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S.S. v. R.A., 2024 ONSC 2870

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CITATION: S.S. v. R.A., 2024 ONSC 2870
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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
S.S.	)	Michael J. Stangarone and Julia McArthur, for the Applicant Mother
	)	
Applicant Mother	)	
	)	
– and –	)	
	)	
R.A.	)	On his own behalf
	)	
Respondent Father	)	
	)	
	)	
	)	
	)	**HEARD:** May 19, 23, 24, 25, 26, 29, 30, 31, June 1, September 18, 19, 20, 21, 22, and November 21, 22, 23, 24, 27 2023

JUSTICE ALEX FINLAYSON

PART I: OVERVIEW

[1] This case primarily concerns a young boy named D. D. recently turned 8 years old. D. has an anxiety disorder, which is exacerbated by his separation from his parents, and a mild form of Tourette syndrome, also aggravated by his anxiety. By the time that this 19-day trial began, D.'s parents had been embroiled in high conflict litigation for close to three years. D. sometimes exhibited anger and aggression towards both of his parents, and his peers at school.

[2] This case also concerns financial issues, specifically child and spousal support, and equalization of net family property. The father is a senior manager with a major consulting firm. In the year before this trial, his employment income was $223,000.00. As the trial approached, the father changed his work arrangements to work less, and consequently that significantly decreased his income. The father came into this trial in non-compliance of an order for the uncharacterized payments of monthly funds to the mother, and in default of a costs order.

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[3] The mother is a creative person. She started to work as a photographer before the marriage. While she occasionally engaged in artistic projects during the marriage, she otherwise did not work. She was financially dependent on the father. That remains so to this day.

[4] The parties were married for a short five years only, between April 10, 2015 and June 1, 2020. Their marriage was very traditional. Both parents are of the Muslim faith. They agree that their marriage was arranged in accordance with certain cultural norms and traditions.

[5] Upon the marriage, the mother moved into the basement of father's house in Ajax that he owned for several years before the marriage. The paternal grandparents and the father's sisters also live there. The other paternal family members occupy other areas of the home.

[6] The mother became pregnant with D. soon after the marriage. She was the child's primary parent during the marriage.

[7] The parties had some mental health difficulties during the marriage. The parties moved out of the Ajax property twice during the marriage. These moves away from the father's Ajax home did not last long. Soon after the first move out, the parties returned to live with the father's extended family, after the mother got ill. After their second move out, the parties separated.

[8] The parties' separation was dramatic. The father discovered that the mother had an affair.[1] The father alleges that the mother was going to harm him with a box cutter. The mother ended up in the hospital again, experiencing a mental health episode. The father did not allow the mother to return to the home. When she tried to return home, the father intimated to her that he had changed the locks, and that he would telephone the police.

[9] I found the father to be very angry towards the mother. That anger continues to this day. It has manifested itself in his parenting, in his dealings with service providers involved with the family, in his litigation conduct, and in the positions he has taken at trial. Immediately after the separation, the father seized control of the situation respecting D.'s parenting. He altered the *status*

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[1] The mother alleges that the father had an affair also, during a business trip. If he did, then the father very much applied a double standard in his treatment of the mother.

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quo. He would later use this trial process to expand upon prior allegations about the mother's character. The father disparaged and humiliated her throughout this trial.

[10] With nowhere else to go, the mother ended up living with her brother in Stouffville from around mid-June 2020 until about the end of the year. The father restricted the mother's contact with D. in these early days, all but precipitating the mother to launch this case on a rush basis. Once this case got underway, restrictions were then imposed on the mother's contact with the child on ostensible mental health and safety grounds, pursuant to an early Consent Order of Justice Fryer. The mother was able to see D. while she lived in Stouffville, under the supervision of her brother or his wife. Those visits did not then occur without conflict.

[11] By early 2021, the mother moved out of her brother's house in Stouffville and into a house in Ajax, with her parents and sister. The mother's new home was near where the father lived, and where the child goes to school. But the father would not allow visits to take place in that home, even if supervised by another family member. For the better part of a year, both the mother, and the father and D., separately commuted back and forth between Ajax, to the maternal uncle's house in Stouffville, for the mother to have her supervised parenting time. This too caused problems.

[12] Regrettably, this early requirement, that the mother could only have supervised parenting time with D., went on for almost two years. Furthermore, her parenting time actually decreased, rather than increased.

[13] It was only in early 2022, when the maternal uncle was no longer willing to supervise, that a change to the parenting arrangements occurred. The father would not agree to the Court lifting the supervision. This led to a motion I heard on March 17, 2022. At it, the mother only asked for limited time, pending a May 2022 trial. I lifted the supervision and granted the mother's motion in full.

[14] By that point, the mother's mental health had been scrutinized multiple times. Both at the time of the March 17, 2022 motion, and again by the time of this trial, **none** of the professionals who had been involved with this family supported the father's narrative about the mother, that she is mentally ill, that she must take medication, that she does not perceive reality when not taking medication, that she makes up false narratives and gaslights him when off her medication, or that the mother's sister's mental illness or the maternal grandparents' past difficulties in their own relationship, pose some kind risk for this child. Equally, **none** of the professionals involved with this family have taken the position that that the child's mental health deteriorates as a result of

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contact with the mother either, another of the father's unsupported positions in this litigation. The professional evidence has actually been to the contrary. Yet the father has been completely unwilling or unable to accept this feed back, and consequently to work out a reasonable parenting arrangement with this mother.

[15] Unfortunately, the case was not then called to trial for another year. It began during the spring 2023 sittings. The Court had previously appointed the Office of the Children's Lawyer to undertake an investigation and to prepare a report pursuant to section 112 of the *Courts of Justice Act*. Following the release of this report (the "First OCL Report"), the father filed a 95-page dispute of it. His dispute had a table of contents with various headings and subheadings, and it also had attached to it, another report. The first clinician's supervisor initially responded to the father's dispute by letter supporting the validity and accuracy of the First OCL Report. The OCL later changed its mind, and offered to undertake its second section 112 investigation. On April 19, 2022, Fryer J. appointed the OCL for the second time (which resulted in the "Second OCL Report") and determined this case was not trial ready as a result.

[16] At the outset of this trial, the mother asked the Court to award her sole decision-making responsibility. She asked the Court to order parenting time on a so-called 2-2-5 schedule and various ancillary parenting orders. By the end of the trial, the mother changed her position, and instead asked the Court to order a schedule that would make her the primary parent. The 2-2-5 shared parenting schedule became her alternate position.

[17] By contrast, the father initially asked the Court to award him sole decision-making. He asked the Court to order limited parenting time for the mother, not to interfere with the child's religious Saturday school. He continued to take the position that the mother's sister and parents pose risks to this child. He asked for what would essentially be a mutual restraining order, or perhaps a lesser conduct order. In his Opening Trial Statement, the father also argued that there needed to be further disclosure, including health disclosure from the mother, and a psychiatric assessment of her.

[18] By the end of the trial, the father changed his position, too. He stopped short of asking the Court for the outright eradication of the mother from D.'s life, forever. He asked for "An Order of protection terminating the Applicant's parenting access time". His request for a restraining order became one sided (against the mother). And he would have the Court completely remove the mother's ability to talk to professionals involved in the child's life, or obtain documentation about the child, not vetted through him. His alternative position, offered up during closing

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submissions during a dialogue with this Court, was there should be a suspension of parenting time and of the mother's involvement, but she could come back to Court upon obtaining a psychiatric assessment and taking a parenting course.

[19] During closing submissions, Mr. Stangarone on behalf of the mother, argued that she had been emotionally abused throughout this marriage and that the father continued his abuse in various ways post-separation, up to and including during this trial. I agree with this argument of Mr. Stangarone for the reasons that follow.

[20] But this Court's Order cannot turn entirely on the father's bad behaviour. There must be a holistic best interests analysis, with the Court's sole focus being on the child.

[21] The mother's mental health has improved in the years since the end of the marriage. But the child exhibits some challenging behaviours. While I have an overwhelming amount of concerns about the way the father has conducted himself, his approach to parenting, his view of the mother's relationship with the child, and his conduct of this case, I also have three very specific concerns about the mother's parenting. I am concerned that the restrictions that were imposed on the mother, coupled with the father's influence on the child, his attempts to exclude the mother from this child's life, and his attempts to control her, have had their effect. She has been deprived of a full opportunity to parent, and to learn along the way. The mother experienced some difficulty parenting this child. Frankly so has the father.

[22] This confluence of problems has contributed to limiting the range of remedial options that might have otherwise been available. That said, I do not find the three concerns about the mother's parenting to be insurmountable.

[23] For the reasons that follow, I find that joint decision-making, which the author the First OCL Report recommended, is not workable. Equally, the father cannot be trusted to be this child's sole decision-maker, despite the recommendation for that in the Second OCL Report.

[24] I find that the Court must choose an arbiter between these parents to decide. After much careful consideration, the Court selects the mother. In the end, despite the Court's three concerns, I have more confidence in her ability to learn, to have insight, to correct mistakes, and to recognize the importance of the child's relationship with the other parent than the father does. In short, the Court's concerns about the father far outweigh those it has about the mother.

