS:** Three weeks. Okay, sorry. 25th to the 17th.

**(THE FATHER):** I don't have the paperwork in front of me, but I'll say three weeks.

**Q.** Okay. Okay. Now, I've seen the word "familia" used in your affidavits and such, were you, so you had no concerns that (the child) might have wanted to see, to spend more time with her mother after not seeing her for those three weeks? You had no concerns?

**A.** Not at all. I put her on the phone with her mother as our custody agreement dictates

**Q.** Kay.

**A.** And (the child) was happy as a clam.

**Q.** Okay. So, then on the 19th, what you're hearing, I know you don't believe it

**THE COURT:** January 19th, 2022.

**MR. KATSIHTIS:** Of January 2022 is that (the child) doesn't want to go with you.

**(THE FATHER):** I heard this from her mother.

**MR. KATSIHTIS:** Okay... And over that Christmas, in terms of

**…**

... Ms. Lehey have all the children there as well?

**(THE FATHER):** Yeah, we did.

**MR. KATSIHTIS:** Okay. And I'm sorry, there's a 21-year-old

**(THE FATHER):** There was some birthday's recent. I think V is 23 now and L might be 22.

**Q.** Okay.

**A.** Oh no, sorry. So she's 21.

**Q.** Okay.

**A.** Then C would be 15 and K's 17.

**Q.** Sorry, the last?

**…**

**Q.** And, oops, sorry. And around or on January 28th, (the mother) discussed with you reunification therapy?

**…**

**MR. KATSIHTIS:** (the mother) brought up reunification therapy with you, correct?

**(THE FATHER):** That's correct.

**MR. KATSIHTIS:** And you thought it was expensive. How much was it gonna cost?

> **(THE FATHER):** I thought it was completely unnecessary and refused it.
>
> **THE COURT:** That's not the question
>
> **(THE FATHER):** I don't recall saying that it was expensive, but I do know that it is. Yeah, expensive and not necessary.
>
> **MR. KATSIHTIS:** And I'm sorry, you're saying it's expensive but you don't know how much it costs?
>
> …
>
> **MR. KATSIHTIS:** Right, just so, but at the time, and actually I'm going to show you, this is your affidavit
>
> **(THE FATHER):** Yeah, at the time, and I did know it was expensive. It's expensive. F-word expensive.
>
> **Q.** Okay. And, and as you said
>
> **A.** Unnecessary.
>
> **Q.** ...**unnecessary. Okay. However, you were agreeable to the school counsellor becoming involved?**
>
> **A.** That was later, towards the end of I think the middle or end of March. Yeah.
>
> **Q.** And (the mother) had raised with you some names of, of people to do therapy though, right?
>
> **A.** She had offered that at the time, they offer reunification therapy is my understanding. One of the, I did go through the trouble to look into them. One clinic did not have any room and the other did not do those kinds of things. That was part of my inquiry.
>
> **…**

One could certainly describe the father as somewhat rigid; however, as will be outlined below in my decision, the father's negative reactions have most often been in reaction to the mother's behaviour of limiting or interfering with his parenting time with the child.

**The mother's plan**

[130] When cross-examined about her plan the mother stated in part:

**(THE MOTHER):** I provided a plan in my affidavit there as recommendations for moving forward.

**Q.** Yes, but one of those **recommendations, you would like your son, M, and K, I don't recall K's last name to be, I guess, failsafe for (the child)** to go to, can you.

**A.** Well, we currently have the protection order that's against you where you don't have contact with (the child), so when I proposed that part of the solution, that seemed like an appropriate scaffolding option.

**Q.** How is placing (the child) in her brother's care going to support my parenting of (the child)?

**A.** Well, as I say, because of the order that's in place right now where you don't have any access unless it's supervised, that was in order to support supervised access with you.

**Q.** We've established that supervised access is not gonna be that much of a problem

**THE COURT:** Well, sir. Somebody has recommended, that doesn't mean you've established.

**(THE FATHER):** Okay. Well, Madeline DeLittle has not indicated that supervision is necessary. She made that clear. I think we can agree on that.

**THE COURT:** Sure, but you can't agree that that's a final decision.

**(THE FATHER):** Yep. If that was the case, how would you want to proceed?

**(THE MOTHER): If supervision isn't necessary, that's fine. But those options were in, provided just under the current orders that were in place**.

**Q. Would you consider doing a bilateral parenting capacity assessment**?

**A**. No.

**Q.** Why?

**THE COURT:** First of all, sir

**(THE MOTHER):** I don't feel it's necessary.

**THE COURT:** ... I don't know who's going to do that for you, so... are you going to pay for that? Who's going to pay for that?

**(THE FATHER): I saved the money for it.** Where I have expressed concerns, you're saying you would not agree to a bilateral parenting capacity assessment? Even if I'm willing to pay for it?

**(THE MOTHER):** I did say that.

**Q.** If I'm willing to pay for it, would you be willing to do it?

**A.** I already answered. No.

**Q. Okay. Would you be willing to participate in court ordered parental training?**

**A. I don't feel that that's necessary to be ordered**. As I say, I already engage in lots of my own work with being a parent, et cetera. If it was ordered, then that's fine.

**Q.** Why haven't you reached out to me before to put (the child) on the phone?

**A.** Before what? I did do that immediately.

**Q.** After that Friday there was no phone contact.

**…**

**(THE FATHER):** Yes. There was a, would you agree there was a long period of time after the initial January, February time where there was no phone contact with (the child)? Why didn't you reach out to somebody to facilitate that earlier?

**(THE MOTHER):** I did. I had proposed seeing that that was an unsuccessful approach to look for somebody that could provide more, kind of, neutral guidance between you and (the child), and that's where **I proposed the counselling, and then I had to leave it in your hands at that time.**

**Q.** Okay. Is it true that **you have authority over counselling for medical issues for (the child)?**

**A.** I don't know what that means.

**Q.** You have authority in our court order for medical day to day concerns for (the child). Is this true?

**A.** Yeah, the parent that has (the child) takes care of her medical needs, yes.

**Q.** Specifically, you have charge of (the child)'s day-to-day

**THE COURT:** Why don't you just give her the paragraph of the order and read it to her.

**(THE FATHER):** Paragraph nine. It's in our September 18, 2018, sorry, February 24, 2018, would it be 2018... I don't know. My apologies. This is our, yes, the September 24, 2018 Variation Order, paragraph nine: "**The mother shall have responsibility for arranging the child's routine medical, dental, or other health related appointments.**" Why didn't you take (the child) to see somebody?

**(THE MOTHER):** I did in meeting with Madeline.

**…**

**MR. KATSIHTIS:** Just a clarification, (the mother). You said at one point that you were leaving the counselling arrangements in (the father)'s hands. What did you mean by that?

**(THE MOTHER):** Well, it was what I had offered was that the counselling and if (the father) was looking for other ways that he thought things could be resolved,

> that's what he seemed to want to do things his way, I guess. So, you know, I kept that offer on the table because I felt like that was probably the right path, as far as I could see things at the time.

[131] The mother appeared to acknowledge that the expert had stated there was no need for the father's parenting time to be supervised. The mother also refused to participate in a Parental Capacity Assessment and suggested there was no need for her to attend any parenting programs.

[132] At the continuation of trial in May 2023, the mother's counsel's comments appeared to back track a bit, suggesting that unlike when she provided answers during cross-examination, the mother was actually anticipating ongoing video chat sessions to assist the father and child in reconnecting, and she was not prepared to proceed with in-person time for the child and father:

> **MR. KATSIHTIS:** So, a couple of items. One, and perhaps I misunderstood, but after hearing Dr. MD testify and (the mother) and I spoke, and so what (the mother) did is reach out to Dr. MD to see if Zoom calls between (the child) and (the father) involving Dr. MD could be initiated, and I have actual emails, but I'm paraphrasing, but if need be, I can refer to the actual emails. Dr. MD—
>
> **THE COURT:** Have you provided those emails to (the father)?
>
> **MR. KATSIHTIS:** I think he was involved
>
> **THE COURT**: Okay.
>
> **MR. KATSIHTIS:** ....in those. Dr. MD seemed to indicate that maybe perhaps it was premature, that perhaps it would be best to wait to get some direction or, so I guess she used direction and decision interchangeably, and until then, before this commenced, I understand (the father) agreed with her, although, there seemed to be also an indication that he was concerned about another counsellor being involved with (the child), although, and again, I, I, I take it as meaning adding Dr. MD to it, but she's already been involved, so I'm not sure if I'm understanding (the father).

**(THE FATHER):** No, that's not correct.

**MR. KATSIHTIS:** Okay. In any event, so, I, I, I, guess, you, you know**, (the mother) is, is prepared to initiate the Zoom calls. I don't know if there can be some direction for Dr. MD such that it would satisfy her and start to proceed with the Zoom calls if, in fact, (the father) wishes to proceed with those**. So, I just wanted to, to raise that because, I, you know, my sense of the matter is the more contact there is between (the father) and (the child), **I appreciate he wants it to be in person, but to get things moving along, and, again, in line with what Dr. MD had said when she testified, (the mother) thought she would try to get things moving in that regard**. So, I just wanted to throw that out for the Court and (the father).

**THE COURT:** (the father), do you have any comments to make?

**(THE FATHER):** Yes, I do. I reached out to Dr. MD to ask her advice in how we may proceed. **I have concerns regarding the reinforcement of the false narrative given I have concerns regarding parental alienation.** From what I've read, my understanding is that the wrong kind of counselling can actually do more harm than good. I do believe (the child) needs support and I do believe it's important we spend time together, however, I do have concerns where Dr. MD is not trained in those kinds of matters, which leaves us in a little bit of a pickle.

**THE COURT:** Well, sir, the bottom line, who is trained in those matters and who is willing to do it? There are only so many resources in the world. You can read whatever you want from Ontario and they have lots more resources that we don't, we do, we don't have them here, so that's what you're stuck with. So, you're being asked do you want to start talking to ~~your mother~~, to your child who has a therapist who is willing to help you, and that therapist is obviously going to have some sway with your child, because your child likely trusts that therapist. So, do you want to do that? I think it's starting from a point of recognizing that your child is where she is. Whether it's right or wrong, it's where she is, but that's up to you. I'm not forcing you to do that.

**(THE FATHER**): **I'll pursue further discussions with Dr. MD to see how we can proceed.**

**THE COURT:** Yes, and I can certainly say that **I'm prepared to grant an order, an interim order that says if the parties agree and Dr. MD is consenting**, then they're, it's fine to go ahead from my point of view with, especially if Dr. MD identifies herself as, and she has from my point of view, as the child's therapist. If the child's therapist feels that it's beneficial for the child to see her father through this means, who am I to step in there in a decision. What do you think I'm going to decide? That she can't see Dr. MD anymore? I'm not.

(THE FATHER): No.

**THE COURT:** And either way, if you get somebody different at some point from your point of view to facilitate things for the family, **you're still gonna have Dr. MD, because that's the child's therapist.**

**(THE FATHER): I did ask Dr. MD if she could reach out to somebody with the expertise that I mentioned earlier**, and I haven't heard from her on that, as she wanted to wait to hear back from the Court.

**THE COURT:** Right, and as I mentioned before, from my understanding, because I'm not a psychologist, I'm not a counsellor, **is that a counsellor or a therapist has to start from where the child is. And the child is wherever she is**, and if you argue she's there because, you know, (the mother) brought her to that point, she's still there, and that's where she is.

(THE FATHER): Yes.

**THE COURT:** And judges have to take all of the evidence into account. Not just the evidence from the therapist, but you have to understand, I can't tear a child apart trying to get her back to her dad, so...

**(THE FATHER): Perhaps if we could proceed with Dr. MD and that she would seek out some additional resources to support her efforts**.

**THE COURT:** That, that sounds, if the order could stipulate that certainly this Court recognizes that **Dr. MD has been, is a safe place, appears to be working with the child, and as the child's therapist, the child's therapist has, from my point of view, said, based on what you, the information I've received and the testimony, I said that she's willing to facilitate contact between the child and dad and she actually felt that dad didn't need supervision at Veith House**, I believe is what her testimony was, and she felt quite positive about dad. Dad is somewhat, the order might reflect that **dad is still seeking an independent person to work with the family as a whole because that's the child's therapist**. It's not a family therapist, it's not his therapist, it's the child's therapist who starts from, you don't have to put all of that in the order, Mr. Katsihtis, but you understand the gist of it. I recognize the child's therapist is willing to facilitate some contact with dad. Dad is still not saying that's all, even in the interim, he still would like and he's going to ask, and **I think it's appropriate that he ask Dr. MD if, Dr. MD if she has any other ideas with respect to experts in the area of reunification and somebody that would be able to work with them more independently,** because, obviously, she is the child's therapist. It's the best I can do.

**(THE FATHER):** Thank you.

[133] I granted a consent interim order following the parties' agreement regarding ongoing counseling:

I am prioritizing this trial. I'm really concerned about this matter. I've pushed this to a hearing because I've said to (the father), and I mean that, **that I can't do anything till I have all the evidence.** Once all the evidence is in, I can start my work and do something. I have the authority to do it. Until then, I don't. So, we need to get this in, and that's our last opportunity, is June 6th, I think I was reminded the next date. And you're on, if you're going to call that police officer and he can't make it, if you get the materials and the police officer can't make it the 6th, make it sooner. Contact the Court, indicate on the court record that I want it as soon as possible, and sooner than June 6th if possible. And I'll do it any noon hour, I'll do it any time to have the officer come and testify if necessary.

**MR. KATSIHTIS**: Okay.

**…**

I know I'm glad you're going to be drafting an order, an interim order, it's consent, interim consent order without any prejudice to anyone saying that meaning it's not that you accept you only have time with her through Dr. MD, but that she can go ahead

**MR. KATSIHTIS**: Sure.

**THE COURT:** ...and that everybody's agreeing to that

**…**

**MR. KATSIHTIS:** Right, right.

**THE COURT:** ...that said, clarified that paragraph was only by his consent and it's understood that **he will only do it in person, and that's a perfectly valid position to take.** (the father)?

**(THE FATHER):** The agreement was with the understanding that Dr. MD will do her best to seek out third party.

**THE COURT:** Read. Of course. The rest of it too.

**(THE FATHER)**: ...support.

**THE COURT:** I'm sorry, sir. I should have been complete. I did say that earlier, that it's **understood that it's without prejudice that he's accepting this and that he would appreciate knowing about third party support**. Most times, (the mother's legal counsel), and the reason why I'm agreeing with (the father) on this is that most times therapists want to stay as far away from being the family therapist as possible, because she actually represents the child, right? So if we could get a separate person who does have some knowledge on reunification that isn't the child's therapist, would be great.

**MR. KATSIHTIS:** How can I phrase it so it doesn't come across that she shall

**THE COURT:** Not shall. We will say something like (the father) has requested –

**MR. KATSIHTIS**: Okay.

**THE COURT:** ...**and the Court supports Dr. MD or (the father) or (the mother) finding someone everyone agrees on and with that separate person for family reunification that everybody can agree on**, with that therapist's consent only, and that it's expected that it's something that's outstanding for (the mother), sorry, (the father), and I, I support that because normally we wouldn't have a child's therapist doing both or that's my impression, and I, I'm not an expert in this field. I'm not pretending to be, but (the mother's legal counsel), in previous files I've certainly had children's therapists refuse to get into, to be involved in that role, right?

**MR. KATSIHTIS**: Yes.

**THE COURT:** But, then again, she knows Dr. MD is a professional who knows (the child), and it's of benefit to (the father) to know that therapist and to be known by that therapist. It is a very big benefit for you to be involved with her, and it doesn't mean you can't have family therapy as a group separate from that.

**MR. KATSIHTIS:** Quite often we have a child therapist, parent therapist, going to other counsellors.

**THE COURT:** Yes, that's what I'm talking about. Is that it might be, I'm thinking, I'm making this decision, and you should put that in there at the very beginning, **it may be in (the child's) best interest to not have her therapist be the family therapist, right? Because she has to have a place to go where she feels safe and she feels like she can say things that aren't going to be coming out in the family therapy,** necessarily. So, if you can draft something that all parties will agree on, I'm fine with it, as long as you make sure that neither Dr. MD nor anyone else is ordered by me to do anything with (sic) without their consent.

**MR. KATSIHTIS:** And family therapy that (the father), (the child), and (the mother)

**THE COURT:** However, presumably it would require all three of them to sort out everything that's happened.

**MR. KATSIHTIS**: Okay.

**THE COURT:** And I wouldn't exclude one for the other. If they want to each have their own independent therapist like (the child), and that's why I'm trying to make room for here, is for (the child) to have Dr. MD to herself, I mean, then there's costs and there's other issues. We have to consider resources. If we can never find somebody else to do that, then Dr. MD's your, you know, your connection to your child.