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[25] Because of the three concerns about the mother, I find that the Court should map out the decisions that need to be made with as much detail as possible. Recognizing that it is not possible for me to exhaustively do so, the mother will be given the residual power to decide any other issues.

[26] I also find that the mother's time with the child needs to increase immediately. The evidence does not support the father's request for an order terminating the mother's parenting time, either temporarily pending some kind of review or Motion to Change, or permanently.

[27] The Court is also concerned that any Order it makes should succeed. Therefore, for the next year, until counselling for this child resumes and both parents take a parenting course, I increase the mother's parenting time using the child's attendance at school as a support to provide the mother with the time and skills she needs, as she continues along her journey as D.'s mother. Frankly, the father also needs these supports. In a year from now, the mother's alternative request made at the end of this trial, for a 2-2-5 schedule, shall be put in place.

[28] To be very clear, I have no hesitation in finding that if the father is given any leeway, he will use it to marginalize and undermine the mother's relationship with D., and cause the child emotional harm in the process. I seriously considered whether his parenting time with this child needed to be curtailed to ensure that the mother's relationship with the child succeeds. In the end I am refraining from making such an Order, because of the medical evidence I heard about the child's separation anxiety. And I was also not asked to do this by the mother, perhaps in part because of that evidence.

[29] I nevertheless intend to make provision, that if the father fails to support the child's relationship with his mother, or breaches this Court's Order in any way, that will constitute a material change. The mother will be entitled to return this matter to Court and to seek a remedy, which may include a reduction of his parenting time, or other relief.

[30] In regards to child support, the father became the child's primary parent post-separation, until now. The father seeks retroactive child support from the mother, but except for a small amount for 2021, she does not owe him any. The prospective child support order that I am now making engages section 9 of the *Federal Child Support Guidelines.* Neither side actually provided the Court with the evidence or submissions it needs to undertake a proper *Contino* analysis. The father did not even fill out the budget section on three of his financial statements. In any event, as the mother does not and will not in the immediate to longer term have any significant income,

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other than spousal support, there would be little by way of a reduction to child support having regard to the shared parenting schedule that I am ordering.

[31] The mother's entitlement to spousal support was conceded in a Statement of Agreed Facts tendered at the outset of this trial. The parties differ on quantum and duration. The father's calculations in both his Opening Trial Statement and his Closing Submissions were premised on him being the child's primary parent. While that was so for the purposes of retroactive support, that is no longer the case. The custodial payor formula of the *Spousal Support Advisory Guidelines* the (*"SSAGs*") is not appliable any longer.

[32] The father's expectations about what he will have to pay going forward are not reasonable. For example, after not having even paid the interim uncharacterized monthly amount to the mother each month that he agreed to pay, the father now asks the Court to terminate spousal support altogether as of December of 2023.

[33] I find the father owes a small lump sum on account retroactive spousal support, at the high range of the *SSAGs* using the "Custodial Payor" Formula. With the new parenting arrangement being ordered, the "With Child Support" Formula shall be used going forward, and the amount of spousal support in a shared parenting arrangement under that formula increases. I find that commencing June 1, 2024, the father shall pay increased spousal support, but which falls slightly less than the mid-range of the *SSAGs,* but under the "With Child Support" Formula. With child support, the amount I will order equalizes the parties' net disposable incomes. I also shall order a spousal support review, to occur at any point after 6 years, when D. is ready for high school.

[34] I find the father owes an equalization payment of $124,542.43 to the mother. He owes her pre-judgment interest of $9,902.05 on that amount, up to today's date. There is no need for more disclosure or more litigation, as the father stated should be ordered. I find that the father took this position based on a statement in an Endorsement of Fryer J., which he took out of context. The parties were given more than ample opportunity over three different trial sittings to call whatever evidence they wanted. If there were gaps in the father's financial evidence, the father must take responsibility for that.

PART II: BACKGROUND

A. Backgrounds and Financial Circumstances of the Parties

(1) The Mother

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[35] The mother is currently 34 years old. She was just 25 when she married the father.

[36] Following her graduation from high school, the mother enrolled in a two-year college diploma program in photography. She did not finish the program. The mother did some photography work for a time. She tried to build a career. That came to an end when she got married.

[37] The mother testified that her career was just gaining traction, when she got married to the father. It is not disputed that the mother did not work much during the marriage. For example, the mother participated in an art show, but did not earn significant funds. This was more akin to a hobby at that point.

[38] Before the marriage, the mother disclosed to the father, that she had student debt that she wanted to pay off. She said that the father wanted her to be a "housewife" and later on, a mother. He agreed to pay off her student debt, but it was never paid off. It is not disputed that the mother was financially dependent upon the father during the marriage. For example, although inconsistently, he gave her funds, akin to an allowance at first, and later access to credit cards.

[39] The mother has tried to do some photography work after the separation, but she has largely been out of the work force. She obtained social assistance in 2022. Her budget is extremely modest, consisting of transportation and cell phone expenses, a small amount for food, minimal health expenses, very modest clothing and personal care amounts, $100 per month for children's activities, and a gym membership.

[40] The mother does not have a lot of money in the bank. She has had to turn to members of her family for support while this case has been pending. For example, the maternal uncle testified that he paid for a course that the mother took, he provided housing, and he covered other expenses for her. He likewise paid for her legal fees.

[41] On July 16, 2020, just a little over a month after the separation, the mother's former counsel requested that the father commence paying spousal support of $950.00 per month on a without prejudice basis, based on the father's estimated income of $160,000.00. On July 24, 2020, the mother revised her position and asked for $1,100.00 per month, as her former counsel had been earlier unaware that the father had rental properties and earned income from that. Former counsel made a third request for support on July 29, 2020.

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[42] The father started to pay the mother $950.00 per month in November of 2020.[2] The funds were characterized as an advance, not monthly support. The requirement that he make ongoing advances in this amount was memorialized in a later consent dated November 25, 2020, that was incorporated into the Order of Fryer J. dated December 3, 2020. The relevant term reads: "The Respondent Father shall continue to pay to the Applicant Mother $950.00 per month on a temporary and without prejudice basis as an advance on either property or support".

[43] The father is in default of this Order as of August of 2023. He is also in default of a costs order of $2,600.00 that I ordered him to pay on March 17, 2022. He has offered various unreasonable excuses for this. This has no doubt compounded the mother's financial difficulties.

[44] The mother did not really have a plan for her own support at this trial. She testified that she would like to obtain a place of her own and "get back on [her] feet", but she cannot afford to do so. Were she to move out, she would like to live in the same area as the father, so that the child can continue in his current school, and have the same friends and community.

(2) The Father

[45] The father is currently 39 years old. He holds a Bachelor of Science Degree (Hons.) in Mathematics, Statistics and Actuarial Science from the University of Toronto. He obtained this in 2008. According to his *curriculum vitae*, he also holds a Masters Degree from the Schulich School of Business at York University. He describes himself as an "executive consultant", an "obsessive problem solver", and a "loving father" on this *curriculum vitae*.

[46] The father is currently employed as a Senior Manager with a large consulting firm. For the seven-year period between 2013 and 2020 (which included the period of the marriage), the father worked as a management consultant for a different large organization. In his Answer dated November 5, 2020, the father claimed to be a "consultant", "earning $160,000.00 per annum as a

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[2] According to the chart in the mother's closing submissions, the father only paid two months in 2020. The father's draft Order says that he paid $950.00 per month in 2020, without specifying when he started to do so. But for example, he clearly did not pay in either June or July, given counsel's letters asking him to start paying. I find the commencement date to have been in November.

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T4 employee". Eighteen days later, the father changed jobs, to work for the new consulting firm. His salary increased in the years that followed.

[47] In cross-examination, the father explained that he entered into a "personal flexibility arrangement" at work. The father said that staring in December of 2022, he was experiencing stress with the trial and with reviewing documents. He also said that he is taking 60 mgs of Cymbalta, and he had medical authorization to do this. The father said that he lost his ability to focus, and that he could not perform at his job as a senior management consultant while on medication. He claimed that now, after Covid-19, a global restructuring within the company, and the softening of the market, he was not able to support multiple time zones or to support the travel requirements of his job, a responsibility he had before, either. He said that the flexibility arrangement allows him to "respect [his] parenting responsibilities", and to not have to work long hours. The father further explained that he took the entire summer of 2023 off of work, even though this trial was on a complete *hiatus* during the summer months. He said that the situation was "extremely stressful" as the reason for the time off.

[48] During closing submissions, the father said that he went back to work for a week, only to then go on a medical leave. As such, he was apparently paid based on full-time work. The father said he intended to return to work in 2024 (after this trial ended), but only on an 80% basis.

B. The Circumstances of the Parties' Relationship

(1) The Parties' Engagement

[49] The parties were introduced by a mutual friend in 2014. They were engaged soon thereafter.

[50] The engagement lasted about 9 months. The mother felt that their courtship was too rushed. She said she had concerns, early on. For example, she said she wanted to live with the father separately; not in the father's household with his other family members. That did not happen. The mother testified that the father promised her that his family would give the new couple space. That did not materialize. There were brief times during their five-year marriage when they lived apart from the father's extended family, but the situation did not last, either.