**(THE FATHER):** Perhaps there's a way that Dr. MD could find a comrade that could support her.

**THE COURT:** Well, I mean, MD, MD is available to do adults virtually, he said, he might be available, I don't know. And he has knowledge of this file, right?

**(THE FATHER):** Okay.

**THE COURT:** Because you're talking about somebody from another province, you know, maybe MD would be better because he's from here. I 2don't know. It's up to the two of you. I'm not in charge and I cannot order services and I cannot create them and I know that certainly, she's in British Columbia and she's in BC, sorry, she's in Vancouver, where is she in BC? 5

**…**

**THE COURT:** You just need somebody who's, you know, **I thought MD presented very well,** he just had a certain way he wanted to proceed, and he may not, if it included the child, then he might not want to do it because she's not there in the room.

**(THE FATHER): He didn't proceed because the order stipulated it the counselling be in person and in private**. MD would be agreeable, I'm certain, if we changed the terms of the order.

**THE COURT: Right. And I'm still of the view that a therapist would be better placed to have that child privately, to be able to speak with her before sessions, after sessions, that's my view**. You as a family can decide to do what you want.

**(THE FATHER):** I would only ask that we find someone who is, understands the nuances of our current circumstances.

**THE COURT:** Okay, well then, I will take away the provision that it **has to be in person and in private, because that order was granted back in October when I wanted the child back in this province, which she should have been returned to this province, that's the order that's outstanding**, but under the circumstances with the parents saying they may be fine with any type of, certainly we use, we use technology all the time and I'm fine with that. That's up to you. I'm not a therapist, **but that order was put in place under specific circumstances, and I'll lift that requirement. Okay? So the order can say it doesn't have to be in person, it can be through technology, however the therapist want to use it, so that we can take the provision off that would be continuing from October**.

**MR. KATSIHTIS**: Okay.

**…**

In October, there was a need to just, I guess, address everybody's emotions, and I was made, **I was ordering the child back here, so I expected here. I expected (the mother) to comply. She didn't comply. And she still hasn't complied. So, I have no choice but to say it can be, because ideally it should be done in person, in my personal opinion, so you can say it that way. That it was done because I thought she was going to comply and the child the would be in this province.**

> **MR. KATSIHTIS:** Right, right.
>
> **THE COURT:** Not because there as any risk and you should add that part. Not because I thought there was a risk that (the father) would in any way endanger the child. **But because we are in the circumstances we are with (the mother) not complying with the order, then it can be done however**. So, (the father), that will open everything up for you,

## The father's witnesses

[134] (The father)'s lay witnesses included several school officials including SC, the child's former school principal, and CC, the vice principal; his mother JC; and KT, the mother's former husband and father of the child's two half brothers, G and M.

## School involvement

[135] During the 2021-2022 school year, the child was a grade 5 student. She was 10 years old when she began refusing to see her father following his refusal to allow her to travel to British Columbia with her mother in December 2021 / January 2022.

## Principal – January 19, 2022

[136] The school principal advised that on Wednesday January 19, 2022, a staff person, DT, advised her that the child's father had called the school to indicate that his partner, KL would be picking the child up from school that day. The school principal noted that the custody order on record at the school at that time required

the father to pick the child up and if not, then the mother was expected to pick the child up.

[137] Further, the school principal, SC, advised that on January 19, 2022, the child's classroom teacher, TP, had advised her that the mother had called stating she would be picking the child up at 1:00 pm for an appointment. Subsequently, a staff person, DT, advised the principal that the mother was at the school to pick the child up, and the mother had left with the child.

[138] The father claimed that the principal, SC, had referred to the previous court order, Order (Family Proceeding) issued November 30, 2017. He suggested that after the child moved schools, the child's current school was not provided with the most recent Variation Order (Oral decision September 20, 2018) which permitted the father to either pick the child up for his parenting time on Wednesdays and/ or Fridays, or to have "someone arranged by him" do so. I understand the father provided the school with a copy of the more recent 2018 Variation Order.

**Principal January 21, 2022**

[139] The school principal, SC, advised that on January 21, 2022, the child's teacher, TP, informed her that the mother had requested the child be sent out to

meet her for lunch at 11:05 am. The vice principal, CC, subsequently advised the principal, SC. that the mother was waiting for the child in the school parking lot.

[140] The vice principal, CC, advised the principal, SC, that she had spoken with the mother several times and the mother stated she was taking the child from school as the child did not feel comfortable going to her father's home. The school principal, SC, reviewed the custody order and then advised the mother that the school could not release the child to her that day as the child was scheduled to be picked up by her father.

[141] The mother then advised the principal, SC, that she **"did not have jurisdiction"** and the mother stated: "**that she had been here before**" and she would be taking the child from the school. The mother was then observed to leave the school with the child. (my emphasis)

[142] The principal, SC, indicated she contacted the School Administration Supervisor, IO, to advise of the mother's refusal to follow the school's "request" that the child remain at school for pickup by the father. IO advised the principal, SC, to advise the father and the police. SC advised that she attempted to contact the father and she did contact 911 to report the incident. Constable JP responded and advised that the issue should be dealt with in Family Court.

**Vice principal – January 21, 2022**

[143] On January 21, 2022, the vice principal, CC, reported in part that the mother came to the child's school seeking to take the child from the school. The vice principal, CC, directed the mother to "wait" as she "needed to review the custody documents prior to allowing" the mother to take the child from the school. The mother told her she "did not have any jurisdiction" and she intended to take the child from the school.

**February 23, 2022**

[144] On February 23, 2022, the vice principal, CC, reported in part that the father's partner, a designated person with authority to pick the child up, arrived at the school to transport the child on the father's behalf. The vice principal, CC, was advised by a school staff person, DT, that she had advised the child that her father's partner had arrived to transport her. However, when the bus to the child's mother's home was called, the child walked past her father's partner and the child boarded the bus to her mother's home.

[145] The father's partner then boarded the bus and asked the child to go with her and the child refused. The father's partner was asked to exit the bus and the vice-principal, CC, then boarded the bus and attempted to speak with the child, who

yelled “I’m not getting off”. The child refused to speak with the vice-principal privately, but the child did hand the vice principal her cellular telephone to allow the vice principal to speak with the mother. The mother stated to the vice principal that the child must remain on the bus to the mother’s home as the child did not feel safe with her father.

[146] The vice principal advised the mother that according to the “custody documents” the child was scheduled to go to her father’s home and could be picked up by his designate. The vice principal consulted with the principal, SC, and they both agreed the “custody documents” indicated the child was scheduled to be in her father’s care. However, they decided that given the child’s refusal to get off the bus, they could not detain the bus any longer and they released the bus with the child on it. The vice principal, CC, then contacted the father to advise him the child had refused to exit the bus and she was taking the bus to her mother’s home.

[147] Both school officials presented as reliable and credible witnesses and comments attributed to the child to school officials were considered by me. I prefer their evidence to the child’s information shared with Dr. MD in October 2022.

[148] There is no question in my mind that the mother's behaviour and her conduct as observed by the child has directly contributed to the child's view that she need not take no for an answer from her father or school authorities. There is no credible evidence of any risk or harm. I find the most likely cause of the child's refusal to see her father is that the mother has alienated the child from her father. It is completely unacceptable that the mother has given the child the freedom to make the decisions she has been making.

**The child's paternal grandmother**

[149] The father's mother, JC. testified. She provided historical information about the father taking the child to visit her in 2020, and about the types of activities she understood the father and child participated in together. JC's testimony in this regard was very similar to the information provided by the child to Dr. MD, and I have found the father was a very involved parent.

[150] The child's paternal grandmother expressed disappointment that the mother had not answered any of her telephone calls to the mother on: April 14, 2022; on April 17, 2022; and on June 20, 2022. The grandmother was also disappointed that the mother had not arranged for the child to contact the grandmother as requested in the voicemails she had left on the above noted dates. It is clear the mother has

made no effort to keep the child in contact with her extended family in Nova Scotia.

**Prior history**

[151] In the following excerpt from the cross-examination of the father, the father is asked about a charge of assault dating back to 2016.

[152] Previously, and at trial, I alerted the parties that evidence regarding the charge of assault and the mother unilaterally leaving the province with all three of the children, the child who is the subject of this proceeding and her half brothers, M and G, intending to relocate to British Columbia, was considered by J. MacDonald in *McCluskey v. Tobin*, 2017 NSSC 234, following a contested hearing.

[153] On cross examination at the most recent trial. the father responded as follows:

> **MR. KATSIHTIS:** So, Mr. McCluskey, after you were charged with assault of Ms. Polomark, Ms. Polomark went to British Columbia for a preplanned vacation soon thereafter?
>
> **MR. MCCLUSKEY:** I don't know if she had it preplanned.
>
> **Q.** Okay. If I were to suggest to you that it was preplanned, do you have recollection that it was not preplanned?
>
> **A.** I can't remember one way or the other.
>
> **Q.** Okay.
>
> **A.** **I remember not seeing my daughter for 61 days**.

**Q.** This occurred after you were charged with assault, and you had a –

**THE COURT:** Date?

**MR. KATSIHTIS:** ...non-contact—

**THE COURT:** The date.

**MR. KATSIHTIS:** After you were charged on the 17th day of July, 2016, or sorry, that's the offence date. The 17th of July, 2016. The assault that you're thinking off when I asked you—

**MR. MCCLUSKEY:** I'm sorry, the accusation of assault?

**MR. KATSIHTIS:** The charge of assault.

**MR. MCCLUSKEY:** Yeah.

…

[154] The father was cross examined in relation to police files obtained through an Order for Production:

**MR. KATSIHTIS:** Okay. Now, (the father), if we go a few pages further, HRM Police General Occurrence Hardcopy dispute, domestic, no charge, …

(THE FATHER): Okay.

**Q.** So, now at this point, not being able to get (the child) you're, I take it, quite agitated and upset. Is that correct?

**A.** I would say it would be accurate to say I was distraught.

**Q.** Okay. So the police officer, it states down below that:

> The writer was dispatched to a child custody matter, and I contacted Andrew via telephone and the following transpired: Right away, Andrew was cutting me off, refusing to listen to me, telling me he was going to sue me for negligence if I did not go arrest his ex-wife immediately. And you wanted her to, it states, "to be arrested under 282(1) of the *Criminal Code*." So that's all correct, is it?

**A.** That's correct. This was very distressing. It's been many years, and, you know, it's frustrating that things aren't enforced.

**Q.** Okay.

**A.** And the laws are there.

**Q.** On page, the next page, page 5 states that you have 1, 2, 3... second paragraph:

> I also explained that I would need to have the original court issued custody order from the family court to see the arrangements before laying the charge. He stated that he had a copy that the officer didn't need an original. She advised that she would speak to the duty crown and contact him back. He then demanded to speak to a male officer, as females don't listen.

Did you say that?

**A.** Absolutely.

**Q.** Okay.

**A.** I was getting better results with one male officer where I actually got my daughter where (the mother) was interfering, and I was able to deliver a nice little letter to my daughter as the only way to contact her. Through the school, initially dealing with school staff, they were all female, they said that they would be, they didn't want to interfere, but by not providing that letter, it was a form of interference. I spoke to the school counsellor, sorry, the counsel for the school which was female at the time and no results, and then I spoke to a male counsellor, or the counsel for the school, and he arranged for me to have that letter delivered to my daughter. It was the last means I was able to contact her before (the mother) fled the province.

**Q.** Okay. Can I say, sir, can you ask you then, sir

**A.** I feel more comfortable, just like any, anyone going to see the doctor if they had a preference, you know, women might prefer to see a female doctor, men may prefer to see male doctors. So, yes. 100 percent, I said that.

**Q.** So, are you able to explain why you believe that or your thoughts on the inaction of, because you mentioned there were a couple of women that you went to get assistance from and they didn't provide that assistance.

**A.** No, not all the time. It was a time of frustration. I would have liked to expressed it, you know, that I feel more comfortable speaking with a male officer is what I would have loved to have said at the time, absolutely.

**Q.** Because you thought that they would actually take action?

**A.** I felt that there was more assertive results. Yes.

**Q.** Okay. Now if you turn, so, to a... page six, and this is the police officer speaking to (the mother), but it's discussing your going to (the mother)' residence, and I guess, parking nearby the residence. So, that is something that you did do, correct?

**A.** I went to Claire's house. I would inform her before I left that I would arrive for my parenting. I would wait ten minutes. I would inform her that I was leaving. If I didn't have a witness, I would take a photo, send it to (the mother) to show that it had been there, that was the program. Now, KT did arrive earlier one time and I

informed her that if you're early, don't park anywhere near. Go park somewhere out of the way.

**Q.** So, I'm sorry, what did you meant that was the program?

**A.** That's the program. You don't wait any longer than ten minutes. You show up only when you're supposed to be there, and then you leave. Don't get out of your car.

**Q.** And this was, generally though, was (the child) not being picked up at school

**A. I would go to her school, if she refused to come with me, then I would provide both (the child) and her mother another opportunity by going to her home, and (the mother) always knew when I was going, how long I'd be, and when I'd leave**. Also, I would inform her that I did not agree to interference of the parenting time.

**Q.** Okay. So, if (the child )would not go with you from school, why would you go to (the mother)'s residence?

**A.** I answered that. To provide the second opportunity to encourage her mother to support our parenting relationship.

**Q.** And again, your belief being that was, that (the child) did want to go with you?

**A.** There are a number of occasions where (the child) indicated she wanted to be with me.

**Q.** Okay. Alright, so, when she was not going with you from school, you did not believe that's what (the child) really wanted to do?

**A.** No. **I believe (the child) has been influenced by her mother**.

**Q.** Kay. So, in, so you, you

**A.** I'll add one more thing. I consulted with Deidre Kazzie (Sp?), my counsellor at the time and asked her what as the

**THE COURT:** You can't ask

**MR. KATSIHTIS**: No.

**THE COURT:** You can't testify about what she said.

**MR. KATSIHTIS:** So, (the father)

**(THE FATHER):** To check about going to see her, if it would cause harm.

**MR. KATSIHTIS:** So, at Christmas, you had (the child) for what period of time in this 2021?

**(THE FATHER):** It would have been from after Christmas until school started again.

**Q.** And, do you recall how many days that was?

**A.** Probably a span of about two weeks.

**Q.** About two weeks. And there was no issue with (the child) coming to spend, (the child)easily came to see you at Christmas time that year? Correct?

**A.** Yeah. No problems at all.

**…**

**Q.** So, on page four, I guess the incident date is March 11, 2022. Okay...and this incident is about your being at the bus stop and wanting to get (the child) and she wasn't forthcoming, correct?

**A.** That's correct.

**Q.** Alright. And, I'm sorry, did you ask for a wellness check of (the child)? On page five it says, "(the father) was told the police will check the wellbeing of blank" I assumed (the child), "but he needs to drive ahead or leave."

**A.** Yeah, that's correct.

**Q.** Okay.

**A.** That was on Friday?

**Q.** I believe so. Friday March 11th.

**A.** A parenting day, I believe.

**Q.** Yep.

**A.** Okay.

**Q.** Did you, you asked for wellness checks to be done on, on (the child) more than one occasion?

**A.** At the, it was June, the school had reported that (the child) wasn't in school the last week, I just served papers to Claire, I was concerned that I didn't know her whereabouts, once again, in BC, where I was informed, I found out she was in BC, again

**Q.** So, I guess, (the father), sorry to cut you off, but I guess, my question was had you requested other wellness checks?

**A.** That's correct, yes.

**Q.** Okay. Do you, do you recall how many wellness checks you

**A.** There was the one that was requested once again

**Q.** Okay.

**A.** ...**and then in BC to locate (the mother) and (the child), and then it had come to my knowledge that she had moved again and hadn't notified me** or the Court and that's probably a third time there, and I believe the wellness checks were done mostly by phone.

**Q.** Okay. So, if you go to the packet that's top right, the last five digits 3-0-6-5 6-0.

**A.** Okay.

**Q.** Yep, and so this date is March 17, and it looks like (the mother) contacted the police and so and she's at page 4 of 8 advising the police or requesting the police to stop you from parking in front of your, her house. So, once again, (the child) would not go with you, so you went to the house.

**A.** That's correct.

**Q.** So, there's another packet. The last five digits are 3-4-8-1-5. And the substantive information's on page five. It's (the mother) contacting the police and advising, that she advised she was just looking for telephone advice, and it's about your being in front of her house again.

**A.** Where is it? I'm reading here

**Q.** So, on page five of ten, she stated, it's stated here in reference to (the mother), she was just looking for a phone call and gives a little bit of a history of the two of you, and it states:

> (the father) had been parked in her neighbourhood, and he doesn't reside within those boundaries. He apparently was parked in such a manner that he would be hidden from view from the complainant's home. He drove by her home slowly and then was then observed parked elsewhere on her street.

That you said nothing, so

**A.** If this was on a parenting day, it's likely I came by from the other direction. Normally, I come from the south, and if I'm early, I prefer to be early, but I'll park several blocks out of the way out of view. I was probably coming from the north side, and I probably did go past her house, it's possible, but it would never occur on anything but a parenting day. I assure you of that. And there was no funny business.

**Q.** Okay. And sorry, what did you, when you said came the other way, I'm a little...

**A.** Well, if I'm coming in from a northern direction heading south, then the road takes you right past the house. Normally I would park, there's a big hill, so I would go up and I'd park onto the other side of the hill, but I don't think that's even possible. I try to be avoid being anywhere around there to tell you the truth.

**Q.** Okay. So there's another packet that the last five digits are 6-6-3-3-2. And this is, again, page four that you are calling the police and that you had gone to pick up your daughter and you noticed screws on the road?

**A.** Yeah. There were a number of drywall screws facing up

**…**

**(THE FATHER):** There was a number of drywall screws right where I would normally park to get (the child)for my parenting time. I wouldn't have noticed

aside from the fact that there was a van parked up the road we dropped something, and it rolled down the street, and I came out to pick it up for him, and I noticed them on the ground. I reported it.

**Q.** Okay. You, do you know what kind of van it was?

**A.** It was a kind of construction van. White, lettering on the sides. It was facing south on the other side of the street.

**Q.** Okay. So it was a white construction van and sorry, you saw, I'm sorry, three screws? Yeah, there screws.

**A.** Well, the picture showed three screws, but there was a lot more there than that.

**Q.** Okay.

**A.** Yeah.

**Q.** And, so...

**A.** I'm sorry. The relevance of this? This is?

**Q.** (the father), I would just ask you

**THE COURT:** That's not any of your concern, sir. Well, it is, actually. Mr. Katsihtis, he's representing himself, and if he's challenging the relevance, then I have to respond to that, so the relevance, sir, of the question.

**MR. KATSIHTIS:** My Lady, so, (the father) wanted, it's just his comment on this, but that, my next questions would be that he was calling the police and making an allegation against (the mother) who placed the screws that were placed on the road. I think that's the, that's the inference, and I think that's relevant in terms of, certainly, these proceedings, and...

**THE COURT:** (the father), part of this is an allegation that you're harassing (the mother), and I find it relevant for him to ask those questions based on the fact that you seem to be alluding in your document that it was placed there intentionally by (the mother).

…

**THE COURT:** Go ahead.

**MR. KATSIHTIS:** So, but you called the police, and you advised the police that they appear to have been deliberately placed there to damage tires on a vehicle?

**(THE FATHER):** That's correct. They were placed pointy end up.

**Q.** Okay.

**A.** They weren't there casually.

**Q.** And you were, you were suggesting that (the mother) did it. Did you not?

**A.** I don't think... where does it say there that I suggest Claire?

**THE COURT:** "I suspected it could have been his ex, Claire, or someone connected to her." Sorry, go ahead, Mr. Katsihtis.

**(THE FATHER):** Yeah, yeah. Okay. So, there it is. Yeah.

**MR. KATSIHTIS:** Okay. So, (the father), you'd appreciate that making a criminal complaint is a serious thing, correct?

(THE FATHER): Yes, it is.

**Q.** Okay. And here, you didn't see anybody put the screws on the road, correct?

**A.** No, I did not.

**Q.** Okay. **And you contact the police and accusing (the mother) of putting those screws there intentionally, and for you, essentially, correct?**

**A. I actually asked them if I should actually make it a report or not. I followed their lead on this one**.

**Q.** Okay.

**A.** I also asked that they not contact her about it. We didn't need to make anymore waves.

**Q.** Okay. So, you just wanted to, but you're telling the police that you think that it was her or somebody for her that put them there?

**A.** Yes.

**Q.** Okay. So, (the father), did you have any reason to believe that (the child) was not aware of your coming and parking near to (the mother)'s residence?

**A.** I believed she would be aware. When I would arrive on my parenting days, I would inform (the mother) before

**Q.** Right.

**A.** ...stay for ten minutes, and then leave. I went to see Deidre Kazzie to consult about

**THE COURT:** I've told you you can't testify about that, really. You can't testify, you can say you went to somebody, you can't testify what she said. It's possible she didn't even say that. She's not here to testify.

**(THE FATHER): I continued to make myself available. I believed that the lesser consequence to that was that I was available for her, and she would not perceive that I had abandoned her. So, yes, I continued to exercise opportunities for parenting time on a regular basis. 100 percent, I am guilty of that.**

**MR. KATSIHTIS:** Okay. And... Have you ever, okay, so... did you have any concerns that if (the child) did not want to see you, that showing up at the house would make her uncomfortable?

> **(THE FATHER): I believed that (the child) was being influenced, and I was providing the opportunity for (the mother) to support our relationship**. What (the mother) does on the other side, I have no control over. I did everything I could to ensure that my relationship with
>
> **…**
>
> **(THE FATHER): I did everything I could to ensure that (the child) would have her parenting time with me. I made myself available, and I did not do so in such a way to create a threat or a problem.** But nobody was doing anything. No counsellors, no, no effort was presented.

[155] The father certainly made the right choice to follow the dispatch persons advice not to pursue his allegation that the screws were put in place in to damage his vehicle. That was not one of the father's finest moments and certainly speaks to a level of paranoia. Unfortunately, the father has been given good cause not to trust the mother.

[156] I try to remain optimistic that parents who are in conflict will learn to have a little empathy for the other parent or to at least fake it for their kids. It is extremely concerning that the mother has behaved the way she has and that she has modeled this behaviour for the child.

[157] The mother has continued to point the finger at the father who has only ever tried to be available to ensure the child knows that he wants to have his parenting time with the child. He has not yelled, he has not stomped his foot, he has sat patiently while the mother and the child have walked by him, ignoring him. The mother reported that she had applied for a "restraining order" but was not

successful. She was not successful because the father was not and has never been a threat to her or the child.

[158] The mother was cross examined in part in relation to the police files:

> **MR. MCCLUSKEY:** This was Cst. Hannah Burridge. January 24, 2022, top of page seven:
>
> > Claire disclosed to me that there was a long history of domestic violence with Andrew. And she had an EPO in place at one time, which has since expired.
>
> Would you agree that you have the entirety of the police reports, aside from what you can't find right now?
>
> **MS. POLOMARK:** I have the police reports. Yes.
>
> **Q.** Okay, so, have I formally been found guilty of family violence?
>
> **A.** You weren't charged, no.
>
> **Q. So, there are no reports regarding me saying that I have been violent towards you or (the child). Not saying, no convictions. Nothing.**
>
> **A. Well, I personally experienced family violence from you in the form of financial threats, economic, physical threats, and emotional threats in the way that you communicate, as represented by police files, requests that I make to you that aren't provided with any response or reception.**
>
> **Q.** Why did you not provide that evidence?
>
> **A.** That evidence is in my affidavits. It's also represented in the police files.
>
> **Q.** Police report 2-0-2-2 dash 2-8-7-0-9, Thursday—
>
> **A.** Say that one more time?
>
> **Q.** The last five digits: 2-8-7-0-9. Top of page 5... Top of page 5,
>
> > McCluskey was told that police would check the wellbeing of (the child), but he needs to drive ahead or leave. Mr. McCluskey obliged and drove ahead and finally left before (the child) arrived with Claire. I spoke to (the child) in Claire's presence, who shared that she did not want to go with her father, but on asking why's that, she didn't share any specific reasons.
>
> What are the specific reasons that (the child) does not want to spend time with me?

**A. She's been reluctant to express that, but essentially, she said she's afraid of you, she said that you yell at her, you restrict access to me, and she just had a general sense of fear and discomfort around you. I, which I've expressed and shared that with you.**

**…**

**MR. MCCLUSKEY:** Hmm. Tracey McDonald, March 26, 2022. I can read it for you:

> It also appears that Mr. McCluskey **is not making any threats towards anyone, not being physical with anyone, and generally not doing anything that a criminal code charge would apply**. There is a formal court order in effect that provides Mr. McCluskey visitation on Wednesdays and Fridays, but (the child) has made the decision that she does not want to spend any time with him. Mr. McCluskey is having a difficult time accepting this and still arrives at (the child)'s school to attempt pick up and have a visit.

This officer is quoting you. Those are your words?

**MS. POLOMARK:** I don't have that in front of me, but that sounds appropriate, yeah.

**THE COURT:** It doesn't necessarily say that they're her words, Mr. McCluskey. There's no quotation marks around it, it could be the police officer saying that, so I can't, so really, Ms. McCluskey (sic), you should have printed out all of that stuff to be able to refer to it—

**MS. POLOMARK:** Ms. Polomark.

…

**THE COURT:** Well, come look at mine, right? So it's referencing, that's how it started, and then it's, if you look at page four it says, specifically it says:

> I, Cst. Tracey J. MacDonald, patrol four west, was dispatched to a child custody matter. A citizen call where the initial text dated as follows.

…

**THE COURT:** ...the rest of it appears to be her summarizing—

**MR. KATSIHTIS:** Right.

**THE COURT:** ...discussions. Unhelpfully, she hasn't indicated in quotations whether, and I'll read, perhaps, I'll read the portion that leads up to what he's asking you about. It says:

> I spoke at length with Ms. Polomark, and it appears that this has been an ongoing issue and occurs at her residence or at the [elementary] school [….]. **It also appears that Mr. McCluskey is not making any threats**

> **towards anyone, not being physical with anyone, and generally not doing anything that a criminal code charge would apply**.
>
> Ms. Polomark has spoken with other officers and they have spoken with Mr. McCluskey, but these conversations are having no effect on him regarding his staying away from Ms. Polomark and...

[159] In the mother's brief she states in part:

> Section 18 also directs that the court look at issues of "family violence, abuse or intimidation".
>
> The **mother is not accusing the father of violence or abuse towards the child, only that something appeared to happen driving the father's** subsequent conduct of pressing for access and attending to the mother's home was understandably concerning to the mother, as she sets out in her affidavit, but also to the child.

Cross examination of the mother continues:

> And then it just, it stops. There's no other competition of that sentence. And then it says:
>
> > There is a formal court order in effect that provides Mr. McCluskey visitation on Wednesdays and Fridays, but blank has made the decision that (presumably it's (the child)) she does not want to spend any time with him. Mr. McCluskey is having a difficult time accepting this and still arrives at (the child)'s school to attempt pick up and have a visit.
>
> I'm not convinced that that's Ms. Polomark saying that, necessarily, Mr. Katsihtis, and I'm not prepared to have her just say, okay, whatever you say there is mine.
>
> **MR. KATSIHTIS:** Right.
>
> **THE COURT:** That's not what's happening on that page.
>
> **MR. KATSIHTIS:** Right. There are no quotes, no.
>
> …
>
> **(THE FATHER):** On this day here, it appears that you were in a hotel with KT's sons, your two sons, and that **you've admitted to not providing them to their father, contrary to a court order.** Can you tell us about that?
>
> **(THE MOTHER):** I don't understand that question.
>
> **THE COURT:** You're just asking her generally to tell, to speak about it, sir. Do you have a specific question?

**(THE FATHER):** Let's see... it says here presumably, KT spoke about the issues he as having with, and how she refuses to, how he refuses to go with his mother. What are they referring to there? I believe this is

> "G spoke about the issues he was having with... and how he refuses to go with his mother." Claims he was mentally abused by Claire and no longer wants to be with her. He is concerned for his wellbeing."

**(THE MOTHER):** Yeah, this is clearly, to me, you and KT colluding against me. That statement's by KT, that was never made, those statements were never made by G in court. He had a wish assessment, but that, that's clearly a collusion between you and KT. I was fearful. I felt intimidated. I think that your collusion was intentional, and you were using my children to manipulate and control and harass me, and it was very scary. Very uncomfortable, sad situation.

> **Q.** "We located Claire and M in blank**. Claire did not dispute that it was (KT, presumably KT's) turn to have M, but she stated that she sent a letter to lawyer on Thursday with reasons why she would not meet him with M.** When asked what those reasons were, she stated that she did not want to subject M to the same things she was being subjected to. She would not elaborate." So, what were these things you were being subjected to? Did you cover that already?

**A. I was concerned that KT would, would not return M as well. So, there was a situation with G, and I had significant concerns about what** was happening with G and that M would be susceptible to the same experiences.

**Q.** So, you're saying that KT withheld his son, G, from your parenting?

**A.** Is that relevant?

**THE COURT:** Past history of parenting is relevant to current parenting, especially if it's similar issues.

**MS. POLOMARK:** Well, I feel like that's in the past. I think that certainly—

THE COURT: Miss—

**(THE MOTHER):** ...G had been influenced by his father—

**THE COURT:** Miss, Ms. Polomark.

**(THE MOTHER):** ...and, pardon.

**THE COURT:** I need you to answer the question, his specific question. It's not up to you decide whether it's relevant or not, I just said it was, so answer the question. Mr. McCluskey, ask the question again?

**(THE FATHER): Are you saying that KT was withholding G from your parenting?**

**(THE MOTHER):** **I think it was a very complex and unfortunate situation, and on some level, yeah, KT was participating in that event**.

**Q.** How was he doing that?

**A.** I don't know.

**Q.** To your knowledge, does KT have any convictions?

**A.** Not that I know of. … I don't know. I don't know KT's police records. I've never seen his police records.

**…**

> **Q.** "Cst. MacDonald approached and was able to speak to Mr. McCluskey. He told Cst. MacDonald that he was recording the conversation and pointed to a voice recorder on the dash. **He told Cst. MacDonald that he was there to get (the child) for his weekend time with her. He did not have a court order, but a judge's decision**. He believed that the decision was binding and was supposed to take effect immediately. He stated that he is supposed to be there to get (the child) on Fridays when he is off work. He did say that he was there to have it on record and that he was there and the time that he was there. He did not expect that (the child) was going to go with him." **Do you believe a court order does not take effect immediately?**

**A.** In that situation, no. And there was, as I recall, there were email communications that clarified my position on that.

**Q.** I have an email that contradicts—

**THE COURT:** You can put it to the witness. You'll have to send it to your client, somehow, Mr. Katsihtis. Are you able to take a picture and send it to her? That would be the easiest way. We can send it differently. We can send it, we can have it, PDF it to her by email.

…

**THE COURT:** It's in relation to an incident alleged to have occurred September 18, 2019. Carl McIver was the officer.

…

**(THE FATHER):** This is a report where we were having, JP's involvement was problematic, and I requested police speak with him to mitigate that.

**THE COURT:** What's your question?

**(THE FATHER):** What did you do to stop JP's involvement in custody child exchanges?

**(THE MOTHER):** JP was essentially somebody that supported me in the custody exchanges as necessary. In that report, I believe, it was to return a passport so... I felt more comfortable to have JP provide the passport.

**Q.** Why wouldn't you just put the passport in the mail?

**A.** I didn't think that was necessary.

**Q.** Is this the first time there's been some concerns regarding JP's interaction with me?

**A.** I didn't have concerns about JP's interaction with you.

**Q.** Is it fair to say that I had concerns?

**A.** I can't speak for you.

**THE COURT:** That's fairly nonresponsive, Ms. Polomark. We've had discussions in court about him before and it's been brought up in hearings before, **so you knew he objected to JP being involved. Did you not?**

**(THE MOTHER):** There was rare occasions... pardon me?

**THE COURT:** Did you not, you knew he'd taken issue with it before**. I presided over matters where he stated it. So you knew about it, so that's nonresponsive to me. That's you not being responsive to his questions**, and it effects your credibility when you do that. So, please, answer the question.

**(THE MOTHER):** Ask the question again please?

**(THE FATHER):** Is it fair to say you knew that I had concerns regarding JP's involvement?

**(THE MOTHER):** **I guess there were concerns you had, sure**.

**(THE FATHER):** So, why would you have JP return the passport at the child exchange?

**(THE MOTHER):** At that time, I didn't think there were concerns. I believe that would have been one of the earlier situations that was identified by you.

…

**THE COURT:** That's from January 26, 2020 and Samantha Banfield was the author. What's your question, sir?

**(THE FATHER):** From the previous report, would you say it's safe to say you would know that I would have a concern with JP?

**(THE MOTHER):** The previous report from 2017?

**(THE FATHER)::** The one we just went through, yes.

**(THE MOTHER):** Three years prior?

**THE COURT:** No, it was September 18, 2019. It was September 18, 2019.

**(THE FATHER):** September 18, 2019, yes that's correct.

**(THE MOTHER):** From the two years prior.

**(THE FATHER):** Yes.

**(THE MOTHER):** That was a couple of years prior, so I wouldn't have thought or concluded that there were problems at that time necessarily.