(2) The Parties' Experiences Living in the Basement of the Father's Ajax Home

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[51] The mother described feelings of isolation and desperation after the marriage. She testified that she felt cooped up and secluded living in the basement of the father's home. The mother also felt mistreated by members of the father's family. She testified that there was a lack of communication within the household. She felt caught in between what the father's family wanted and expected of her, and what she wanted in the new marriage. The mother explained that when the father was gone to work, the paternal grandmother would "talk down" to her. The mother described the father's household as "intense". She said she was turned into a scapegoat.

[52] The mother felt isolated from her family. She said that the father even encouraged her not to talk to her own mother. She did not have much of a support network. She was left financially "in the dark". The father controlled the finances.

[53] The father disagreed that the environment in the home was somber. During his examination-in-chief, the father tendered various family photographs to try to rebut the mother's perspective. He also tendered photographs to demonstrate how the mother was not isolated from her family, but rather they were involved.

(3) The Parties' Expectations and Alleged 'Lifestyle' Choices

[54] There was a clash in the parties' expectations about what their married life would look like. The mother views the father and his family as religiously more observant and conservative than she was. The mother testified that the father's family had a number of expectations of her, including that she had to wear their traditional clothing.

[55] The father showed the Court photographs of other family members, like an aunt and a cousin, who chose to dress differently, and said these family members are not mistreated or harassed on account of their personal decision to dress this way.

(4) The Family's Pilgrimage to Iraq in 2015

[56] When the mother was approximately five months pregnant, the father and his extended family organized a pilgrimage trip to Iraq. This trip caused a significant rift within the family.

[57] The mother explained that she was put under immense pressure to take this trip. She said she was made to go to her doctor to get clearance to travel. When she talked about not wanting to go, the mother said she was told to "suck it up" and to be "grateful". She felt "herded" to go on this trip. The father objected to the mother's characterization of having been forced to go on this

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trip, citing the fact that the mother had renewed her passport in advance of this trip, and asked if her own parents could accompany his family on the trip, which they did.

[58] The mother testified that she felt sick during her pregnancy and that happened while on this trip. She said she was criticized and looked down upon for not engaging in more activities during this trip. The parties missed their return flight to Canada at the end of the trip, because the mother experienced pregnancy sickness in the airport and needed to get some food. The mother testified that the situation was also quite tense because there were bombings happening in the area at the time.

[59] The mother said that after she and the father returned home on a different flight, she was criticized by one of the father's sisters for having "embarrassed the entire family" and for being "extremely disrespectful". The mother testified there was a lot of tension in the household. She explained that the father suddenly packed up their belongings, and they moved into a condominium in Markham.

[60] The father denied that the mother was sick and needed food as the reason for the missed flight back from Iraq. He made other allegations about why they missed the flight home, one of which is extreme. The father claimed the mother refused to get on the plane unless they could move out of his parents' home upon their return, but he had already told her, before the marriage, that he could not support two households. He even claimed that the mother threatened to harm the unborn baby, if he would not agree to move out.

(5) The Parties' Temporary Relocation to a Condominium in Markham

[61] The parties did move out of the Ajax home into a condominium in Markham. That did not last long. At most, the parties moved out for between 4 or 5 months.[3] Soon after the mother gave birth, she returned to the hospital, suffering from a high fever. The mother testified that while she

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[3] The mother testified that she was about 5 months pregnant at the time of the Iraq trip. The mother was hospitalized soon after the child's birth. The move back to the father's parents' house happened right after this hospitalization.

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was in the hospital, the father took new baby D. to the Ajax property. The father then took her back to the Ajax home too, upon her discharge from the hospital.

(6) The Parenting Arrangements During the Marriage

[62] There was some disagreement between the parties about who was the child's primary parent during the marriage. I find that the mother was D.'s primary parent.

[63] The mother testified about the care that she provided for the child. She explained that the father worked between 60 to 80 hours per week, and never on a part-time basis. Rather, he told her about various other work contracts that he wanted to pursue instead.

[64] The father travelled for work. The mother explained that the father's business travel was within Canada and the United States, and that some of these trips lasted an entire week. The mother testified that the father would be gone from Sunday evenings, and return Friday night, or Saturday mornings, pretty much every week. She recalled that the child would only spend one bedtime with the father at home. The mother occasionally travelled with the child, to accompany the father on these business trips, but not always.

[65] The mother tendered a number of photographs of her and the child together, of the child's living environment, and of the parenting that she did during the marriage. These photographs included engaging in art projects, and taking D. on outdoor and other activities, like swimming.

[66] The mother testified that the father's family members helped care for D. when the father was home from work, but when he was away, they expected her to care for D. full time without assistance. She testified she only got a reprieve if she needed to go to a doctor's appointment, or the like.

(7) The Mother's Brief Hospitalization in 2018

[67] The mother experienced mental health episodes during the marriage. She testified that she experienced anxiety and stress, as she was closed off from her support system. The mother first saw a psychiatrist named Dr. Khitab, in 2016. She said she was diagnosed with generalized anxiety disorder and depression.

[68] By 2018, when D. was about two years old, the parties were still living in the Ajax home. The mother explained that she wanted to move out. The mother said that the father was dismissive. The mother became very upset, and she ended up calling a "suicide hotline". Although she testified

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that she told the person on the hotline that she was not actually planning suicide, she said she had some "dark thoughts".

[69] The mother ended up either going, or being taken to the hospital, for an overnight. She recalled that the doctor at the hospital must have prescribed her some medication for anxiety, and advised her to sort out her situation at home.

[70] After this brief hospital stay, the mother told the father, again, that she wanted to move out of the Ajax home. She also said she wanted the parties to attend counselling together. To his credit, the father did agree to move out of that house, for a second time, after this episode. He did not go to counselling with her, however.

(8) The Parties' 2019 Move to the Oshawa Rental

[71] The parties moved to a rental property in Oshawa, but the father continued to work a lot when the parties lived in Oshawa. The mother testified that the father was "coming in and out" of this property when they lived there (referring to the amount of time he spent away for work).

[72] The mother experienced another mental health incident in the Oshawa rental. She smashed a glass and broke a window, while caring for the child, while the father was away. She did reach out to him over text message for his support when this occurred.

[73] The child's life in this Oshawa rental did not last. After the separation, the father took D. and returned to living with his family in the Ajax home.[4]

(9) The Parties' Separation and the Immediate Aftermath

[74] On May 31, 2020, after she had put D. down for an afternoon nap, the father confronted her. He had her iPad in hand, and asked her if there was anything she wanted to tell him. The

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[4] Because they were living in the Oshawa rental at the time of separation, the Ajax property is not a "matrimonial home". The father is entitled to deduct its value on the date of marriage in the calculation of his net family property for equalization: see the definition of "matrimonial home" in sections 4(1) and 18(1) of the *Family Law Act, R.S.O. 1990 c. F.3, as amended* (the "*FLA*"); see also the definition of "net family property" in section 4(1).

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mother's response was that they had a "problem" and she wanted "emancipation". The mother testified that an argument ensued as the father insisted on knowing who the mother was speaking to over the internet. According to the mother, the father became upset, threw everything off his desk, and demanded to know this information, since he was entitled to it as the mother's "husband".

[75] The father denied having confronted the mother about the affair, or that he did so violently. He claimed that it was the mother who "lost control". He said that she had hit D. on the hand, because D. tried to get her phone to watch cartoons. The father said this caused him to ask the mother if there was something on her phone that she did not want the child to see. The mother admitted to having met another artist.

[76] The father testified that later in the day, after the child had woken up from his nap, he overheard the mother either speaking on the telephone, or talking to herself. He said she was talking about a box cutter, saying that she would either attack the father with it, or use it in self-defense. He also said he had heard her talking about his life insurance. The father says he was afraid.

[77] The father said he later saw the mother with her hands inside the pockets of a 'hoodie' sweater, but he talked to her calmly, while also maneuvering in a fashion to grab her hand, and take the box cutter away. He said that he encouraged the mother to take some medication, which she did, and she then fell asleep. He said that he called a "suicide prevention" hotline, while she was sleeping. The mother denied that she had planned to hurt the father.

[78] According to the mother, the father suggested that they drop D. off at his sister's house for a sleep over, and that the mother go to her parents' house for a "break." While their accounts differ about how this was ultimately implemented, the *status quo* of D. being away from the mother began at this time, essentially immediately upon the separation. D. did not accompany his mother when she was taken to her parents.

[79] The mother thought this break was to be a temporary one. She said she only packed enough clothing for one or two days, but the separation would become permanent.

[80] In the days that followed, the mother had another mental health episode. On June 4 or 5, 2020, she went to Credit Valley Hospital. Like her previous hospitalizations, she was only there briefly. She testified that she was diagnosed with "situational stress", said she was prescribed anti-anxiety medication. She said she obtained a recommendation for counselling.

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[81] There was insufficient space in the mother's parents' house for her to stay long term. The father booked a hotel for the mother to stay at for a few days. She would later go to her brother's house in Stouffville thereafter.

[82] The parties communicated over text message in these days that followed the separation. After being away, the mother apologized to the father and told him that she would do whatever it would take to save the marriage, including resuming wearing the traditional clothing. The father deflected and delayed allowing the mother to return to the house.

[83] The mother's counsel asked the father about a number of other messages exchanged between them during these first few days after the separation. The general theme of these messages was in the nature of discussions between the parties about perhaps working on, and repairing their marriage. Some of the messages from the father were about the mother addressing her mental health.

[84] During this time frame, in these messages, the father told the mother that one of the conditions for her to return, would be him controlling her access to the internet. He told her that she needed to give him her password. He told her that she needed to close out all of her social media accounts and wipe away any other online presence. The father told the mother that her communications over WhatsApp would need to be monitored. He did this at a time that the mother was very vulnerable.

[85] On June 3, 2020, the mother asked the father whether she could order burgers. The father responded and told her that she could but in general she needed to "start watching [her] diet." He told her that the amount of sugar she was eating was not healthy. He told her that he needed her to start taking her appearance seriously, saying "I'm your husband and need you to pay attention to your weight, appearance etc.". He said that it would make him "happier if [she] ordered something healthy, but since [she was] going through a tough time if the burger is comfort food I'll allow it." The mother wrote to the father that she found his messages to be hurtful.

[86] The mother asked the father to see D. many times in these early days. She tried to call him, too. The father restricted the mother's ability to see and speak to D. Although he did bring the child to see the mother while she was in the hotel, he did so just once. During his cross-examination of the mother about the circumstances surrounding the separation, the father himself introduced an audio recording that the mother had made during this time frame. The audio recording is labelled "Applicant's MMS Message to [D.] Following a Call 020-05-05-21-04-19-

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1" The recording is of the mother singing "Twinkle Little Star", to be played for the child. While the father may have sought to introduce this recording for some other purpose, this evidence became part of the mother's narrative that the father was restricting the mother's contact to with the child. The mother testified that she wasn't being allowed to speak to the child, so she sent him a pre-recording. I accept her evidence.

(10) The Mother's Attempt to Return Home on June 9, 2020

[87] On June 9, 2020, the mother told the father that she would be coming to the rental property in Oshawa. The father told the mother that she was not welcome in the home, and intimated that he had changed the locks. He also told her he would be calling the police if she tried to come back. During his cross-examination of the mother, the father tendered another recording, this one audio of a phone call between the parties. There was no objection to the father tendering it.

[88] During the call, the mother indicated that she wanted to return home. The father told the mother that the house was "under surveillance" and that she would not be able to enter the house with the key that she had. When the mother asked the father whether he changed the locks, he deflected answering. Throughout this recording, the father cut the mother off a number of times when she tried to speak. He told her that he wanted to get "legal counsel". An argument ensued about the mother returning to the home. The father said multiple times that the mother was not welcome to return to the house. The recording ended with the father telling the mother that he would call the police if she tried to come home.

[89] Consequently rather than going straight to the Oshawa rental, the mother instead went to the Oshawa police station. She had police accompany her to the home. When the mother got there, D. was not there, but the father and his sister were in the process of removing items from the house, including some of her journals.[5] The mother was given access to the house for a brief time to pack some belongings, too.

[90] The mother then went to stay with her brother in Stouffville. The mother's brother is married and had two young children, O. and K. The mother stayed there until January of 2021,

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[5] It is admitted that the father took several of the mother's journals. The journals were returned to her prior to the trial, after the father first made photocopies.

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when she returned to Ajax, to live in a new house with her parents that her brother helped purchase. The mother's sister occupies space in the basement of this home, although precisely what time periods she lived in the home in the past, and whether the mother was transparent about that, was a contested issue during this trial.

[91] It is common ground that there was some past family violence between the maternal grandparents, with whom the mother now lives. It is also understood that the mother's sister suffers from some mental health issues. The father claimed throughout this proceeding, and still at this trial, that these grandparents, and the mother's sister, pose a risk to this child.

(11) The Father's Continued Control of the Mother's Contact With D.

[92] On June 10, 2020, the day after the mother moved in with her brother, the mother told the father that she wanted to put things on a "two week pause". She proposed a temporary equal time-sharing arrangement for her to see D. The father's response was that he was not "comfortable with in person visits right now". Over several messages, he told the mother she had to decide who she wanted to be, to be in a better place to decide on whether she wanted to remain in the marriage. Although the mother told the father that seeing the child was a "parallel conversation", the father wrote, "[f]or now, you can do phone calls and video calls with him. After that until you establish a regular medicine and therapy regimen and get back to a stable place emotionally and mentally we can do supervised visits. Then eventually sleepovers as you're proposing". When the mother told the father that was not acceptable to her, he reiterated, "I don't feel [D.] is safe under your care when you are unwell, off medicine or not actively attending therapy." He also told the mother that the medical professionals did not have "all the facts", an argument he continued to make throughout these proceedings, and one that he is still making some three years later during this trial.

[93] The mother separately asked the father to bring the child to her brother's home, for a visit. The father would not do that, saying he was "not comfortable" and "rattled" by the mother's actions of June 9, 2020. He wrote to her, "I've heard your requests. I've asked you to think about some topics and share your plans independent of our relationship: pious lifestyle, art practice plans, family interactions, commitment to treatment." He said he also needed time to think through three of the four items on his list, although he claimed to commit that "access to your child and financial support regardless of your decisions will be there".

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[94] On June 11, 2020, the mother asked the father to have a video call with the child, saying that D. hadn't seen her in days, and she really missed him. The father responded by saying that the child was doing well, but it was hard to match the mother's "schedules" and so she could send an audio clip. Two days later, the father told the mother to have a "thorough medical screening", including for "HIV/AIDs and for Covid-19", since she mentioned "kissing/exchanging fluids with a stranger in the last two weeks". On June 13, 2020, the mother told the father that she had a Covid-19 test, and said that she wanted to see D. On June 16, 2020, she followed up again. The father responded and told the mother that she was "misrepresenting the facts". He said that she had already seen D. on June 7, 2020 (the hotel visit) and that she had been provided "regular access by Video calls "as per the guidance provided to [him] by the CAS". The mother sent another follow up on June 17, 2020. In response, the father sent the mother a picture of the child, but did not arrange actual contact.

[95] On June 19, 2020, the father sent the mother a message, telling her to read a letter from his former lawyer, that she could find in her email. Notably, the letter was also copied to child protection worker, Sharon Taylor. The letter suggests the mother was a danger to the child, and falsely claimed that the Society supported the father restricting contact. Sharon Taylor was not called to testify at this trial, but child welfare business records were introduced, and the OCL would gather collateral information from child welfare agencies.

[96] The father gave inappropriate messages to the child during this time frame. Notably, this began very early on after the separation. One of the first of several videos that the father sought to introduce is dated June 15, 2020, made a mere 15 days after the separation. The child was then just four years old. It is a video of the child playing outside with sticks and pinecones. It seems that the father introduced this video, in some kind of attempt to disprove the mother's allegation, that the father had previously said that she could not be D's mother. That is a minor point. This video reflects poorly on the father. In it, the father made a number of manipulative statements to the child that were really directed at the mother. He had the child repeat his statements. On the one hand, he encouraged the child to say he loves the mother and the child did say, in response to questions from the father, without repeating the father's words, that he had made the mother a heart shape (out of the sticks and pinecones) because he loved her. But on the other hand, the father also had this little boy repeat that the mother was sick, and that the child would not be seeing his mother until the mother was "better".

[97] Towards the end of the video, the father said to the child, and had the child repeat the following message, which foreshadowed what would come next:

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….mama we want you to take time to get better; and then we can't wait to meet you.

[98] The father's restrictive conduct all but necessitated the mother bringing this proceeding a mere 19 days after the separation, to get some visits established.

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PART III: THE PRIOR PROCEEDINGS AND THE EVENTS THAT TRANSPIRED IN BETWEEN COURT DATES

A. The Mother's Initial Ex Parte Motion

[99] This proceeding began by way of the mother's *ex parte* motion on June 19, 2020, for an order for the child's return to her care, and a non-removal order. Fryer J. scheduled an urgent case conference for June 25, 2020 instead. Although she noted a paucity of particulars respecting the allegation that the father might remove the child, Fryer J. granted the non-removal order pending the conference.[6]

B. The Urgent Case Conference Before Fryer J. on June 25, 2020

[100] Fryer J.'s Endorsement from the urgent case conference on June 25, 2020 notes that the mother acknowledged early on, that she had struggled with her mental health, but not such that she should not resume her role as the primary parent. By contrast, the father then argued, as he still does today, that the mother has serious mental health issues, including recent suicidal ideation and a possible incident of self-harm resulting in hospitalization. Notably, the Society was not taking a position respecting parenting time, despite the father's letter of June 19, 2020, referred to earlier.

[101] According to the Endorsement, Fryer J. made recommendations respecting the mother's parenting time, to include overnights, with a mutually agreeable third-party present. She recommended a custody and access assessment, or the involvement of the Office of the Children's

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[6] The father took issue with the mother's early allegation that he was a flight risk as a matter going to her credibility. I accept his view, that there was little basis for this Order to have been made. But for reasons that will be further particularized later on, my overall credibility determination favours the mother.