**Q.** At the top of this report here, when it starts,

> "Initial officer's report. Sunday, 2020, January 26. Callers is using JP as a third-party proxy, rather than contacting caller directly. **Apparently this is against prior court suggestion. Not ordered.** Emailed caller trying to make suggestions regarding the daughter." So, you were attempting to use JP as your proxy? Is that what this is?

**A.** Yes, I used JP as my proxy and it was not, that was not truthful that the court had said that was not, they actually endorsed that as a, an option, and I understand that that's something that we can do.

**Q.** Which document endorsed JP as a proxy?

**A.** Well, I understand that as a top-level right that we have that we have as a citizen. I'm extremely uncomfortable speaking with you. I don't find that we're able to resolve and create situations, that, you know, are simple situations in any reasonable capacity. So, you know, basically, I'm using the support that's available.

**Q.** There is something in here about the report.

> "McCluskey also explained that the last school parent curriculum night, JP followed McCluskey and KT out of the school and to his vehicle. McCluskey said there were five exit doors in the school and felt JP followed purposefully to intimidate."
>
> Why was JP at curriculum night?

**A.** Just to be part of supporting (the child) in her school.

**Q.** Mhmm. And that night was my parenting night, yes?

**A.** Correct.

**Q.** Okay .And did I send (the child) over to say hello?

**A.** I can't recall.

**Q.** I'm going to flip ahead to January 24th.

**THE COURT:** It's 9-7-7-3 if anybody's trying to find it that way. Your question, sir?

**(THE FATHER):** **Has (the child) met with CPS authorities?**

**(THE MOTHER):** Is there a line that is in this report to look at?

**THE COURT:** **Answer the question. Has (the child) seen or been interview by child protection authorities?**

**(THE MOTHER):** Yes.

**(THE FATHER):** Who interviewed her?

**(THE MOTHER):** I don't know the lady's name.

**Q.** When did it occur?

**A.** There was one... probably in September, 2017 or 16?

**Q.** Where did it occur?

**A.** At my home.

**Q.** And why do we not have a document from CPS?

**THE COURT:** Sir because you didn't submit one or ask for one, right?

**(THE FATHER):** I'm asking why one wasn't provided?

**THE COURT:** Why would she, she has no affirmative obligation to provide that unless you ask her for it.

**(THE FATHER):** Okay. Again, so, who interviewed (the child)? What was their name?

**(THE MOTHER):** I don't remember the name.

**Q.** On the next page, that would be, it has page 7 of 14 on the bottom...

> I advised Claire I would be contacting Child Protection Services and passing this to major crime **to speak to (the child) to see if there is more going on and try to ascertain why she is so afraid of her father**. I contacted...

I don't know who...

> with CPS to make a referral. I also forwarded her the emails. She stated they will follow up. Cst. Jutin McCormick had attended Andrew's home while I was at Claire's and he will be adding a supplemental file in regards to the interaction. While on scene, the written obtained two-page written statement from Andrew McCluskey in the kitchen of his residence. While obtaining the statement, the writer observed the house to be in a clean order, as well as food could be observed. While obtaining the statement, Andrew also informed the writer that he had been dealing with this matter for over four years now. Andrew then showed the writer that he has multiple banker's boxes of binders which details every interaction he has had with Claire since September of 2018. While speaking with Andrew, he was calm in manner and just wished for police to help, as he states Claire is always violating or bending the court order into her favour.

**THE COURT:** What's your question, sir?

**(THE FATHER):** Would you say that you have difficulty following court orders, Claire?

**(THE MOTHER):** No, I would not.

**(THE FATHER):** Next one. This would be the next page over at I-R Murray, Deb, January 25th.

…

**THE COURT:** Okay, so Jennifer Clarke's the author of the one he wants you to look at, same date, sorry, same GO number, different date, March 4th, Jennifer Clarke.

**(THE FATHER):** We'll go to the next page in:

> **Principal presented me with a plan that she had set with her father and that he was to notify the school in his arrival and then wait in the side parking lot.** The principal would then attend (the child)'s classroom to advise her father was there, was per the agreement, and **would be given a choice to go with him or get on the bus.** Father was not to intervene with this at all. (the child) was advised by the principal that her father was there to pick her up, as per the court agreement. (the child) acknowledged, but stated she would like to get on the bus and go to her mother's. (the child) waited for the bus...
>
> Oh, sorry. Waited for the bus...
>
> ...which was late, but got on with no issues. At one point, **(the child) asked if she could go on a different bus with a friend because her mom said she could, but the principal declined that request**. Andrew was advised that (the child) wished to go on the bus and did not interfere or even have contact with (the child). **He did exactly as the principal had planned with him prior to arrival.**

My question is what measures have you taken to mend or foster my relationship with (the child)? In January, February, or March?

**(THE MOTHER):** From the initial, yeah, from the initial incident that's already been submitted in evidence, I was in contact with you after I discovered that (the child) had an issue. I put (the child) on the phone with you that evening to support communication between you and her to assist to resolve the situation. I then suggested to have counselling because the conversations didn't seem to, **you didn't seem to be willing to communicate with (the child) about any of the concerns that she had**—

…

**THE COURT:** So, what steps to mend the relationship. She said she put the child on the telephone with him. She is suggesting, she suggested counselling, and he didn't seem to respond, but you couldn't hear what he could say, what he was saying, could you? Ms. Polomark, how could you hear, could you hear—

**(THE MOTHER):** Yep.

**THE COURT:** ...what he was saying to (the child) or their conversation on the telephone?

**(THE MOTHER):** Yes, I was, **I told him in the call that I would be present during the conversation to support (the child)**. So, I did hear the call.

**THE COURT:** So, she's present, she can testify about it.

**(THE MOTHER):** I attempted to assist in understanding (the child), **there as a detective investigation to evaluate if (the child) had been harmed or there was a criminal incident regarding the wellbeing and safety for (the child)**. I engaged, after coming to BC, I engaged with Michael Donaldson as an alternative counsellor to see if he could assist the situation, then I engaged independently with Dr. Madeline DeLittle to assist (the child) in engaging in communication, which was finally successful.

…

**(THE MOTHER):** May 6th?

**Q.** Okay. This is Sean Upshaw, Friday, 2022, May 6th. **This is where (the child) came out of the house and JP waved her back in**. I saw that as interference, went to see police, asked them to speak with JP.

> Cst. Upshaw and Kidston attended 112 Shoreview Drive where JP was in the driveway, sitting in his car. In speaking with JP was very pleasant with officers, and explained the reason why he **waved (the child) back in the house was because he was going to tell her father that she didn't want to come with him this weekend, just like every other weekend**...

But he thought, she thought... or...

> ...he thought he could be the one to relay the message. While officers were speaking with JP and Claire and (the child) returned home from Tim Hortons, **both parties attempted walk right by officers and not engage in dialogue until challenged by Cst. Upshaw. Cst. Upshaw asked if she wanted to talk about the breach of custody agreement, and Claire's response was not really**. Cst. Upshaw as taken back by this as this was to do with her and (the child)...

I guess here...

> ...**with her daughter (the child) and outright breach of the order. Conversation was extremely difficult to extract from Claire**, so Cst. Upshaw asked (the child) if she wanted to go with her father, and she shook her head no. **<u>It was clear to officers that Claire was dictating the situation for her and with no regard for the order</u>**. (my emphasis)

**THE COURT:** Is there a question, sir? You can't just read out the reports.

**(THE FATHER):** What, what, what, are you dictating the situation for (the child)?

**(THE MOTHER):** Absolutely not. That observation to say I wasn't interested in the conversation is true because the police don't do anything. That was one of the 20th conversations that I've had with police and I was minimizing the extent of conversations with the odd time I had somebody that I never met. So, that was an interpretation of the officer in my opinion, and he was surprised, but I've had so many conversations with so many officers and it was just, that was why I was less willing to go through the same situation again.

…

**(THE FATHER): So... if (the child)'s ordered to return to Nova Scotia, will you come as well?**

**THE COURT:** **You can't ask that question**. It's, it's contrary to the new law, or not new law, but the accepted, if you look at *Barendregt* or other decisions of the Supreme Court of Canada, **I am not allowed to consider whether or not Ms. Polomark will come back with (the child). I have to consider is it in (the child)'s best interest to be here with you? Or in her best interest to be there with her**? That's how I interpreted *Barendregt,* unless you interpreted differently—

[160] In *Weagle v. Kendall*, 2023 NSCA 47, the court found I:

> ...did not properly interpret or apply section 18H(3) of the *Act* and its "don't ask" provisions. The restriction on evidence of whether the relocating parent would move without the child differs under the *PSA* from that in the *Divorce Act*. **The *PSA* merely limits the court from asking or permitting the opposite party to ask the double-bind question.** It does not prohibit the information from being offered, nor does it prohibit it from being used by the judge when offered. "Shall not ask" is the language of the *PSA*, whereas "shall not consider" is the language of the *Divorce Act*.…

I would note that in this case, the mother has not offered information about whether she would return to Nova Scotia if she was ordered to return the child.

**Notice of Application and Interim Motion filed by the father in 2016**

[161] In *McCluskey v. Tobin*, 2017 NSSC 234, J. MacDonald (as she was then), presided over a hearing involving the parties, the father and the mother - formerly Ms. Tobin. J. MacDonald stated in part:

> [1] On **July 22, 2016**, the Father filed a Notice of Application and an Interim Motion seeking custody, access and **travel restrictions to prevent the Mother from travelling to British Columbia with the parties' child**. The Father's primary objective was a shared parenting arrangement. A very detailed Interim Order was granted on September 26, 2016. (my emphasis)

In her decision, the honourable J. MacDonald indicated, among other things, that she: did not accept the mother's claim that her lawyer misunderstood her instructions with respect to the terms of the interim order.

[162] In addition, J. MacDonald went on to summarize the parties relationship history, and made other findings of fact including but not limited to the following:

> [15] The Mother and the Father **began living together in the spring of 2011** when he moved into her home located [in ……] Halifax Nova Scotia. The Father owned a home in Bedford, Halifax, Nova Scotia. He rented out rooms in his home. **The Father's occupation is as a millwright**. Originally, he worked for 5 to 6 months in Alberta, usually in the spring and fall. The rest of the year he lived in Halifax.
>
> [16] **The parties' child was born in the fall of 2011**. **The Mother has two children living with her from a former relationship. They are 13 and 14 years old**. Their father is actively involved in parenting them.
>
> [17] The **Mother has a Masters of Education degree in Information Technology**. **She works on a contractual basis**. Prior to the birth of the child she had been working part-time as an instructor at Dalhousie University. When she was ready to return to work that position was no longer available. She decided to **study for her Master's degree. Since that time she has worked periodically for a non-profit organization**. She is presently unemployed. The Mother suggests she is looking for employment but **I am not satisfied she is making**

**serious attempts to become re-employed. She has indicated she can live on what she receives from the child tax credit and child support**.

[18] **Since the child's birth the Father has been actively engaged in her care** when he was present in Nova Scotia. **The Mother suggests otherwise and has attempted to minimize his role in caring for the child. I accept his evidence that he had a significant parenting role because**: He spent several months in Nova Scotia when he was not working and so was available to provide childcare.

- He wanted to nurture this important relationship and he did so by caring for the child.
- When the Father was informed the Mother was pregnant, he began providing money to her monthly. The amounts were irregular but they were not insignificant. He paid $530.00 each month when the child was in daycare because the Mother was finishing her Master's degree.
- After the parties separated in December 2013 he lived in an "in-law suite" in the Mother's home so he could be close to and provide care for the child. Previously the suite had been rented to tenants.
- After the parties' separation, the Father began paying the Mother $650.00 per month and he continued to pay the full cost of daycare.
- The Mother admitted, that after the parties "**ended their romantic relationship in December 2013", they "remained friendly, and continued to be intimate on occasion until June 2016**".

[19] The Mother's parents and other extended family live in Vancouver, British Columbia. **In the Summer of 2015 she decided to move to Vancouver and she rented a house near her parents' home**. **She enrolled her two older children in school and she enrolled the youngest child in daycare. She arranged to rent her home in Halifax, Nova Scotia. The Father decided to move with her and planned to take his motorhome to Vancouver and find suitable housing after he found work.** The Father assumed the father of the Mother's older children approved this move. He had not and the Mother and children were required to return to Halifax. The Mother has an entirely different version of this event. It appears in Exhibit 11 paragraphs 150 to 159. **I have not accepted her explanation because:**

 There is no evidence she informed anyone, including the father of her two older children about the death of her grandfather which required her to stay in British Columbia longer than she originally planned.

 She testified she intended to return to Nova Scotia shortly after September 12, 2015. If this was her intent why would there be any need for her to enroll the older children in school and the child in daycare. **I do not accept this was merely a means to give them "something to do until we returned home".**

 **The Father had shown his willingness to live near the child's residence so he could have parenting time with her**. His work skills are employable across the country. He was mobile and was prepared to live wherever the child resided including British Columbia. There was no particular reason why he would insist the Mother and child remain in Nova Scotia.

[20] The Father testified, when the Mother returned from British Columbia, because her home was rented, she needed to find another residence and she did so by renting a home in Bedford Nova Scotia. There was no in-law suite that would permit the Father to reside there as well. The Mother's home continued to be rented until she sold it in March 2017.

[21] The Mother testified she did not return to live in her home at […] because it needed costly repairs and was not in a good school district. **However, she had been living in that area for some time with her older children. The inadequacies of the "school district" had not caused her to move prior to her return from British Columbia. When the Mother evicted the tenant living in the […] property the Father and the Mother's father did renovations to the property but the mother did not return to live in that home**. **She continued to rent it to others and, because she had no mortgage, she was able to profit from these rentals.**

[22] **The Father's explanation about why the Mother did not return to live in her home is plausible; hers is not**.

[23] Because of the fire at Fort McMurray the Father became unemployed in March 2016. He lived in his motorhome parked near to the Mother's residence in Bedford and he rented out additional rooms in his home to meet his financial obligations. When he did have the child in his care she slept with him in the motorhome on the top bunk.

[24] In the Summer of 2016 the Father moved back into his […] home. He stated in his affidavit, Exhibit # 2, that he and the child each have their own bedroom. In fact, the Father was sleeping on the couch and the child had her own bedroom. The Mother made much of this statement suggesting it proves the Father is untruthful but I place no such interpretation on this language. The important fact is that the child had her own room although I recognize the maternal grandmother may have slept in that room as well when she was present.

[25] In June 2016, the Father and the Mother enrolled the child in a French language school conveniently located between their two homes. They also were to continue to use the same caregiver for the child. The child could take the bus to her caregivers and would be picked up at 5:00 pm each afternoon. This is evidence of the relationship that previously existed between the parties. They were able to talk with one another about what was in the interest of their child and make joint decisions without drama and controversy**. Something happened to change the nature of their relationship. The Father believes the change occurred because the Mother, shortly before June 20th discovered he had a**

**girlfriend**. The Mother denies this but has no plausible explanation about why the change occurred.

[26] Before the child attended the French language school the Mother decided to enroll the child in a local school in her neighborhood. While I understand her reasons for doing so, **she did not discuss this change with the Father. This is but one example of her present conviction that she is the "parent" for this child entitled to make all decisions without consulting the Father. This is not to suggest that the Father is free from rigidity in his approach to parenting. He also has chosen to enroll the child in a day care facility in the Summer without the Mother's approval.** I view this as a "**tit-for-tat childish reaction. It has prompted the Mother to remove the child from this facility in the mornings because she is available to care for her.**

[27] **Both parents have lost sight of the child's best interest in their pursuit for control. Both parties have unrealistic expectations; both are inclined to ignore practical difficulties in parenting time suggestions they have exchanged by email and both often misinterpret what they have read or heard**. Both have failed to respond to or read emails in a timely fashion. The combination of these mutual deficiencies resulted in the event that occurred between July 13, 2016 and July 17, 2016. **A miscommunication about the Mother's intent to take the child to a "friends cabin in New Brunswick" on what was to be "his parenting time" resulted in the Father's belief that she was withholding the child from him**. The Father knew the Mother generally returned her older children to their father on Sunday afternoon at a designated area in Bayers Lake. He went to that location. **When the Mother arrived, the child opened the door and ran to greet her Father who picked her up. The Mother insisted the Father put the child down and his refusal resulted in phone calls to 911 and police intervention. An assault charge was laid against the Father and a no-contact order was put in place**. **That order remained as an impediment to contact until the end of February 2017 when the Crown elected not to proceed with the assault charge.**

[28] **The Father's evidence indicates he did touch the Mother but whether it was an aggressive touch that could be considered an assault, or whether he was merely trying to hold her back from confronting him, is inconclusive. The event does indicate these parents are poor problem solvers and are more interested in achieving dominance over the other than in working together in the best interest of the child.** I realize each believes what he or she wants is best for the child. However, the **Mother suffers from the illusion that she is the only person who can protect the child and therefore must have micromanaging control over every aspect of the child's care. The Father is unable to communicate with the Mother without calling her names and labeling her by calling her "a psychopath".** These behaviours do nothing to promote a good relationship.