Lawyer. She also modified her earlier non-removal order, such that now neither would remove the child from Ontario.

[102] The parties entered into a consent Order that day, based on those recommendations. They agreed that the mother would reside with her brother in Stouffville Ontario, that the brother or his spouse would be present in the home when the child was in the mother's care, and that the parties would negotiate more terms respecting the brother's or his spouse's obligation to report any "access issues" or concerns regarding the mother's parenting while caring for the child.

[103] The parenting time itself was to occur on certain specified dates, building up to Wednesdays at 9 30 AM until Saturdays at 9 30 AM, pending a further conference. The father was to transport the child to and from these visits. The parties also agreed that there would be a phone or video call, nightly at 6 PM, for approximately 20 minutes, with the other parent who had not been with the child that day.

[104] The maternal uncle and aunt later signed an undertaking on June 30, 2020. The undertaking states that the brother or his wife undertook to be present in the premises with D. when having parenting time with his mother. They agreed that if there was a concern respecting the mother's parenting while caring for the child, either would advise the father as soon as possible by text, and then be available for a telephone call. The latter term caused conflict.

C. The Continued Case Conference of August 25, 2020 and the Order Appointing the OCL for the First Time

[105] There was a continued case conference on August 25, 2020. On this date, Fryer J. granted the first of two orders appointing the OCL that would be made during this case.

D. The Consent Order of Fryer J. dated December 3, 2020

[106] The parties entered into a further consent on November 25, 2020. On December 3, 2020, Fryer J. granted an Order based on that consent, on a 14B Motion. This was a significant consent Order that would map out the landscape for the next year and four months, and beyond. There has been much conflict over a number of terms in it. Several terms have been breached and it has largely been the father who has engaged in the breaching.

[107] The parties agreed that the child would attend school in Ajax. Both parents were to provide their contact information for the purposes of receiving notices and updates from the school, with

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the father registered as the child's emergency contact. Both were also entitled to attend the first day of school and school events, but they agreed to attend parent-teacher meetings separately. By the end of this trial, the father would now have this Court make an order prohibiting the mother from attending the school, entirely.

[108] The mother's parenting time was reduced pending the recommendations of the OCL. While she previously had the child with her at her brother's house three nights each week, the child would now be in her care, just two nights each week, from Friday at the end of the academic day (or at 2 PM if there was no school that day) until Sunday at 6 30 PM, and still supervised.

[109] The father was ordered to advise the mother if he was going to be late for exchanges, and to inform her by text of the estimated time of arrival. I heard much evidence during this trial, about the father not getting the child to his visits on time, or sometimes at all.

[110] The child's video calls also continued. The mutual non removal term also continued, but it was now made subject to the written consent of the other parent, to enable travel. This too has been a source of conflict.

[111] The parties agreed that the mother would advise the father of any "parenting issues or injuries" by text as soon as possible when D. was in her care. Somewhat similarly to before, the father would then be allowed to have a brief video call with the child "to soothe and comfort him when/if there is an incident". This term has created conflict, too.

[112] The parties agreed to communicate by Our Family Wizard, by providing each other with brief, daily updates. These communications were only supposed to relate to parenting. This term has not been adhered to either. As I will explain in more detail later, the father has overwhelmed the mother with lengthy and detailed communications. The OCL has commented on this, too.

[113] The parties agreed that the child would continue to be seen by his pediatrician, Dr. Vinoja, and the parties would adhere to any recommendations made by her. Dr. Vinoja is no longer a family doctor for this child, as I will explain. They also agreed that the child would commence counselling with Breanna Rutledge. Ms. Rutledge is also no longer involved either. These developments have created problems, and so the Court must now rectify the situation.

[114] There were a number of other terms in the consent, such as a prohibition against using physical discipline, the parties not discussing any aspect of the litigation with the child, and the parties not denigrating the other to the child directly or indirectly, by words and actions. The

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latter prohibitions about insulating the child from the litigation and parental conflict have not been followed.

[115] Finally, the consent Order "continued" the $950.00 monthly payments to the mother, that the father had just started to pay. The father came into his trial is in breach of this term, too.

E. The Mother's Move From Her Brother's House in Stouffville to a New Home in Ajax

[116] After the mother moved in with her family in Ajax in early 2021, she tried to sell the father on the merits of this move. She explained she now lived close to the father's home, and to D.'s school. She talked about the stability that this move would offer for the child. She told the father that this new arrangement meant he would no longer have to drive to Stouffville and back, for her to have parenting visits. She also described the physical environment of the home, such as that D. would have his own room.[7] As a courtesy, she asked the father for his permission, to bring D.'s items that she had kept in Stouffville, to this Ajax home.

[117] This would have been an early opportunity, for the father to perhaps relax some restrictions imposed on the mother, and to cooperate in D.'s best interests. The father responded by telling the mother to have her lawyer contact his regarding this move.

[118] The mother's former counsel then sent a letter dated January 11, 2021, to the lawyer who then represented the father, advising the father of this move, again. She asked to change the terms to permit the mother's visits to take place in the new Ajax home, now supervised by her parents.

[119] The father did not agree. During this trial, the father raised four different complaints about the mother's new home in Ajax, two of which have little impact on the decision that I must make, the third which reflects poorly on the father, and the fourth of which is completely without merit.

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[7] The mother tendered a number of photographs of this family home, depicting the child's environment there, as she did respecting her brother's home, at which she used to have supervised visits. The mother wanted to demonstrate that in both homes, she had set up child friendly spaces for D.

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[120] First, the father took issue with the fact that the mother only notified him of move into this home by Our Family Wizard message on January 7, 2021, when the house had previously been purchased in October. This complaint centered around the fact that the mother must have known about the move, when she signed the November 25, 2020 consent, for visits to take place in Stouffville.

[121] But the father was not exactly prepared to change the location for the mother's visits, or the identity of the supervisors, in any event. And I already addressed the father's concern about the mother's parents being in the home at the same time as the child, in my Order following the mother's March 17, 2022 motion, discussed below. There was then no evidence called at the trial, that the maternal grandparents caused harm to this child, that there had been any conflict between them since the March 17, 2022 motion, or that my Order that the mother was to remove the child had to be acted upon.

[122] Second, the father has raised concerns about the mother's parents and sister, as already explained. He accused the mother of having not been transparent on her Form 35.1 about the people living in the home.

[123] The mother corrected an omission about those living in the home on her Form 35.1 before the start of the trial. And by the time of the second OCL investigation, the sister was living in the basement of the home.

[124] Third, the mother tried to talk to the father about introducing the child to her new home, first by seeking his permission to bring the child's toys there, and then by seeking his permission to tell the child about her move. The father would not agree.

[125] The mother did later talk to the child about his room without the father's permission, but she waited well over a year after her move, and she did so only after a further conference before Fryer J. on January 28, 2022. At that conference, Fryer J. essentially ordered the supervised visits should take place in the mother's home, now by a professional supervision service. So the mother went ahead and talked to the child about his room there.

[126] There was nothing untoward about her having done this. However, over Our Family Wizard on February 14, 2021, the father criticized the mother, saying:

> …this is not appropriate. The last time you did this it resulted in [D.] having severe mental health issues for many months. Paragraph 17 of the Order dated 12/3/2020

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> restricts you from you exposing [D.] to aspects of the litigation. The suitability of your household as a parenting time location is the subject of conflict in the litigation. Your insistence on bringing D. in on this dispute is in contempt of the order. You have been granted a motion to canvass a change in location for your parenting time. Please read the endorsement dated 1/28/2022 closely. The purpose of the motion is to debate the change in location. Your insistence to change the location ahead of the motion is unreasonable. Your understanding that Justice Fryer has Ordered that the location be changed is incorrect. Even if it were not for the Order, [D.] is extremely vulnerable emotionally and you are exacerbating his emotional stability by trying to place him in the middle of an adult argument. Furthermore, Breanna has specifically – on multiple occasions – made it absolutely clear that no changes are to be communicated to [D.] about residence changes until they are set in stone. When I asked you not to repeat the behaviour on the second call for the day, you did not respond. On the call you started repeating the same behaviour and I had to terminate the call early. This behaviour needs to stop.

[127] Fourth, the father has suggested that the mother somehow owns or has an interest in this new Ajax property. This was little more than speculation by him that was not proven at this trial.

[128] In the result, for approximately a year between the time the mother moved to Ajax in January 2021, until the brother was no longer able to supervise the visits in Stouffville (around the end of 2021 or in early 2022), the father insisted on driving the child from Ajax to Stouffville for visits, even though the mother lived very nearby him. This resulted in each parent separately travelling to Stouffville each week, the father with the child in his car, the mother separately, and the mother and the child then staying in Stouffville in her brother's house, to be able to visit with each other. This arrangement very much caused problems, that I will address in due course in this Judgment.