[29] **The Mother had many complaints about how the Interim Order was interpreted by the Father as he does of her interpretation. My analysis is both parties misinterpreted the meaning and intent of the provisions in that order. They were inflexible and this escalated their conflict.**

[30] The Mother also complained the child spent a great deal of time in care of persons other than the Father. This is a daily event for most children who have two working parents and is not considered a detriment if the child is cared for by appropriate persons or in appropriate facilities. In addition, while the no-contact order was in effect, if the child was to be parented by the Father, the child had to be shuffled about between the paternal grandmother, the Father's aunt and the Mother.

[31] **The Mother has alleged the child has exhibited many worrisome behaviors since the Interim Order has been put in place. Given the conflict between these parents I attribute these behaviors as a reaction to their conflict. I am satisfied the Father can and does provide appropriate nurturing and loving care to the child**.

[32] The Mother does not want the child to be in daycare when she is available to care for her. However, she too relied on others to care for the child when she was working or studying. This is not a reason to restrict the Father's parenting time.

[33] Throughout this proceeding the Mother has attempted to use the fact that the Father rents out rooms in his home to convince the court this represents a safety issue for the child. This would require me to presume the Father would make no efforts to ensure that the persons living with him and the child were respectable and responsible people. The Mother has demanded the Father produce criminal record and child abuse registry reports for each of his tenants. He has attempted to do so. He has not done so within the strict timeline contained in one of the court orders issued in this proceeding. However, given the difficulty in obtaining these reports, and the intrusive nature of those reports in respect to the Father's tenants I draw no negative conclusions about this failure.

[34] There is nothing to indicate the Father's tenants presented a risk of harm to the child. While it is important for the Father to choose his tenants carefully, I am satisfied he does so and I will not require him to obtain a criminal record and child abuse registry report for the tenants he will have living in his home. He is a responsible parent and he may choose how he will satisfy himself about whether a tenant may present a risk to his child while she is in his care.

[35] I accept the Father's testimony that the child has her own room in his home and I accept that his home is an appropriate residence for the child when in his care. There will be no order requiring the Father to permit the Mother to "inspect" his home.

Parenting Plan

> [36] Both parents have the ability to provide for the child's basic needs. **She has an appropriate attachment to each of her parents and that attachment is very important to her.** However, **she has been and will continue to be caught in the middle of her parents' disputes, if they cannot overcome their present inability to be empathetic toward one another and to focus on the child's needs** as she grows and matures. **Most important is her opportunity to spend meaningful time with each of her parents based upon the realities of each parent's time availability and caregivers available for the child when a parent must work**. If the Mother continues to be unemployed the Father must be able to pick up the child from the Mother's residence in order to implement his parenting time. The child does not need to be in a child care facility merely to "provide parenting time to the father".
>
> [37] The Father's plan would require the child to be in a child care facility or with a child care provider when he is working. Given his present work hours I am not satisfied there is a facility or caregiver that will take the child as early as would be required. Even if this child care was available this would create a very long day for this child which would appear unnecessary because, at least at present, the child's Mother is not employed. While that may change in the future the Mother will not likely require child care as early as does the Father. Cooperative parents would have worked within this reality to ensure the child had meaningful time in her Father's care without being repeatedly subjected, unnecessarily, to a very early morning routine. **However, the Mother's suggestion that the Father only parent the child every 2nd weekend and for a few hours during the week when the child is not in his weekend care is not meaningful parenting time. If there were particular deficiencies in his parenting or other concerns this might have been appropriate** but there are no such deficiencies or concerns. The child can endure occasional early mornings.
>
> [38] The parenting plan and schedule attached as Schedule "A" to this decision is in the child's best interest.
>
> (My emphasis throughout)

[163] J. MacDonald went on to order costs of $8,688.00 payable by the mother to the father. In her Endorsement with respect to costs, J. MacDonald found in part:

> [2] …
>
> This is a case where **Ms. Tobin, in particular, lost objectivity and acted unreasonably.** As I said in my decision, this does not absolve (the father) from his responsibility for heightening the conflict but I have determined that much of his responses were reactive to **Ms. Tobin's lack of objectivity and her unreasonableness. His frustration was palpable in the evidence presented before me. Unfortunately his frustration often caused him to behave**

> **negatively**. I do not excuse him for that behaviour but I do understand its genesis.
>
> [3] In this proceeding **I made credibility findings against Ms. Tobin (the mother) about allegations she made** that substantially increased the cost of the proceeding. Those allegations were that:
>
> * (the father) was not actively engaged in the child's care when he was in Nova Scotia;
>
> * Only she could exercise good judgment required for parental decision making;
>
> * She did not intend to permanently move the child's residence to British Columbia;
>
> * She could not return to her previous residence in Nova Scotia when she returned from British Columbia;
>
> * (the father)'s tenants presented a safety risk to the child; and
>
> * The additional costs incurred to finalize the Interim Order were caused by Mr. MacKinnon's failure to "accurately track the agreement reached and the direction given by Justice Beaton".
>
> [4] **Costs to (the father) were also increased because of Ms. Tobin's dismissal of her counsel only to retain new counsel a mere 2 weeks before the scheduled hearing.**
>
> …
>
> [8] My decision did not absolve (the father) from any responsibility for the conflict that evolved. This I consider to be an important factor leading to the conclusion that Scale 1 of the tariffs is to be used…

## Notice of Application filed by the father in January 2018

[164] On January 30, 2018, the father filed a further Notice of Application pursuant to section 41 of the *Parenting and Support Act*, requiring the mother's appearance to explain a failure to comply with an Order. On March 14, 2018, upon review of evidence that the mother (then Ms. Tobin) was avoiding service. I granted the father an Order for Substituted Method of Providing Notice of a Proceeding to the mother (Ms. Tobin as she was then).

[165] The mother requested the father's Application be dismissed. However, paragraph 59 of the Variation Order issued September 24, 2018, directed:

> 59. If the parties have a disagreement about the interpretation or implementation of this order or if they are unable to agree about a decision requiring their agreement, they may request a review to address the issue of compliance with the terms of the order pursuant to sections *40* and *41* of the *Parenting and Support Act*.

[166] A contested hearing was held on May 9, 2018 and May 31, 2018. On September 20, 2018, I found the mother had wrongfully denied the father parenting time with the child. Further to my finding, I found it was in the child's best interests to vary certain of the terms of the Order (Family Proceeding), issued November 30, 2017.

***Tobin* v. *Tobin*, 2019 NSSC 314**

[167] As part of a variation application, the mother's previous husband, KT, asked the Honourable Justice Elizabeth Jollimore (as she was then) to vary child support prospectively. In October 2019 J. Jollimore found in part: based on her tax returns, Ms. Tobin's 2017 income is $31,617.00 and her 2018 income is $43,112.00:

> [20] Ms. Tobin described **working at contract positions or as an instructor. Since the children were born it seems most of her employment has been at Dalhousie University**. **Her employment has not been continuous: she has been unemployed between contracts and received Employment Insurance benefits.** Her current contract ends on November 15, 2019. She is unsure whether she will qualify for employment insurance benefits but offered no

> clear explanation why she would not qualify. If she qualifies, she anticipates the benefits will be approximately $2,000.00 after tax.
>
> [21] I find Ms. Tobin's 2019 earnings are $47,544.00 (comprised of her earnings and $2,400.00 in EI benefits – I have grossed up her after-tax figure of $2,000.00 by 20%).
>
> …
>
> [24] The parties have tried to adjust child support on their own since their older son moved to Mr. Tobin's home at the end of July 2017. They formalized these adjustments in at least one order. The terms of orders relating to child support since July 2017 are replaced by the terms contained in this endorsement.
>
> **2020 child support**
>
> …
>
> [27] Based on these income levels if the parenting arrangement continues to be split parenting, beginning in January 2020 Mr. Tobin will pay Ms. Tobin monthly child support of $440.00: at $94,057.20, Mr. Tobin would pay Ms. Tobin $807.00 each month and at $43,112.00, she would pay him $367.00.

## ***Tobin* v. *Tobin*, 2020 NSSC 55**

On September 25, 26, and 27, 2019, the Honourable Justice Elizabeth Jollimore presided over a proceeding involving the mother's former husband, KT, and their two sons, G and M. In February 2020, in *Tobin* v. *Tobin,* 2020 NSSC 55**,** J. Jollimore found in part as follows:

> …
>
> [21] The research of Fidler, Bala, Birnbaum and Kavassalis, "Child Custody Assessments, Recommendations, and Judicial Remedies Regarding Alienated Children" in *Challenging Issues in Child Custody Disputes: A Guide for Legal and Mental Health Professionals* (Toronto: Carswell Thomson, 2008) provides a convenient summary of generally known and accepted observations relating to alienation.
>
> [22] Fidler, Bala, Birnbaum and Kavassalis identify 14 typical behaviours of alienated children. **In general, alienated children have one-dimensional views of each parent: one is idealized and the other is vilified**. The child's hatred of the vilified parent is not tempered by any ambivalence, guilt or reason. The child may openly display and express their hatred for the vilified parent. This is not the way G treats his mother.

> [23] Though G doesn't see his mother, in speaking to Mr. Whitzman about her, **he "didn't describe large issues [with his mother] beyond small arguments**." According to Mr. Whitzman, "**G had no difficulty expressing love for both of his parents". G had fond memories of family trips with his mother to British Columbia**. G is not entirely critical of Ms. Tobin as an alienated child would be. He has one concern about her. He feels she is still upset with him about his move to Mr. Tobin's.
>
> [24] Ms. Tobin believes G's feelings are not genuine but are the result of his father's manipulation. I heard evidence that after the first day of this variation hearing, **Ms. Tobin and her new partner telephoned G. During the conversation, G was asked if he was drunk, high or gay**. Upset by this, he ended the call. G's reaction was not manipulated but entirely the result of the questions he was asked.
>
> [25] G's views and preferences about his relationship with his mother are focused and specific: **he does not want her to be angry about his increased time with his father.**
>
> [26] **G does not hate or fear his mother. His rejection of *time with* his mother (and I stress this is a rejection of spending time with her, not a rejection of her) has endured because he sees her continuing to be angry with him about his spending more time with his father**. His assessment is correct: Ms. Tobin still has strong negative emotions about this.
>
> [27] I find that Ms. Tobin's plan is not one which will resolve the fracture between her and G. Because this is the basis for her request for custody and care, I reject her claim for sole custody and primary care of G.
>
> [28] G wishes to live with his father. He has acted on this view consistently for over 2 ½ years. **At 17, he is of an age where I respect his view**. The parents will continue to share decision-making **but G's primary home will be with his father.**

It is clear to me that the mother "has been here before", and she knew what the Court might be looking for if there was an allegation of alienation against her.

[168] The mother was aware that if a child stated she still loves her parent, and that she does not completely dismiss that parent, that the Court may interpret that reaction as an indication that alienation is not a concern. However, in this case, the

child has not actually seen the father in person since February 2022. He has been alienated.

**The mother's involvement with the father the child's half siblings**

[169] The police files and the above noted decisions support KT's evidence with respect to his ongoing problems co-parenting with the mother. KT stated that he and the mother had initially always shared the care of G and M. He stated they had joint decision-making authority although he alleged that the mother often made decisions for the children unilaterally.

[170] KT stated that he often found it "too stressful fighting even though it interfered with his parenting time" with G and M. KT advised that in 2013, 2014, and 2015 the mother only allowed him to have contact with G and M "when it was convenient to her."

[171] However, KT reported that in 2015, after he had agreed that the mother could travel to British Columbia with the G and M for three weeks, the mother then extended her vacation with the children with no return date and she registered the children in school. KT filed an ex-parte motion with the Court and the mother was ordered to return G and M to Nova Scotia or she would lose custody of the children and the mother returned the children in or around September 28, 2015.

[172] He stated that the father of the child subject to this proceeding had “always been nice to him” both before and after the father left the mother. He stated that the father had “always made time” for M and G even though they were not his children.

[173] KT advised that he lived outside of Halifax, Nova Scotia and he testified that in 2017, after G chose to live with him instead of his mother, that he and the father arranged to keep G and the child connected monthly (I understood for in person visits) and with weekly telephone calls. However, the mother often refused to allow the father to have contact with M.

[174] KT indicated that in or around 2017, G chose to reside with him, instead of continuing in a shared parenting arrangement. KT reported that after G left the mother’s home in or around July 2017, that in or around August 2017 the mother took the children to a hotel to frustrate his parenting time and / or deny him contact with M. He stated that in 2019, J. Jollimore granted KT care and custody of G.

[175] KT – the father of the child’s two half-brothers, swore an affidavit on February 13, 2023. He indicated that G had continued residing with him full time in Nova Scotia while M had been residing with the mother, in Nova Scotia until M travelled to British Columbia with the mother in the Summer of 2022.

[176] KT advised that in February 2022, the father told him the mother was denying the father his parenting time with the child. KT then called the father in June 2022 to see if things had resolved and to determine whether they could get G and the child together. At that time, the father told KT the mother had taken the child to British Columbia without the father's consent.

[177] KT stated that in June 2022, he attended his and the mother's youngest son M's high school graduation, but M was not there. When he contacted M, M had informed him that he was in Vancouver British Columbia with his mother and the child. The mother had not notified KT that M was going to British Columbia.

**Notice of Variation filed by the father March 4, 2020**

[178] Pursuant to paragraph 59 of the Variation Order issued in September 2018, the father sought the Court's direction with respect to the implementation of the parenting terms and to address the issue of compliance pursuant to section 40 and 41 of the *Parenting and Support Act*.

[179] A hearing was held on April 21, 2021. In my oral decision on that same day, I warned the mother that she could not make unilateral decisions about the father's parenting time with the child. However, I recognized that the mother HAD NOT at that time followed through on her threats to change the father's specified

parenting as suggested to the father by the mother. I cautioned the mother that had she followed through on her threat that I "might have found a change of circumstances" and I might have found that it was in the child's best interests to change the parenting arrangement.

**The law and analysis**

[180] According to the *Parenting and Support Act* (amended), SNS 2021, c. 15, Courts must consider certain identified issues when determining whether to grant a relocation application which will have a "significant impact" on a child's relationship with a parent, in this case the child's relationship with her father.

[181] The child's unauthorized move from Nova Scotia to British Columbia with her mother in or around June 2022 has most certainly had a "significant impact" on the child's pre-existing relationship with her father. Her relationship with her father prior to February 2022 has changed dramatically.

[182] Based on the available evidence, there is no other explanation except that the mother is most likely responsible for the child taking the position that the child no longer wishes to, and the child is no longer required to spend time with her father. There is no other plausible explanation.

[183] The evidence supports a finding that the mother has no desire to redirect the child and the mother has actively communicated to the child through her actions and inaction that it is acceptable to behave in the manner the child has been behaving. The mother has in fact rewarded the child's behaviour.

[184] The mother has failed in her responsibility to communicate to the child that the child is not entitled to make decisions related to her custody and care. The mother has been enabling the child and encouraging the child not to comply with her father's direction, with direction from school officials, and with a court order.

[185] I find it is not in the child's best interest for the mother to continue to have primary care of the child. In addition, I find it is not in the child's best interests for the Court to authorize the child to relocate to British Columbia with the mother.

> **Relocation**
>
> 18E (1) In this Section and Sections 18F to 18H,
>
> (a) "person planning to relocate" means
>
> (i) a person who is planning a change of that person's place of residence and is a parent or guardian or a person who has an order for contact time with the child,
>
> (ii) a parent or guardian who is planning a change of both that person's and the child's place of residence, and
>
> (iii) a parent or guardian who is planning a change of the child's place of residence;
>
> (b) "relocation" means a change to the place of residence of
>
> (i) a parent or guardian,
>
> (ii) a person who has an order for contact time with the child, or

> (iii) a child, that can **reasonably be expected to significantly impact the child's relationship with a parent**, a guardian or a person who has an order for contact time with the child.

[186] The mother failed to notify the father of her intention to relocate when she left the province with the child. She took the child from the jurisdiction without the legal authority to do so. I do not accept the mother's evidence that when she left the province she did not intend to relocate with the child to British Columbia, thereby intentionally frustrating the father's parenting time.

> (2) A person planning to relocate shall notify, at least sixty days before the expected date of the planned relocation, the parents and guardians of the child and any person who has an order for contact time with the child of the planned relocation.
>
> (3) The notification under subsection (2) must be in writing and must include
>
> (a) the date of the planned relocation;
>
> (b) the location of the new place of residence and, if known, the address;
>
> (c) all available contact information for the person giving the notification; and
>
> (d) the proposed changes to decision-making responsibility, **parenting arrangements**, parenting time, contact time and interaction resulting from the relocation.
>
> (4) and (5) repealed 2021, c. 15, s. 7.
>
> (6) This Section does not apply where an agreement registered under this *Act* or a court order provides a different notification requirement for a planned relocation.

[187] The relocation requirements have not been met by the mother. In this case, there is insufficient reason to change or to waive the notification requirements.

[188] For many reasons, the mother cannot be permitted to rely on the child's refusal to see her father between mid January 2022 and June 2022, and thereafter

as proof there is no ongoing relationship between the child and the father who was entitled to notification. The mother has most likely encouraged the child and / or at the very least she has not discouraged the child from acting inappropriately by ignoring and refusing to see her father.

[189] There is no credible evidence of any threat posed by the father.

Application to change notification requirements

> 18F (1) On application, the court may change or waive the notification requirements under Section 18D or 18E if the court is satisfied that
>
> > (a) giving notification may create a risk of family violence;
> >
> > (b) there is no on-going relationship between the child and the person who would be entitled to receive notification of the application; or
> >
> > (c) there exists sufficient reason to change or to waive the notification requirements.
>
> (2) A person may make an application under subsection (1) with- out giving notice to any other person. 2015, c. 4

[190] As noted, the mother left the province with the child on or about June 28, 2022, and on or about August 3, 2022, she notified the father in writing that she would be seeking his consent to relocate or an order of the court. At a court conference on August 11, 2022, the mother's legal counsel advised the Court and the father about the mother's request to relocate. The father did not consent. This Court has directed the child be returned to the jurisdiction and twice granted orders directing the child's return.

[191] According to section s. 18 E of the *Parenting and Support Act*, failure to provide notice of relocation will be a factor weighing against a decision allowing a move.

> Authorization or prohibition of relocation
>
> 18G (1) Subject to a court order authorizing or prohibiting the relocation of a child or an order changing or waiving the notification requirements, when the notification requirements under Section 18E have been complied with, the relocation of the child may occur on or after the date of the planned relocation, unless an application is made to the court to prohibit the relocation within thirty days of receiving the notification.
>
> (2) On application by
>
> (a) a parent or guardian of the child;
>
> (b) a person with an order for contact time with the child; or
>
> (c) any person that has been granted leave of the court to make the application, the court may make an order authorizing or prohibiting the relocation of a child and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just.
>
> (3) An application for an order authorizing or prohibiting the relocation of a child may be filed at any time prior to or after the relocation occurs.

[192] To discourage abduction and encourage orderly moves, many have argued that "a unilateral or surreptitious or no-notice relocation, or attempt to relocate, as in this case, should give rise to a presumption against allowing the move at a subsequent hearing on the merits," suggesting that a parent's unilateral move or attempt demonstrates a lack of concern for the child's best interest.

[193] However, many courts have found it is an error to "nullify the burdens" due to non-compliance. I agree. With respect to presumptions and burdens, I must consider evidence regarding a pattern of care, not just time but the day-to-day

caregiving and ordinary decision making for the child before the denial of parenting time took place. The *Nova Scotia Parenting and Support Act* looks at "care" with "time" as just one factor, although an important one. JA Roscoe in *Burns* v. *Burns* NSCA.

[194] I find that the mother aught to have been able to encourage the child to see her father and that the mother actively chose not to do so or could not. The mother did not comply with the Order granted September 21, 2022, or the Order granted October 19, 2022, both issued on or about November 3, 2022. The mother did not advance any persuasive arguments with respect to why she did not.

[195] Given the evidence available to me, I find that section 18H1A (e) applies in this case, and both parties had the burden to prove their plan was in the child's best interests. I have considered the relevant time period to determine the parents' usual involvement with the child to be before December 2021, and I find the parenting arrangement did not quite rise to "substantially equal time" which is usually considered to be somewhere between 40 – 50% but the father claimed he had had care of the child for approximately 35% of the time. During the relevant time period, the mother did not have care of the child during the "vast majority of the time."

Relocation considerations

> 18H (1) When a proposed relocation of a child is before the court, the court shall give paramount consideration to the best interests of the child.
>
> (1A) The burden of proof under subsection (1) is allocated as follows:
>
> (a) where there is a court order or an agreement that provides that the child spend **substantially equal time** in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies;
>
> (b) where there is a court order or an agreement that provides that the child spend the **vast majority of the child's time** in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;
>
> (c) where **there is no order or agreement** as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child;
>
> (d) where **there is no order or agreement** as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child; (my emphasis)
>
> (e) **for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child.**

[196] As noted previously, the mother did not state whether she would return to Nova Scotia if the child was ordered to return. Although in cross-examination the father did ask the mother the question, I did intervene before the mother could respond, and I advised the father he was not permitted to ask the question.

> 18H(3) In deciding whether to authorize a relocation of a child, the court shall not ask or permit a party who opposes the relocation to ask whether the party who

> intends to relocate the child would relocate without the child or not relocate if the child's relocation is prohibited.

[197] As note above, I have considered that in *Weagle v. Kendall*, 2023 NSCA 47, the court found I:

> … did not properly interpret or apply section 18H(3) of the *Act* and its "don't ask" provisions. The restriction on evidence of whether the relocating parent would move without the child differs under the *PSA* from that in the *Divorce Act*. **The *PSA* merely limits the court from asking or permitting the opposite party to ask the double-bind question. It does not prohibit the information from being offered, nor does it prohibit it from being used by the judge when offered.** "Shall not ask" is the language of the *PSA*, whereas "shall not consider" is the language of the *Divorce Act*.…

[198] I have noted that the mother has expressed various reasons for her relocation request at various times. The mother has testified that when she left the jurisdiction with the child, she did not intend to relocate but once she arrived in British Columbia she felt that would be the best decision. She stated that she found a new job, that she started a new relationship, that she and the child had an increased opportunity to see her best friend and her family: the mother's brothers, the mother's elderly parents, and others. She outlined all the positive experiences available for the child and she argued it was in the child's best interest to relocate.

[199] The mother's depiction of her view of a better life with more support is insufficient to support a finding that it is in the best interests of the child to be taken from her habitual residence and to disturb the status quo. The mother has

done nothing to ensure the child is able to maintain connections or to address the issue of cost, she did not file sufficient financial disclosure for the Court to properly consider her plan and if the parties could financially support the child's travel.

[200] The mother also suggested she needed to be in British Columbia to care for her elderly parents. The mother's parents did not testify. The mother's brothers both filed affidavits and neither of them suggested that the mother needed to care for her parents. I do not accept the mother's testimony that she must care for her elderly parents and that this is sufficient reason to allow the child to relocate from her habitual place of residence with all the changes that entails.

[201] The mother has suggested she needed to move to find employment. In previous court matters involving the mother, the court has found that the mother has a history of securing contract work and then regularly relying on employment insurance benefits in between contracts.

[202] As courts before me have refused to accept, I also do not accept the mother's testimony that she diligently looked for work in Nova Scotia and she could not find further employment in Nova Scotia. In any event, it is generally unclear to me

whether the mother has even continued to work in the same position she had reportedly secured in or around September 2022.

[203] I would note that although the mother has talked about how wonderful it is for her to be able to spend time with her brothers, that the mother has said very little about how she is going to ensure that the child has continued contact with her half brothers, G or M, and nothing to say about the child's her step-siblings or the friends the child left behind. It is true that the mother did allude to the possibility that M may move to British Columbia, but there was no evidence M would in fact be moving and establishing a home near the child. Section 18H(4) of the *Parenting and Support Act* provides:

> 18H(4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including
>
> (a) the circumstances listed in subsection 18(6);
>
> (b) the reasons for the relocation;
>
> (c) the effect on the child of changed parenting time and contact time due to the relocation;
>
> (d) the effect on the child of the child's removal from family, school and community due to the relocation;
>
> (e) the appropriateness of changing the parenting arrangements;
>
> (f) compliance with previous court orders and agreements by the parties to the application;
>
> (g) any restrictions placed on relocation in previous court orders and agreements;
>
> (h) any additional expenses that may be incurred by the parties due to the relocation;
>
> (i) the transportation options available to reach the new location; and

(j) whether the person planning to relocate has given notice as required under this Act and has proposed new decision making responsibility, parenting time and contact time schedules, as applicable, for the child following relocation.

(5) The relocation of a child is deemed to constitute a change in circumstances for the purpose of a variation order under Section 37.

(6) A relocation of a child that has been prohibited by the court under subsection 18G(2) does not, in itself, constitute a change in circumstances for the purpose of a variation order under Section 37.

[204] The mother has repeatedly suggested she would arrange for the child to travel back to her home community in Halifax Nova Scotia to see her father and her friends. However, the mother has failed to make the arrangements when directed to do so, when ordered to do so, and when she suggested she would do so in December 2022, and then when she undertook to do so in March 2023.

[205] Despite the mother making a unilateral decision to take the child to British Columbia, the mother has failed to provide full disclosure of her financial situation. However, she has suggested that she and the father should share the expense of getting the child back and forth from Nova Scotia to British Columbia.

[206] She has suggested she would make the arrangements to buy the plane tickets and she expects the father to reimburse her his share. The mother has no credibility in this regard. She has failed to make any arrangements for the father's in-person contact in Nova Scotia since June 2022. She has failed to do so in the face of two court orders ordering her to do so.

[207] At trial, the mother suggested where she was living, but she has provided very little other information about her personal circumstances and very little evidence. The mother has recognized there are no direct flights from between Halifax and British Columbia and that the child would need to negotiate a connection or have assistance doing so. She has not provided any concrete information about the real costs of travel, except to say she believes the cost should be shared. She has not suggested whether a decrease in the payment of child support by the father or by the mother may be necessary to offset any costs or how a decrease may impact the child.

**Best Interests Test**

[208] In Section 18 (6) of the *Act*, in determining the best interests of the child, the Court shall consider all relevant circumstances, including:

> (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
>
> (b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;
>
> (c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;
>
> (d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;
>
> (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including the child's aboriginal upbringing and heritage, if applicable;

> (f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;
>
> (g) the nature, strength and stability of the relationship between the child and each parent or guardian;
>
> (h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;
>
> (i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;

[209] The child was too young, at the age of 10, to make decisions about her contact with her father and the child continues to be too young at the age of 12 to be permitted and / or to be encouraged by her mother to make decisions not to attend parenting time with her father. I find the mother did not make an honest effort to support the father's relationship with the child and actively behaved in a manner which discouraged the child from wanting to have a relationship with her father.

[210] The child has attachments to family members both in Nova Scotia and in British Columbia. She always has. I am aware of the connections she has strengthened while residing in British Columbia, however they should not come at the expense of rejecting her father, her half siblings, her step siblings, her stepmother, her school, her friends, and her community.

[211] The mother's claims that there may be some reason the child was afraid of the father are not at all convincing. I would go so far as to say that there is no

other reasonable explanation for the child's behaviour other than the mother's interference with the relationship.

[212] It was and it is the mother's responsibility to enforce the father's parenting time in a positive way and to ensure the child attends. As I have stated previously, I do not believe that the mother or the child were ever afraid of the father. The mother may have been annoyed or inconvenienced by the father, but not afraid.

[213] The father has always been substantially involved with the child and the child had always historically attended for her father's parenting time. The mother had / has no viable plan or any real intention of ensuring the father has a meaningful parenting relationship with the child.

[214] I find that on balance of probabilities the mother has unilaterally interfered with the father's relationship with the child, with the child's half brother G's relationship with the child, with the child's relationships with her friends, with the child's connection with her community and with the child's connection with her extended family in Nova Scotia, including her paternal grandparents. I find it is impossible to know how the child has truly been impacted by the change as her mother has been in complete control of the narrative.

[215] I have also considered the following factors of Section 18(6):

> (ia) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child; and
>
> (j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on
>
> (i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and
>
> (ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[216] As noted, the mother's suggestions that the father has harassed or that he has abused the mother or that he has abused the child, are completely unfounded. At times the father may have presented as rigid and / or stubborn. He has definitely refused to be deterred by the mother's indifference or the child's apparent indifference under her mother's watchful and supportive eye.

[217] The father has at times reacted in a manner which has frustrated the mother as he has refused to back down or give up despite the mother's denial of his parenting time and / or the child's refusal. The mother has treated the father as though he is a nuisance and not deserving of her time or respect.

[218] I find the child's suggestions about her father being "scary" to be without any foundation. At best, the child is upset as she is old enough to know she has been refusing to do what her father has explained she must do, and she is afraid of the consequences.

[219] The child may in fact be afraid that she may have to do what she is told to do, which is possibly not what she would prefer to do. It is important that the child learns that there are consequences to one's actions and that all her family members deserve her respect. The risk of some discomfort for the child for a short period will hopefully be outweighed by valuable life lessons she will be given the opportunity to learn.

> …
>
> (7) When determining the impact of any family violence, abuse or intimidation, the court shall consider
>
> (a) the nature of the family violence, abuse or intimidation;
>
> (b) how recently the family violence, abuse or intimidation occurred;
>
> (c) the frequency of the family violence, abuse or intimidation;
>
> (d) the harm caused to the child by the family violence, abuse or intimidation;
>
> (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and
>
> (f) all other matters the court considers relevant.

[220] The mother has been attempting to dictate the terms of the child's relationship with her father for years. The most likely explanation under these circumstances is that the mother has permitted the child to "run the show" to gain an advantage in her relationship with the child. I believe that on balance of probabilities the mother has talked with the child about the circumstances which would most likely make it possible for the child to move to British Columbia with her mother and the child has acted on that information.

[221] The mother was aware of the Court's previous findings regarding the issue of alleged alienation in her previous matter involving her son G. The mother has herself stated to school officials when refusing to follow a court order that she has "been here before," implying she knows what she can get away with and that the school officials could not realistically intervene, she has suggested they have no authority.

> (8) In making an order concerning decision-making responsibility, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j). R.S., c. 160, s. 18; 1990, c. 5, s. 107; 2012, c. 7, s. 2; 2012, c. 25, s. 2; 2014, c. 19, s. 1; 2015, c. 44, s. 19; 2021, c. 15, s. 4.

[222] Under the circumstances existing since December 2022, at this time the mother cannot be trusted to continue to make decisions about the child's mental and emotional health or other developmental decisions for the child.

> Duties during parenting time
>
> 18A Unless otherwise provided by court order or agreement and in addition to the duties under Section 2A, a parent or guardian shall, during parenting time with the child,
>
> (a) be responsible for the child's day-to-day care and supervise the child's daily activities; and R.S., c. 160 parenting and support 13 APRIL 1, 2022
>
> (b) have exclusive authority to make day-to-day decisions affecting the child. 2015, c. 44, s. 20; 2021, c. 15, s. 5. Requests during parenting time
>
> 18B Unless otherwise provided by court order or agreement, a person with parenting time may, at any time, inquire and receive information regarding the health, education and welfare of the child. 2015, c. 44, s. 20. Duties during contact time

> 18C Unless otherwise provided by court order or agreement and in addition to the duties under Section 2A, the person shall, during contact time with the child, (a) be responsible for the care and supervision of the child; and
>
> (b) comply with the decisions regarding the child made by the person or persons with decision-making responsibility for the child. 2015, c. 44, s. 20; 2021, c. 15

[223] The mother has changed the child's residence from her habitual residence in Halifax Nova Scotia to several residences while enroute to British Columbia between June 28, 2022, and July 4, 2022, and arguably while in British Columbia between July 4, 2022 and possibly up to the trial date. The child's address may have changed without the mother giving the father proper notice or details. It is difficult to know as the mother's credibility is extremely compromised.

[224] As noted previously, when the mother was cross-examined, she claimed she did not know the child's telephone number or her email address. The child has stated to her father than she does not know the name of the school she attends.

[225] I have considered the law of credibility as summarized in *Baker-Warren v. Denault*, 2009 NSSC 59. The mother was not a credible witness. I find the mother will lie or distort the truth to support her own narrative. For this reason, I give very little weight to evidence offered by the mother in my analysis of the issues and I rely primarily on the evidence of other witnesses.

> Change of residence
>
> 18D (1) When a parent or guardian plans to change

(a) that person's place of residence;

(b) the child's place of residence;

(c) both that person's and the child's place of residence,

that person shall notify any other parent or guardian of the child and any person who has an order for contact time with the child of the planned change of residence.

2. When a change of the place of residence is planned by a person who has an order for contact time with the child, that person shall notify the parents and guardians of the child and any person who has an order for contact time with the child of the date of the planned change of residence.

3. The notifications under subsections (1) and (2) must be in writing and must include

(a) the date of the planned change of the place of residence;

(b) the location of the new place of residence and, if known, the address; and

(c) all available contact information for the person giving the notification.

(4) The written notifications under subsections (1) and (2) must be delivered with as much notice as possible in advance of the date of the planned change in the place of residence.