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F. The Two OCL Investigations and Section 112 Reports

[129] The OCL has undertaken two different investigations and it prepared two separate reports pertaining to this family, pursuant to section 112 of the *Courts of Justice Act.*[8] Clinician Alana McNee-Trinidad prepared the First OCL Report. It is dated September 30, 2021. The Second OCL Report is that of clinician Sandra Garibotti, dated December 12, 2022. Ms. Garibotti later prepared an addendum to her report dated April 21, 2023, after additional collateral documentation came to her attention from a collateral source.[9] Both clinicians were qualified and experienced clinicians, with several years of experience having worked with the OCL and undertaken numerous investigations and writing reports pursuant to section 112. The father disputed both reports. He has criticized both clinicians on various alleged grounds, including even that one or both of them manipulated documents, in the mother's favour.

G. The First OCL Report of Alana McNee-Trinidad dated September 30, 2021

[130] The First OCL Report was completed at a time when the mother was still having visits at the maternal uncle's home in Stouffville. Ms. McNee-Trinidad did not recommend continued supervised parenting time. Rather, she observed that D. presented as a healthy and happy child who enjoyed time with both parents. She said that the child reported missing the other parent, when not with that parent. She did feel that the child had been impacted by the parenting schedule, though. She also noted the father's adamance, that the mother's mental health continued to be an area of concern for the child's safety, even though by this point there was no collateral information that supported this view.

[131] Although the level of conflict between the parents was high, Ms. McNee-Trinidad recommended joint decision-making. She essentially did so to maintain the balance of power between the parents. She found that the father was not including the mother in significant decision-making, and that he did not share information with her. She concluded that the father was not

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[8] This was unusual. After the release of the First OCL Report, the father filed a lengthy dispute of it. The OCL first stood by the First OCL Report, but it then changed its mind. The OCL offered up a second investigation on its own initiative. Fryer J. appointed the OCL for the second time on April 19, 2022.

[9] The new information had no bearing on the findings, analysis and conclusions in the Second OCL Report.

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prioritizing the child's relationship with his mother post-separation, either. She wrote that the mother used to be the child's primary parent, and she continued to try to remain involved in the child's life, despite the obstacles that the father put in place.

[132] Ms. McNee-Trinidad also recommended an equal parenting schedule, gradually increasing over several weeks, to culminating in a 2-2-5 schedule. She wrote that the child needed more time to repair the relationship with his mother, and more time with her to heal the trauma caused by the separation.

[133] The father would not agree. He disputed the First OCL Report. The mother had to continue with supervision for another 6 ½ months.

H. The Settlement Conference Before Fryer J. on January 28, 2022

[134] This Settlement Conference was also a very significant event in Court. A few events occurred leading up to it.

[135] First, the father, who had been previously represented, began acting on his own.[10] Second, the mother's brother and sister-in-law could no longer offer the supervision that they had been previously providing, for personal reasons. Third, in addition to the First OCL Report, Dr. Walker-Kennedy's psychological assessment reports were now available by the time of the conference. Fourth, the mother again raised her request to have parenting time in her home. The father continued to object.

[136] In the result, Fryer J.'s Endorsement of January 28, 2022 addressed six things.

[137] First, she wrote that while she made broad recommendations and observations, this matter would probably require a trial. She anticipated that the trial would be heard during the May 2022 sittings.

[138] Second, Fryer J. granted leave for the mother to bring a motion for parenting time.

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[10] The father represented himself during this trial. He nevertheless advised the Court that he had access to legal advice during this trial.

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[139] Third, and in the meantime, Fryer J. changed the location of the visits to be at the mother's home with her parents in Ajax, now supervised by Side by Side if there was no agreement to lift the supervision, pending the motion. This led the mother to tell the child about her new home, and the father to have his adverse reaction over Our Family Wizard.

[140] Fourth, there is reference in Fryer J.'s Endorsement to the child's reported behavioural issues, the fact that a pediatrician named Dr. Sohail Khattak had also been engaged, and the fact that he produced a report with recommendations. Fryer J. noted that it was crucial that the father advise the mother in advance as to what he was proposing with respect to the child's treatment and that he obtain her consent. She also noted that the mother was entitled to participate in processes concerning the child, and wrote that the parties should use Our Family Wizard for this purpose.

[141] Fifth, Fryer J. noted that the parties were probably going to resolve equalization. (That did not then happen.) The father acknowledged that he had an obligation to pay spousal support. Fryer J. noted that admission, too.

[142] Finally, Fryer J. also scheduled the motion respecting the mother's parenting time, that I heard on March 17, 2022. And she booked a further Settlement Conference before her, for April 19, 2022, that would end in the second order appointing the OCL, and an adjournment of the trial.

I. The Mother's Motion for Parenting Time on March 17, 2022

[143] I granted the mother's motion in full. Based on the record then before me, I found it to be in the child's best interests for the mother's parenting time to expand.

[144] The schedule that the mother asked for, and which the Court ordered, culminated in the child being in her care every Wednesday from 7:00 PM until 8:00 PM, and every Saturday from 10:00 AM until Sunday at 10:00 AM. I also permitted the mother to drive with the child, without a third party present, something that had previously been prohibited, too. I prohibited the father from retaining the services of any further medical professionals without the written consent of the mother. I also prohibited the father from discussing the mother's mental health with third parties, without her consent.

[145] I added a term to the Order, arising out of the father's complaint about the maternal grandparents, that if there was any conflict between the maternal grandparents during a time that the child is in the mother's care, the mother was to remove the child from the situation. As I said earlier, during this trial, I heard no evidence that the mother has had to act on this term.

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[146] I ordered the father to pay costs in the amount of $2,600.00. These costs have not been paid. Post-judgment interest has been accruing on this amount.

J. The Father's Dispute of the OCL Report and the Settlement Conference Before Fryer J. on April 19, 2022

[147] Soon after the release of the First OCL report, the father wrote a letter to the OCL dated November 5, 2021. His cover letter states "I am disputing the methodology, findings and recommendations of the OCL clinician, as contained in her report. The areas of dispute are detailed in this letter – the most unfortunate perhaps being that the clinician failed to investigate or report on any of the present-day challenges facing the family in Section 2 and the Incorrect Findings highlighted in Section 3."

[148] The father's dispute was overly lengthy. It was some 93 pages long. Attached to it, he included another report.

[149] At first Ms. McNee-Trinidad's supervisor, Kim Bush, wrote a letter to the parties dated December 3, 2021 saying that the First OCL Report contained "no factual, omission or process errors; nor has any additional information been put forward that would cause the OCL to change the recommendations provided in the Report". However something changed internally at the OCL. Ms. McNee-Trinidad testified that after she completed the First OCL Report, she received an email from the father with several attachments. She testified that she had only reviewed the "legal materials". Ms. McNee-Trinidad was on maternity leave. An internal decision was apparently made to have another report, that would include all of the attachments. Incidentally, supervisor Ms. Bush did say the OCL might have otherwise dealt with the issue by way of an addendum to Ms. McNee-Trinidad's report, had she not been on a maternity leave.

[150] Fryer J. concluded on April 19, 2022 that this case was not ready for settlement or trial. She scheduled a new date for combined Settlement Conference and Trial Scheduling Conference, for September 16, 2022. She made the second Order appointing the OCL, too. She also made an order, on a temporary without prejudice basis, that if either party had contact with a care provider for the child, that party was to copy the other parent if the communication was in writing, or provide a brief written summary of any verbal communications within 24 hours.

K. The Father's Dispute of the Second OCL Report

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[151] After another 8 months or so passed and the Second OCL Report was released, the father would also refuse to accept the recommendations in it, too. By letter dated January 28, 2023, the father later filed his second dispute, now of the Second OCL Report dated December 21, 2022. This time, his dispute was only one page long, but it essentially incorporated by reference, his previous, 93 page dispute of the First OCL Report.

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L. The Mother's Parenting Time Between the Separation and the March 17, 2022 Motion

[152] While these procedural and substantive steps unfolded in court, much transpired outside of the Court respecting the mother's parenting time between the separation and the March 17, 2022 motion.

[153] The actual visits themselves went well, in general. For example, the mother explained that her brother had a nice property in Stouffville, with a nice back yard. She showed the Court a number of pictures of the home, and of some of the creative activities that she engaged in with the child, while having visits there. The mother testified that D. also enjoyed playing with his cousins. From the maternal uncle's perspective, the mother's visits went well, also. He added that he did not have any concerns about the mother as a parent. Ms. McNee-Trinidad observed the mother and child to be laughing together and having fun and relaxed with each other.[11] During one of Ms. McNee-Trinidad's interviews with D., he told her that he liked to visit her with his uncle, aunts and cousins. He said that his mom missed him, and he missed his mother, when with his father. On July 6, 2021, Ms. Rutledge, the child's therapist at the time, also reported to Ms. McNee-Trinidad, that the child had never disclosed any stress about going to see his mother, or about spending time with her.

[154] But in the face of these positives, there were numerous problems with the governing consent Order. One of these problems reported by Ms. McNee-Trinidad, was that D. had said that the schedule then in place was "making him dizzy". Notably, at this point D. was being driven back and forth between Ajax and Stouffville for the visits. Apparently he told her that he would

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[11] Ms. McNee-Trinidad also observed D. to be relaxed and happy throughout her observation at the father's home, including in his interactions with the father's extended family.

feel "less dizzy" in a week about schedule. There is also much evidence that the father tried to undermine the mother's parenting time at her brother's home almost from the outset. This continued after the visits stop taking place in Stouffville, too.