(5) Where the person planning to change the place of residence is unable to provide the notification under subsection (4) at least sixty days in advance of the date of the planned change, that person shall provide reasons, in the notification, why such notice could not be given.

(6) This Section does not apply where an agreement registered under this Act or a court order provides a different notification requirement for a planned change of the place of residence.

[226] As noted at the beginning of this decision: on May 19, 2022, the father filed a Notice of Application pursuant to section 37 of the *Parenting and Support Act*, alleging the mother had denied him certain in-person parenting time with their child born in September 2011 (the child), since approximately January 2022.

[227] I find that the mother did deny the parenting time and the mother actively encouraged and facilitated the child's rejection of the father.

Denial of time application

40 (1) Where a person who has parenting time, contact time or interaction under an agreement registered under this Act or a court order is denied that time or interaction, the person may make an application to address the denial.

(2) The application must be filed no more than twelve months from the date the applicant was denied the parenting time, contact time or interaction.

(3) In determining whether a denial of parenting time, contact time or interaction was wrongful, the court shall consider all relevant circumstances, including whether there was

(a) a reasonable belief that the child would suffer family violence, abuse or intimidation if the parenting time, contact time or interaction was to be exercised;

(b) a reasonable belief that the applicant was impaired by drugs or alcohol at the time the parenting time, contact time or interaction was to be exercised;

(c) repeated failure, without reasonable notice or excuse, by the applicant to exercise parenting time, contact time or interaction in the twelve months immediately prior to the denial; or

(d) a failure by the applicant to give notice of when parenting time, contact time or interaction would be reinstated following advance notice that the time would not be exercised.

4) Where the court finds that the parenting time, contact time or interaction has been denied, but not wrongfully denied, the court may order that the applicant have compensatory parenting time, contact time or interaction with the child**.**

(5) **Upon finding that the applicant was wrongfully denied the parenting time, contact time or interaction, the court may order**

(a) that any of the parties to the application or the child attend counselling or a specified program or obtain a specified service, and which parties must pay for the counselling, program or service;

(b) that the applicant have compensatory parenting time, contact time or interaction;

(c) that the respondent reimburse the applicant for expenses incurred as a result of the respondent’s denial of the parenting time, contact time or interaction;

(d) that the transfer of the child for parenting time or contact time be supervised, and which parties must pay for the costs associated with the supervision;

(e) that parenting time, contact time or interaction be supervised, and which parties must pay for the costs associated with the supervision; (f) the payment of costs for the application by one or more of the parties;

(g) that the parties appear for the making of an additional order; and

(h) the payment of no more than five thousand dollars to the applicant or to the applicant in trust for the child.

(6) **A finding that the parenting time, contact time or interaction was wrongfully denied constitutes a material change in circumstances for the purpose of a variation order regarding custody, parenting time, contact time or interaction**.

(7) The court may, without the applicant filing a variation application, make the variation order referred to in subsection (6) at the hearing of the denial application.

(8) Where the court is satisfied that it is likely that an order under subsection (5) will not be complied with, the court may additionally order that the respondent

(a) post security with the court in such amount or form as the court directs; and

(b) report to the court or to a person named by the court at the time and in the manner specified by the court.

(9) An order for security under subsection (8) or a subsequent order of the court may provide for the realization of the security by seizure, sale or other means as the court directs or for the release of all or part of the security.

…

Power to require appearance

41 (1) Where it is made to appear under oath that a person has failed to comply with an order pursuant to this Act, the court may require the person to appear to explain the failure to comply or a party to the order may make an application to bring the matter before the court for determination.

(2) In an application pursuant to subsection (1), the court shall determine the issue and may make any additional order the court deems necessary to ensure the order of the court is complied with, including an order for contempt which may include imprisonment continuously or intermittently for not more than six months.

(3) Nothing in this Section affects the application of the Maintenance Enforcement Act where a party under a maintenance order has failed to comply with that order.

[228] In *S.B. v. V.M.*, 2023 NSSC 73, wherein Justice Pamela Marche found:

*Denial of* Contact *Time*

[87] Under s. 40(1) of the *Act*, a person who has been denied contact time may apply to the Court to address the denial. The onus is on the applicant to prove, on a balance of probabilities, a denial of contact time contrary to an agreement or court order.

[88] While a presumption is not explicitly laid out in the *Act*, denial of contact time, contrary to an agreement or court order, is *prima facie* wrongful. The onus then shifts to the Respondent to prove, on a balance of probabilities, that contact time was not wrongfully denied. Section 40(3) of the *Act* directs the Court to consider all the relevant circumstances when determining whether a denial of contact was wrongful including whether there was:

a. a reasonable belief that the child would suffer family violence, abuse or intimidation if the parenting *time*, contact *time* or interaction was to be exercised;

b. a reasonable belief that the applicant was impaired by drugs or alcohol at the *time* the parenting *time*, contact *time* or interaction was to be exercised;

c. repeated failure, without reasonable notice or excuse, by the applicant to exercise parenting *time*, contact *time* or interaction in the twelve months immediately prior to the *denial*; or

d. a failure by the applicant to give notice *of* when parenting *time*, contact *time* or interaction would be reinstated following advance notice that the *time* would not be exercised.

[89] The list of circumstances outlined in s. 40(3) is non-exhaustive. The Court must consider all relevant circumstances when assessing whether a denial of contact time was wrongful.

[90] Even if the Court is satisfied there has been a denial of contact time, the Court has the discretion not to impose a penalty. The language of s. 40(5) of the *Act* is permissive, not mandatory. The best interest of the child is the paramount consideration when determining issues related to denial of contact time (s. 18(5) of the *Act*).

[91] The Court may order compensatory contact time, even if the denial of contact time was not wrongful (s. 40(4) of the *Act*). If the Court determines that denial of contact was wrongful, in addition to compensatory contact time, the Court may also order a variety of additional remedies outlined in s. 40(5) of the *Act* including counselling, supervised contact time, costs or a fine.

[92] I will first explore the circumstances that precipitated the denial of contact time. The fall of 2021, saw SB making multiple child protection referrals regarding VM related to medical neglect, excessive discipline, and inappropriate sleeping arrangements. SB reported her grandchildren were being tortured and threatened by their mother. She claimed the children were being physically and mentally abused.

[93] SB's concerns about medical neglect culminated when, on January 22, 2022, TO took L to an emergency room for medical treatment without consulting VM. VM only became aware of the incident after the children were returned to

her care. That was the last contact the children had with SB and TO (apart from one incident where SB removed M from school without VM's permission).

[94] VM conceded there has been a denial of contact time. She also agreed that she changed the schools in which the boys were enrolled, contrary to the 2018 court order. VM acknowledged that she may not have given the boy's schools a copy of the order. I find there has been a continuous denial of contact time since February 2022 contrary to the terms of the 2018 order that authorized SB to have contact time with the children every third weekend.

[95] VM argues the denial of contact time was not wrongful and compensatory contact time, therefore, should not be ordered. VM cites s. 40(3)(a) of the *Act* and claims she had a reasonable belief the children would suffer psychological and emotional abuse if the contact time was to be exercised.

[96] First, it is not necessary for the Court to determine a denial of contact time was wrongful before ordering compensatory contact time (s. 40(4) of the *Act*). SB may be awarded compensatory contact time, even if the denial of contact was not wrongful, but only if the contact time is in the best interests of the children.

[97] Second, the presence of high conflict does not automatically equate to a finding of abuse or a reasonable belief that abuse will occur. There must be evidence of a reasonable belief that abuse may occur to justify the breach of a court order. VM failed to show a connection between the high conflict between her and SB, which I have found to exist, and any reasonable belief that the boys will suffer abuse, if contact time with SB were to occur.

[98] VM does state in paragraphs 25 and 26 of her Affidavit of December 1, 2022, that she does verily believe that her "children sensed the conflict between myself and my mother" and that this conflict was "emotionally harmful to the children." VM does not elaborate on the source of her beliefs. I have already found that VM has limited credibility. I find that VM offered insufficient evidence to demonstrate a reasonable belief that the children were at risk of abuse if contact time with SB were to occur.

[99] The intent of the Legislature, in the amendment of the *Act* to include the provisions outlined in s. 40, was to improve access enforcement through legislated methods more nuanced and better suited to family law situations than traditional contempt proceedings which are quasi-criminal in nature. If a finding of high conflict automatically equates to a finding of abuse, then the effect of 40(3)(a) would be to undermine, as opposed to improve, access compliance in high conflict families where stability is most needed.

[100] Third, a finding that contact time is not in a child's best interest does not necessarily equate to a finding that failure to abide by a court order is justified. Failure to comply with court ordered parenting arrangements is a very serious matter. One cannot simply point to a self-assessment of what is in a child's best interests as justification to ignore a court order. In fact, the need to ensure

compliance with court ordered parenting arrangements is especially important in high conflict cases which are so often plagued with chronic litigation.

[101] When questioned about her compliance with the 2018 order, VM testified, without excuse or apology, that M and L were her children and that she was not going to abide by "some piece of paper". She put it simply: "Not happening." I find VM's disregard for the court order to be blatant and defiant.

[102] Court orders that provide for contact time must be respected. Compliance with court orders cannot be viewed as optional.

[103] I find the VM's continuous denial of SB's contact time since February 2022 to be without justification and to be wrongful. VM demonstrated a lack of respect for the court order and the court process. She refused to participate in the parts of the court process without reason or excuse, she admitted she would lie under oath if she felt it was necessary, and she diminished the court order to a simple piece of paper to which she did not feel bound. I find it more likely than not that VM's denial of contact time was motivated as much by her conflict with SB as her concern for her boy's best interests.

[104] I have considered all relevant circumstances. Even having found that it is not in the boys' best interest to have contact time with SB, I still find that VM's denial of the contact time was wrongful. A finding of wrongful denial does not automatically mean that compensatory contact time must be ordered.

Issue Three: What is the appropriate remedy if there was a wrongful **denial of** contact **time**?

[105] I have considered the various remedies provided in s. 40(5). Having found that contact time with SB is not in the boys' best interest, I cannot order compensatory contact time as a remedy to VM's wrongful denial of contact time. As success was mixed, this is not an appropriate situation for costs as a remedy.

[106] However, VM's blatant disregard for the court order cannot be condoned. Section 40(5)(h) provides that the court may order, upon finding there has been a wrongful denial of contact time, the payment of no more than five thousand dollars to the applicant or to the applicant in trust for the child.

[107] To impress upon VM the seriousness of failing to respect a court order, and to deter similar behaviour going forward, I order VM to pay to the total sum of $3,000 to SB, in trust for the benefit of M and L equally, payable to both boys once L turns nineteen years of age.

[108] I do not have access to the details of VM's financial situation other than her affidavit evidence that she is the owner of a successful hair salon. To mitigate for any potential hardship that might ultimately be felt by the boys as a result of this order, VM will pay the amount of $100 per month, commencing the first day of April 2023, until the sum of $3,000 is paid in full. I believe this to be a

> reasonable use of my discretion to order a remedy in response to VM's wrongful conduct.
>
> [109] The payment of this fine will be considered child support for the purposes of enforcement by the Director of Maintenance Enforcement. The involvement and oversight of the Director of Maintenance Enforcement in the collection of this support will serve to mitigate the potential for ongoing conflict between SB and VM that may result from this aspect of my decision. This is clearly in the boys' best interests.

[229] In this case, I am ordering once again that the child return to Halifax Nova Scotia. This time I am ordering that the child be placed in her father's primary care while her mother's contact is supervised for at least six months subject to certain other conditions. In addition, as in the case above, and to impress upon the mother the seriousness of failing to respect a court order, and to deter similar behaviour going forward, I order the mother to pay to the total sum of $3,000 to the father, in trust for the benefit of the child, payable to the child when she turns nineteen years of age.

[230] The mother will pay the amount of $100 per month, commencing the first day of January 2021, until the sum of $3,000 is paid in full. I believe this to be a reasonable use of my discretion to order a remedy in response to the mother's wrongful conduct. The payment of this fine will be considered child support for the purposes of enforcement by the Director of Maintenance Enforcement

[231] "Relocations should not be unilateral, should be planned and orderly, and should only occur after new arrangements for the non-relocating parents' ongoing

parenting time has been resolved." (Legislating About Relocating Bill C-78, N.S. and B.C., 2019) The mother has not made any arrangements for the father to have any in-person parenting time with the child. I do not accept that it is in the child's best interest to delay her return to Halifax Nova Scotia.

[232] As stated, I do not accept the mother's evidence that she or the child were ever genuinely afraid of the father. The mother (and the child through her mother) knew the father would not consent to the move "this time" as his circumstances in Nova Scotia had changed significantly since she had attempted to move to British Columbia with all three children when he had been prepared to follow the mother if she moved.

[233] The presumption that a relocation is in a child's best interests is confined to a subset of the ''non-shared" cases, where there is a clear primary caregiving parent, and the other parent is not "substantially involved." This father has always been substantially involved. Even when being denied his parenting time, he made efforts to show the child (regardless of how received) that he wanted to spend time with her.

[234] In this case, the father was substantially involved with the child before December 2022 or before February 2022, after which time I find the mother

influenced the child not to attend the father's parenting time. It is not open to the mother to alter the burdens via self-help or withholding. Both parties shared the burden in this case.

[235] In most cases with two active parents, there is a conflict between a parent's relocation and the child's stability. The mother seems to suggest she is the "predominant primary caregiver" and that continuity of care with her is more critical, such that a presumption in her favour serves both the child's interests and the primary parent's interests.

[236] The mother suggests she is more important to the child than the father, that when she relocated, the continuity of that "predominant primary care" was critical to the child. The mother appears to suggest her position is supported by Dr. MD whom the mother retained to meet with the child. However, Dr. MD did state that it was important for the child to reconnect with her father.

[237] The mother failed to give notice to the father when she relocated surreptitiously and unilaterally, the mother has not satisfied me that her plan was or is sound or in the child's best interest. She has not provided a good reason for the move. I find the relocation was planned in bad faith and it was intended to thwart

the father's parenting time. The mother has not provided a good reason to rebut the father's suggestion.

[238] I would note that Dr. MD's View of the Child report must be viewed with caution given the child's refusal to see her father since February 2022 or March break 2022, the lack of information available to Dr. MD, and the father's lack of involvement in the preparation of the View of the Child report. It is relevant that in Nova Scotia, each parent would have an opportunity to present a written plan to the assessor and would usually have an opportunity to transport the child to one of two appointments with the assessor who was completing the Voice of the Child Report.

[239] In addition, Dr. MD was not properly apprised of the ongoing developments through the Court. In addition, it is clear to me that Dr. MD did not have all the relevant information. Ultimately Dr. MD suggested the father would need a period of uninterrupted time with the child to assist in rebuilding their relationship. That will not be possible if the child is residing with the mother.

[240] In *Tremblay v Tremblay* (1987), 82 AR 24 (QB), [1987] AJ No 875 (WL), the father applied to change parenting after bringing multiple applications for

contempt. The Court concluded it was in the best interests of the children to live with the father, and in coming to this result commented at para 15:

> The court should not automatically change **custody if the custodial parent refuses access or otherwise interferes with the development of a normal parent and child relationship** between the noncustodial parent and the child of the marriage. However, **where the parent refuses access, serious questions are raised about the fitness of that person as a parent**. The refusal to grant access after it is ordered is a change in circumstances sufficient to satisfy s. 17(5) of the Act.

[241] The mother's behaviour has revealed her inability to put the child's best interests ahead of her obvious dislike for the father and her inability to put the child's needs ahead of her own. The evidence is clear that this new "status quo" orchestrated by the mother is most likely going to result in long term negative consequences to the child's psychological and emotional well-being.

[242] It is imperative that both parents make a change. It is anticipated that it will take some time for the father and the child to rebuild their trust. I find it is NOT in the child's best interests for the mother to be given any opportunities to interfere with the rebuilding process. I am encouraged that the father is prepared to allow the child's therapist (identified by the father) to provide feedback about when to expand the mother's contact with the child.

[243] Without the parties' consent and the child's therapist's recommendation (after having reviewed this decision and related documentation as necessary), the

mother's contact with the child shall be fully supervised for at least six months. All contact shall be arranged through the Veith House parenting supervision program. The mother is familiar with the program and she has in fact commented on the positive the Veith House reports with respect to the child's and father's contact.