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M. The Father's Interference With the Mother's Parenting Time

[155] The father interfered with the mother's parenting time in multiple different ways right from the outset of these visits. He made false allegations that the mother's brother had breached his undertaking. He gave inappropriate messages to the child. He brought the child late to visits. He caused the child to be upset at exchanges. He failed to follow Dr. Khattak's recommendations about how to exchange the child between parents after the release of Dr. Khattak's assessment (discussed later). He unnecessarily and inappropriately involved the police and child welfare agencies. He refused to cooperate to allow the mother to have visits in her home in Ajax, including after Fryer J. essentially ordered him to on January 28, 2022. He then controlled and micromanaged her time with the child in the community in the face of Fryer J.'s January 28, 2022 Order that provided for visits in the home, pending the motion on March 17, 2022. I will elaborate about each of these in some detail.

[156] First, father accused the mother's brother of breaching the undertaking. The mother testified that the father was "paranoid" about whether her brother and sister-in-law were following the undertaking. She said he was "paranoid" that they were not home, and would send messages to this effect, saying that they were not home when they were. The mother testified that her brother and her sister-in-law were always available in accordance with the terms of the undertaking. The maternal uncle also testified that he fully complied with the terms of the undertaking.

[157] Aspects of the father's cross-examination of the mother's brother were directed at challenging this evidence. He did not undermine that evidence. I do not find that the maternal uncle or his wife breached the undertaking.

[158] Second, the father engaged in inappropriate messaging to this child, just as he had done shortly after the separation, as captured in the "sticks and pinecones" video. Another of the father's videos that he made, and which he put to the mother during his cross-examination or her, is labelled "Dashcam Video – You locked the door on my mama". It is dated August 8, 2020, soon after the Stouffville visits started. The child was also then just 4 years old.

[159] There is nothing visible in this video, but voices can be heard. During his cross-examination of the mother, the father told the Court that it was his sister who made this video, after the two picked the child up from a visit.

[160] Some of what the child says in this recording is hard to understand, but I note the father often repeated what the child is alleged to have said for the benefit of the recording. I gather that the point the father wished to establish by seeking to introduce this video, was that the mother was having inappropriate conversations with the child, as later reported to him by the child. For example, the child seemingly reported to the father his awareness that the father had locked the mother out of the house.[12]

[161] However, what I also ascertain from this recording, again, is how the father not so subtly expressed to the child, his view that the mother-son relationship was of lesser importance. In fact, he engaged in the very behaviour that he was trying to criticize the mother for, namely having an inappropriate conversation with the child.

[162] On this video, the father can be heard telling the child that he did not lock the mother out of the house, and to the contrary the mother had a key.[13] He told the child at least twice, that the mother was feeling "sad".[14] He told the child that the mother was "struggling", but that he wanted her to "be well". He said the latter about wanting her to "be well" multiple times. [15]

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[12] If the mother did this, then it was inappropriate of her to have done so. The mother denied that she had said such things to the child. She testified that she had had conversations with her brother at the time about the circumstances surrounding the separation, and the child must have overheard them.

[13] Incidentally, this was not factually accurate. Recall that at the time of separation, the father had previously intimated to the mother, that he changed the locks, in another of the recording that was submitted during this trial. Therefore, he was either untruthful to the child, or he lied to the mother on June 9, 2020, when he told her not to come back to the house.

[14] This was yet another message to the child, about the mother's mental health.

[15] See the previous footnote.

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[163] The following year, when D. spoke to Ms. McNee-Trinidad during the first section 112 investigation, he talked about the time that his parents lived together in Oshawa. He understood that he had moved from the house because his mother was "dizzy". The father's messages to the child had their effect.

[164] Third, the father brought the child to visits late. The mother testified that the father was supposed to drop the child off right after school for her parenting time, but she learned that he would take D. home first. The mother said that the father was then very casual about when he left the home. The maternal uncle also testified that the father was late, and sometimes he would just not bring the child at all.

[165] The father tendered another video that he had made, dated August 12, 2020, which he called "Access_Dropoff_Incident_Dashcam_Compressed". It captures one of the early exchanges at the mother's brother's home in Stouffville. While the father tendered it to prove a different point, this video was an example of one of the father's lateness. It also reveals the problems that were occurring at exchanges.

[166] At the outset of the recording, very little can be seen as the camera is pointing upwards towards the car's sun visor and rear view mirror. What can be heard though, is the father uttering the words "I sent you a message". Soon thereafter, the mother knocked on the father's car window. The father jumped out of the car and turned his camera towards the mother, to film her. The mother expressed her upset at the father for having been late. The father claimed the child had been sick. Words to the effect that the parties were now going to call their lawyers were exchanged. The mother's brother came out. The father said he wanted to speak to him about this so-called "parenting issue" pursuant to the undertaking. He accused the brother of not discharging his duties under the undertaking. The mother went on to tell the father to leave the property. The father retorted that he was not on the brother's property. Apparently he was on the parked on the street in front of the house.

[167] The father then played a separate video that he had taken using a cell phone, that he labelled "2020 08 12 – Access_Dropoff Incident Phone Camera". Apparently the parties agreed that if the first video would be played, so too would the second one. This related video depicts young D., now screaming and crying, and saying that he did not want to leave the father. The father can be heard telling someone else that he was trying to "soothe the child". The father told the child not to worry, that the mother was not going to be angry at him, but rather that she was just mad at the

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father, because he was late. He told the child that the "rules" are that "we have to go to mama's house for a couple of days".

[168] Towards the end of this video, the mother's brother approached the child. They began talking about a piggy bank that D. had brought with him. The child's upset ended. He hugged his father and ran down the driveway towards the house, as the father stood behind and told the child that he was going to come back "in three days" and said "I promise".

[169] Notably, the father stopped playing the first of these two videos after the first five minutes or so, saying nothing noteworthy happened in the last six minutes or so. Counsel for the mother asked the Court to note that the video continued for a further six minutes. During those remaining six minutes, the father remained on the scene in front of the Stouffville property.

[170] These parenting exchanges continued to be a problem between these parents. For example, the mother pointed me to messages between the parties on Our Family Wizard on March 16, 2021, wherein she asked to come and see the child after school following the father reporting to her, that the child had anxiety. Hypocritically, the father's response to the mother was that he did not "… feel comfortable having you at my house given the past conflict. Please do not come to my house". Yet the arrangement then in place was that the father took the child to the mother's brother's house over and over again, and sometimes he lingered. He would later insist that only he could come to the mother's Ajax home, but the mother could not come to his house.

[171] Dr. Khattak told these parents in his assessment report that he released in the fall of 2021, that prolonged exchanges were contraindicated for this child. Dr. Khattak recommended that transitions occur in a short and quick way, according to an established ritual or routine, and with a short goodbye. While one might give the father some benefit of the doubt respecting his conduct surrounding traditions before the release of Dr. Khattak's assessment report, there is little excuse for the father's behaviour at the exchange that later occurred, in November of 2021.

[172] In November of 2021, the child was groggy and sleepy when the father arrived for a particular exchange. The mother asked the father to get the child out of the car, but the father apparently could not (or more realistically would not) do so. The father's claimed inability to effect a quick parenting transition morphed into a 5 hour affair, that included written communications between the parties, the calling of the police and a children's aid society by the father, and the involvement of other family members.

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[173] Over Our Family Wizard, the mother accused the father of withholding the child. In response, the father claimed that the child, who was now 5 years old, would not come into the house. The father claimed that the child was afraid that his mother would get mad at him. The father also claimed that the child had reported to him, that the maternal uncle had on a prior occasion broken a chair in anger, and on a different occasion, threw a shovel. The mother called her brother to testify about the chair and the shovel, and the account was much different, neither involving bouts of anger.

[174] At 7:00 PM that evening, in the middle of this, the father called the York Region Children's Aid Society to report that he was in a "high conflict custody and access dispute". He told the worker that the mother was to have parenting time from Friday to Sunday. He told the worker that the mother had "mental health issues" and that the maternal uncle supervises the visits. The father told the worker that he was parked outside the house, but the child was refusing to get out of the car, because he was scared of the uncle. The father referred to the broken chair. During cross-examination, the father accused the uncle of having "pounded his fist on the car", frightening the child.

[175] The worker told the father that parents had to comply with court orders. After consulting with her supervisor, the worker also told the father that if he was concerned about "their safety in the car", he could call the police.

[176] The worker called the father back, by 8:58 PM, some two hours later. The father was still there. Now, the father reported that he had called the police in the intervening period, but the police would not come to remove the child from the car.

[177] According to the mother, at one point during this debacle, the father called his sister to come to Stouffville. Then the father, his sister and D. all came to the mother's brother front door. This entire exchange could have ended then. But when D. was about to come into the house for his visit, finally, the father told the child that he was allowed to stay or go. The child also apparently announced he would get a toy when he went home. The maternal uncle explained that the child was already through the door when the father did this, sabotaging the exchange that was finally about to conclude.