**Considerations:**

1. **The first stage**: The burden is on the parent proposing the relocation to prove material change. If relocation is prohibited, not "in itself" a material change. Test for material change is found in *Gordon* v. *Goertz*. These parties have agreed there has been a change of circumstances.
2. Which Statute applies? The *Parenting and Support Act* applies and the hearing was a final hearing of the matter.
3. Was the requirement for Notice of Relocation met? No.
4. What burdens of proof apply to whom? Both parties had the burden of proving their cases. Did the parents have "substantially equal time" (40-50% often used as rough guideline)? Did one parent have the "vast majority" of parenting time (80% often used as rough guideline)? As noted, the father's time during the period I have determined was relevant was approximately 35%.
5. Is the relocating parent the "primary caregiver" or "dominant primary caregiver"? Yes, the mother was the primary caregiver.
6. Was there "substantial compliance" with the order? Was there an existing status quo of some permanence? Were the parenting terms in the order reflected in practice (which is not to be confused as a determination of "denial of parenting time"). Yes, before February or March 2022, the parties had been in "substantial compliance"

7. What plan is in the child's best interest? For the most part, the father's plan.

8. Who should be assigned the burden of proving best interests (with evidence related to the relocation-specific best interests factors and best interests factors in s. 18(6) of the *Parenting and Support Act*)? Both parties were.

9. Has the court ensured that the parent requesting the relocation has NOT been asked if they intend to stay if the relocation is denied? Yes.

10. Should the Court consider the child's best interests under multiple possible scenarios, including whether the parent requesting the relocation intends to stay (come back) or decide to relocate (remain)? I have considered the mother's parenting time if she remains in British Columbia or returns to Nova Scotia.

11. Does the relocating parent have a careful, thought-out plan for the child at the new location: housing, school, day care, activities, any special health or other needs? There is no doubt that both parents are able to provide for the child's basic needs and more. The issue is the harm being caused by the mother's complete lack or awareness of or acceptance of the significance to the child of excluded her father and other important people from the child's life.

12. Will the relocating parent comply with and encourage parenting time *after* relocation in future, consistent with an order? I do not believe the mother would. I believe the father will.

13. Did the relocating parent comply with and encourage parenting time in the past, before the notice of relocation and while the proceedings were under way? As noted, there was "substantial compliance" in fact but I doubt it was "in spirit" and I find it is highly likely the mother has been undermining the father's relationship with the child for years. On the other hand, there is some evidence past and present that the father has not always been able to refrain from making negative comments about the mother. Regardless of the parties' history, it is imperative that the father not speak negatively about the mother for any reason.

14. Required considerations include but are not necessarily limited to: the reasons for relocation; the impact of the relocation on the child;

parental time spent and involvement with the child; compliance with Notice of relocation; geographic restriction; reasonableness of proposal; and compliance with family law obligations. Yes, they've been considered.

15. Have both the relocation-specific factors and the best interests factors in s. 18(6) of the *Parenting and Support Act* been considered? Yes

16. Are there long-distance parenting considerations? Yes, these are not completely resolved. There will be a requirement for further financial disclosure from both parties.

17. Can the left behind parent afford parenting time? How much of the travel expense can each parent finance? Is relocation a viable option? This is unclear.

18. Will the relocating parent return to the community to visit family / relatives? This remains unclear.

19. Does the left behind parent have family in the new location? Yes, the mother has two other children living in Nova Scotia.

20. Has the relocating parent encouraged parenting time and / or complied with past orders and agreements? No, she has not.

21. Should the costs of parenting time be apportioned? If so, how? Unable to determine without the mother's full financial disclosure.

22. Can the payor parent prove undue hardship pursuant to s. 10(2)(b) of the *Child Support Guidelines*? I do not believe either party could but I am not entirely certain as there is insufficient evidence.

23. Can the relocating parent waive the table amount of child support? Uncertain if either party can.

24. If it is necessary to reduce or eliminate child support, should the move be permitted? This issue will need to be explored further.

**Conclusions:**

**The following orders are effective immediately upon release of this decision to the parties in advance and received by them by way of email transmission or otherwise**.

[244] The mother has failed to meet the burden of proving the proposed relocation is in the child's best interests or that the child remaining in the mother's primary care would be in the child's best interest.

[245] If varied by this decision, previous court orders relating to parenting and child support are suspended indefinitely pending further order from this Court.

[246] The father has proven on balance of probabilities that **it is in the child's best interest for her to return to Halifax Nova Scotia and to be placed in the father's primary care within 10 days of receipt of this decision** or no later than December 24, 2023, and remain in the father's primary care for up to 18 months and / or thereafter: this will allow the child to reconnect with everyone in this jurisdiction; allow the child to attend in person counseling services in Halifax Nova Scotia for at least 18 months (counselor chosen by the father funded by the mother); allow the parties to participate in a Parental Capacity Assessment by a Nova Scotia clinician (funded by the father); and allow the parties to participate in

a co-parenting program intended for parents of teenagers (arranged by each parent separately).

[247] The father shall have custody and decision making in relation to the child effective immediately meaning upon receipt of this advanced decision made available to the parties via email on December 14, 2023. **Decision making authority will be assigned to the father for at least eighteen months and / or indefinitely.**

[248] **Within 48 hours of receipt of this advanced decision provided by email to the parties, the mother shall advise the father if it is her intention to make the arrangements for the child to fly from British Columbia (or any other location the child may be) to Nova Scotia**. If the mother does not make the arrangements and communicate those arrangements to the father, the father will have authority to purchase tickets to fly the child to Nova Scotia after the first 48 hours have expired following receipt of this decision by email. The parties must cooperate to plan the child's travel. The parties shall share the cost of the travel for the child to be reimbursed to whomever paid for the arrangements within 14 days.

[249] I find it is in the child's best interest that I leave open the possibility of her relocating to British Columbia with her mother on REVIEW by the Court after a minimum of 18 months if the following requirements have been satisfied:

1. Within ten days of the receipt of an advanced copy of this decision via email, the child must return to Nova Scotia to live with her father primarily for at least six months, with a possible transition to a shared care parenting arrangement with her mother and her father after six months if her mother returns to live in Halifax Nova Scotia, but the child shall live in Nova Scotia primarily for at least eighteen consecutive months before the issue of relocation will be reviewed by the Court (it is always open to the parties to apply to prove a material change in circumstances);
2. The child attend in-person counseling in Nova Scotia for at least eighteen months (counselor chosen by the father but funded by the mother), and the child's counselor is in support of the relocation;
3. The parents complete a Parental Capacity Assessment completed by a Nova Scotian clinician (funded by the father), and follow any recommendations arising from the assessment;
4. Both parents attend a co-parenting program geared to parents with teenagers (arranged by each parent separately);
5. Any further application for relocation must include a realistic and well-planned move which considers the history of conflict between the parties and has a solid plan to ensure meaningful and ongoing contact for the child with both parents;
6. The plan must realistically consider the parties' financial resources;
7. There must be a plan to facilitate the ability of the child to move back and forth between her parents / communities with relative ease.
8. The father must either consent to the move or the mother must seek an order of the court before any relocation occurs.
9. The child will attend for the completion of a Voice of the Child report to be completed by a clinician in Nova Scotia no sooner than twelve months from the receipt of this decision. The cost shall be shared

between the mother and father according to their annual income for child support.

10. Each professional counselor or assessor involved in working with the child and the assessor completing the Parental Capacity Assessment must have reviewed this decision before the Court will accept any recommendations from the counselor or assessor.
11. At their request, Veith House reports and / or police reports and / or any exhibits from the trial held between February 2022 and June 2022 will be made available to any person working with the child or any assessor completing the Parental Capacity Assessment if deemed relevant. Previous decisions involving the father and / or the mother are published and available online.

[250] Upon the return of the child to this jurisdiction and the father's primary care for up to eighteen months and thereafter unless the parties reach an agreement or there is a further order of this Court, the father must be prepared to listen attentively to the child's statements about her needs.

[251] If possible, arrangements will be made for the child to attend her former school or a school in that catchment area or the child will attend a school in the father's area, if different.

[252] At no time shall either parent talk negatively about the other parent in the presence of the child or in the presence of persons known to the child. Neither parent shall speak to the child about court matters except to impress upon the child that the court order shall be followed, and the adults involved will ensure it is.

[253] Initially, the mother's in-person and online contact with the child shall be supervised through Veith House in Halifax Nova Scotia. After a six-month period has expired following receipt of this decision, the mother may have the same parenting time with the child in British Columbia as the father has suggested would be available to her.

[254] After the first six months supervised contact has expired from the date of receipt by email of an advanced copy of the court's decision, and if the mother travels to Nova Scotia, she may have care of the child for up to 10 days in any one month or as agreed between the parties.

[255] Unless the parties' give consent in writing, the mother's 10 days cannot be taken in blocks of more than 3 consecutive days at a time, ensuring the child is then in the care of her father for no less than 7 consecutive days. The mother's dates or schedule must be agreed upon between the parties in writing, or the matter may be brought back to Court if the parties cannot agree.

[256] At all other times, the child shall be in the care of the father.

[257] The mother is not permitted to attend the child's school at any time for any reason and she is not permitted to attend the child's extracurricular events for the first six months after this decision is rendered.

[258] Failure to abide by any of the above directions will extend the automatic right to a Review time clause by six months for the first breach or will eliminate the right to a Review on the second breach, thereby necessitating proof of a change of circumstances to vary the order. As noted above:

> Without the parties' consent and the child's therapist's recommendation (after having reviewed this decision and related documentation as necessary), the mother's contact with the child shall be fully supervised for at least six months or longer. Unless recommended by the child's counselor and agreed between the parties all contact shall be arranged through the Veith House parenting supervision program. The mother is familiar with the program and she has in fact commented on the positive the Veith House reports with respect to the child's and father's contact.

[259] Except to accompany the child back to Halifax from wherever the child is located in compliance with this order, the child may only travel with her mother outside of Halifax Nova Scotia, or to British Columbia or elsewhere after a six-month period of supervision has expired after receipt of this decision, and with the consent of the father or an order of this court.

[260] The father's payment of the table amount of child support for the child to the mother shall be suspended. The mother shall file her up to date financial information with the court within thirty days of receipt of this decision. The mother shall begin paying the table amount of child support to the father for the child on January 1, 2024, based on her total annual income for 2023. The mother

must provide sufficient financial information to establish what her annual income for child support is or should be.

[261] Upon noting that I am adopting only parts of the father's plan, for further clarification the terms / sentences which have a **line through them have not been granted. All terms without a line through them along with any amendments / additions are granted and shall be incorporated into the order**:

a. The father will have primary care of the child and all decision-making responsibility;

b. The mother is **to have supervised access with the child for six months**, either by phone, Face Time or in person parenting time with the child once or twice a week for up to a total of two hours initially until the child has seen a properly qualified counselor and it is determined it is in the child's best interests to increase parenting time and remove supervision.

c. The child will receive counseling as previously ordered, **with the counselor from Nova Scotia chosen by the father** paid by the mother **for a minimum of eighteen months**.

d. The **mother and the father** shall enroll in **co-parenting classes focusing on parents of teenagers** and **they shall both** provide proof to the court of completion. **This requirement must be completed before** supervision of the **mother's parenting time can be removed, and** providing the child's counselor recommends it.

e. If the mother remains in British Columbia, after a period of six months and following counseling for the child and a period of supervised visits for the mother, the child will visit her mother every Christmas, March break and for a four week block of parenting time in the summer that is from the start of the last week of July to the end of the third week of August and one additional week of the mother choosing in October each year provided that she ensures the child keeps up with her daily schooling requirements during that week.

f. **Non-supervised parenting time will commence only after the mother has taken court ordered parenting classes and received approval from the child's counselor**.- Appears to be a repeat of d.

g. If the mother chooses to return to Nova Scotia, **after a six month period of supervised parenting time,** additional time will be provided with the guidance of the child's counselor. **Ideally working toward an alternating weekly schedule.**

h. The child's dog […] should remain with the child and travel with her between homes. I have made provision to welcome […] into our home while the child is here, and we will tend to his veterinary expenses when he is with us. **It is expected that if possible the mother will cooperate with the father's suggestion which is found to be made in the child's best interest.**

i. The child would return to [elementary] public school in Nova Scotia […].

~~j. The order will need to have strict enforcement clauses so that I will be able to ensure the order can be enforced by police if the mother does not return the child.~~ **The issue of any denial of parenting finding and subsequent terms being added to the order is adjourned until the court is able to determine whether the child has been returned to Halifax Nova Scotia as ordered. Either party may write to the court to provide an update about whether the child returned to Halifax Nova Scotia only.**

**k.** ~~As I will have primary care and control of the child her~~ **As of January 1, 2024 the mother will pay the table amount of child support based on her annual income for child support. To be determine upon receipt of the mother's financial disclosure within 14 days of receipt of this decision by email.**

l. ~~Flights for the child or her mother for them to see each other will have to be paid for by the mother as she has chosen to leave Nova Scotia~~. To be determined upon a review of the parties financial information.

[262] In addition, the father has asked for the following:

a. The court proceed with contempt proceedings against the mother for failing to return the child to Nova Scotia. If found guilty the outcome (sentencing) to be placed as suspended sentence until the child reaches the age of 18 unless the mother breaches the court order. On said breach all applicable penalties for contempt be enforced immediately.

~~b. Upon a decision that the child is returned to Nova Scotia and placed in my care, that the mother have three calendar days to comply.~~ I have specified 10 days or by December 24, 2023.

~~c. The mother be fined $1000 per day for every day she fails to comply.~~ Adjourned for further consideration after it has been determined whether or not the mother has complied with the terms included in this decision.

~~d. After five days of non-compliance, the mother be formally charged with child abduction under criminal code 282.~~ No jurisdiction to grant this order.

e. ~~After five more days of non-compliance police, child protection services and any appropriate authority be required to enforce our court order and intervene~~. No jurisdiction to order the police or child protection services to enforce a court order in the manner suggested by the father.

[263] Maintenance Enforcement provision and police enforcement provisions will be included in the order.

[264] A future date for a court conference will be set **within six months** to address the issue of child support; to address the issue of costs related to the child's travel to and or from British Columbia if still relevant at that time; and to address any further issues related to the denial of parenting time application filed pursuant to the *Parenting and Support Act*. This date will be arranged by our scheduling department with the parties.

[265] The mother's legal counsel will draft the order within three days of receiving this decision and file it with the Court to be issued.

**OTH-127771 Contempt hearing**

[266] The father has requested that the Court address his allegations of contempt against the mother:

1. Denial of parenting time and phone contact time with the child;
2. Failure to communicate on changing the child's school to home schooling; and
3. Leaving the province with the child without the father's consent.

These will be added to the allegations of contempt cited by the court in file **OTH-127771**.

[267] The Conference Memorandum from January 2023 has been amended to correct one of the dates the mother is alleged to have failed to appear in court in person as directed, specifically October 19, 2022, and not August 19, 2022.

[268] **Dates will be set for a pre-trial within the next three months and a trial on the contempt issues alone will then be scheduled within six months.** Our scheduling department will arrange these dates with the parties.. The parties are encouraged to review the following cases *Godard* v. *Godard*, 2015 ONCA; *Somers* v. *Aucoin*, 2020 NSSC 339; *Williams* v. *Power* 2022 NSSC 156; [2022] N.S.J. No 171. Further information will be provided in a separate case conference memorandum under **OTH-127771**. All documents filed in relation to the contempt proceeding should include the file number **OTH-127771.**

[269] Please review Rule 89.03 of the Civil Procedure Rules which has been read to the parties and specifically to the mother on the record previously and was included in a previous Conference Memorandum which has now been amended.

> Rule 89.03
>
> 89.03 Citation by judge
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> 1. A judge may start a contempt process by citing a person who is before the judge.

2. A judge may order a person to appear before the judge for the purpose of being cited for contempt or, if the judge is satisfied the person will not obey the order, order the sheriff to bring the person before the judge.

3. A citation for contempt must be given orally in open court by the judge who starts a contempt process.

4. The judge must notify the person alleged to be in contempt of the time, date, and place of the contempt hearing, provide a precise description of the conduct alleged to be contemptuous, and advise the person of all of the following:

(a) the person is presumed innocent unless the contrary is proved beyond a reasonable doubt, is not required to give evidence, and is entitled to rely on the presumption of innocence whether or not the person gives evidence;

(b) the judge will preside at the hearing and determine whether the person is guilty of contempt, unless the judge decides that another judge should do so;

(c) if contempt in the face of the court is alleged and the judge is to determine the contempt proceeding, the judge's knowledge of what took place is part of the evidence;

(d) the person has the right to retain and instruct counsel and to be represented by counsel at the hearing;

(e) a person who cannot afford counsel may apply to Nova Scotia Legal Aid, and court staff will provide contact information;

(f) the person may choose to present no evidence, to present evidence by filing an affidavit before the hearing, or to present evidence after all of the evidence against the person is heard and cross-examination is complete;

(g) the person is required to attend the hearing and failure to attend may result in arrest.

(5) The judge may request the person's promise to attend at the appointed time, date, and place, or order the person to do so.

(6) The judge may provide particulars of the alleged contemptuous conduct in writing after the citation.

Cindy G. Cormier, J.