[178] In the end, this entire exchange lasted some 5 hours. The mother did not have her parenting time with the child. During cross-examination, the father tried to claim that he was following other recommendations of Dr. Khattak, saying that he was not supposed to "sneak out" on the child.

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[179] On November 26, 2021, a society worker contacted both parents in relation to this incident. The father took the opportunity to tell the Society that the mother had "stopped taking her medication and seeing her psychiatrist".

[180] Fifth, this was not the first time that the father involved the police and a children's aid society, unnecessarily.[16]

[181] The maternal uncle testified about one of the father's video calls with the child that occurred in mid-August of 2020, when D. was at his house visiting his mother. The maternal uncle happened to be in the room at the time of the call, when the call occurred. The maternal uncle explained that the father had noticed scrapes or bruising on D.'s arm. He described that the conversation "turned into an interrogation". The mother tried to explain what had happened, but the father "abruptly interrupted her" and told her she was not allowed to speak.

[182] The maternal uncle testified that the father later emailed him, asking about the bruise. In their written exchanges, the father also claimed the child looked sedated, as if he had been given sleep medication.

[183] The mother's counsel introduced the written communications between the two men dated August 19 and 20, 2020. The father "reminded" the maternal uncle about the terms of the undertaking and asked him to "inspect [D.'s] body for bruises and provide me with an update asap. Failing which, I will have no choice but to escalate the matter." The uncle responded and said that he did not have a concern about the mother's parenting, but he was concerned about the way that the father had acted on the call. He also explained why the child was sleepy during the call, which had nothing to do with medication. The emailing continued. It culminated with the maternal uncle asking the father to stop messaging him, beyond the requirements in the undertaking.

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[16] The mother also made complaints to the children's aid society about the father. The mother admitted that during the pandemic, she expressed concern that the father's sister, who is a registered nurse, had been exposed to Covid 19.

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[184] An unnamed person called the children's aid society about this incident. During this particular investigation, the child was not able to provide information about where the bruise had come from. The worker otherwise observed the mother to be attentive to the child through out the visit, the child reported appropriate discipline strategies, and the child did not report any concern. According to this case note, the father even denied concerns that mother caused harm to the child, which begs the question why the Society had to get involved in the first place.

[185] The mother testified about another time that the child had fallen off his bicycle in the driveway, and that caused bruising. So did the maternal uncle. He explained that two plain clothes police officers then came to his house, to inquire about whether D. had been hurt on his knee. The maternal uncle also testified that the father had not reached out to either him, or to the mother in advance, to discuss the child's knee either. The maternal uncle was surprised.

[186] The father attempted during this trial to introduce hearsay statements of the child, that the mother had abused him. For example, the father tendered a police occurrence report of July 7, 2020, in which the child appears to attribute some bruising on his arm to the mother. I address the admissibility of the child's hearsay statements later, when addressing various evidentiary issues.

[187] Sixth, the father restricted the mother's access to information about the child. For example, the children's aid society case notes before the Court reveal that on October 20, 2020, the school principal called the society, after the mother had emailed the school, asking to be added to the mailing list. The principal called the Society, because she had a notation in the child's file, that there were safety issues, that the society was involved, and that there was an "order of protection in progress". The principal wanted to know whether the school could release information to the mother. Notably, at the time of the school principal's telephone call to the Society, there was no open file with a children's aid society. Although the father had earlier raised objections to other CAS notes, redactions were made and he consented to the admission of the remainder of the notes in the mother's document briefs (including this particular case note), later on in the case he claimed that it was incorrect. As the cross-examination on this topic continued, he avoided answering questions about whether he told persons at the school that the mother was dangerous, instead saying that he was supposed to do the pick ups and drop offs at the school pursuant to the governing order at the time. The father also criticized the competency of the children's aid society. Notably, the father's position at the end of the trial is that the mother should not be able to attend at the school going forward, and information about the child must be filtered through him.

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[188] Seventh, it is common ground that the father did not cooperate respecting visits in the mother's Ajax home, after Fryer J.'s Endorsement of January 28, 2022. The father instead would only agree to parenting time in the community. He took issue with a private supervision company, suggesting that the mother's former counsel might have colluded with it.

[189] The mother's evidence was that the father controlled and dictated her parenting time after the January 28, 2022 appearance before Fryer J. I heard evidence about how he supervised a community visit at the time of the child's birthday, when the mother just wanted to have a birthday party for the child. He micromanaged it.

[190] The mother referred me to communications on Our Family Wizard about the birthday, part of which event took place at a Subway Restaurant, apparently. In writing, the father told the mother when at Subway, to let the child "choose the toppings and sauce so he *(sic.)* more autonomous." He also wrote, "Next parenting time Thursday evening at Chuckee Cheese. He hasn't been there for a while and will really enjoy it. Maybe you can even have Denny's afterwards. He's really into their pancakes with low sugar syrup. Does 7 pm work for you?" The father told the mother that a treehouse play place was "too busy on weekends" but weekday evenings are "really quiet for next time." In a subsequent message that he sent, he told the mother that he wanted to go to Chuckee Cheese because he preferred to stick to places that D. "has been to and has an emotional attachment to."

[191] During the trial, the father touted the alleged benefits of having community visits that he would supervise (as opposed to following what Fryer J. had ordered). Despite that the recently released First OCL Report said otherwise, the father claimed that the child's relationship with the mother had declined to the point that it was extremely difficult for him to be with her. The father said that having community visits would therefore give D. a sense of comfort, because he would be nearby. The father also said that he wanted the child to have a safe space.

[192] During this trial, the father said "in retrospect I should have let it happen". But he also testified that "the family system is not protective". He said that courts allow a child to be placed in difficult circumstances, to then look to see, after the fact, if there are "any effects". He also said that this court did not have all the evidence it needed from him, when it decided the March 17, 2022 motion.

N. The Mother's Visits After the March 17, 2022 Motion

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[193] The mother testified that the first visit after my Order went well. She said that the child really enjoyed the first unsupervised visit and even asked to stay longer.

[194] But the father continued to interfere after the March 17, 2022 motion, much like he had done before. For example, the mother referred me to Our Family Wizard messages between the parties dated March 18, 2022 in which the mother told the father that there was now, no limitation on driving, and so she wanted to pick the child up the father's house. The father refused to agree. While he said that the mother was "welcome to drive [D.]", he was not "comfortable having [her] on his property given the past conflict and issues. If you prefer I can drop him at a neutral location in the middle". The mother responded saying that the father was making the logistics more complicated, but she told him to drop the child off in front of a particular store. In another act of hypocrisy, the father then responded and said "I prefer to drop him at your house".

[195] Other problems would later arise when the parties did not then strictly adhere to the schedule that I ordered. For example, according to the father, the parties changed the schedule on Saturdays. The father wanted to enroll the child in a religious school at his mosque on Saturday mornings, so they changed the time of the mother's weekend visits, to be from Saturday at 4 PM until Sunday at 4 PM, instead of the 24 hour period that I had ordered, between Saturday at 10 AM until Sunday at 10 AM. Although during his examination-in-chief the father pointed me to an Our Family Wizard exchange, whereby the mother readily agreed to this, in cross-examination, the father denied that the mother worked with him to accommodate this, and said that "she didn't actually cooperate"; she "initially cooperated, and then half way through, she changed her mind".

[196] During the summer of 2022, the father suggested to the mother, that the 1 hour visit I had ordered on Wednesdays was "disruptive" and the child could "tolerate" two hours. The father pointed me to an Our Family Wizard message from the mother dated December 19, 2022, wherein the mother later asked to consolidate the now two hour mid-week visit into the weekend, to reduce transitions. The father said that Mr. Stangarone's office later accused him of breaching the Order. After the trial scheduling conference in April of 2023, the father "agreed on a temporary without prejudice basis to re-start the mid-week visits."

[197] There was more conflict between the parties over *ad hoc* changes to the schedule throughout 2023. As I will explain later, on September 25, 2023, after the problematic events of the summer 2023, I ordered these parents to strictly adhere to the Court's Order until the conclusion of the trial. These problems and complaints that ensued from *ad hoc* changes to the court ordered parenting schedule only got worse as more time passed.

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O. The Second OCL Report of Sandra Garibotti dated December 21, 2022

[198] In a number of respects, the Second OCL Report was consistent with the First OCL Report, although the recommendations differed. For example, like Ms. McNee-Trinidad's observation of the mother and child, Ms. Garibotti's observation visit, now undertaken about a year later in June of 2022, in the mother's Ajax home, was also positive. She wrote that D. was "observed to be happy as demonstrated by giggling, easily engaging with this mother and grandmother, making eye contact, and overall appeared comfortable. They were noted to sit very closely to each other, often their bodies completely toughing with no hesitation from [D.]. [The mother] was noted to be affectionate, and D. welcomed here caresses.[17]

[199] In her analysis, Ms. Garibotti wrote that the father believed, that the first clinician, Ms. McNee-Trinidad, did not "understand the level of conflict and how the child's health declined since February of 2021, when [the mother] began to have more contact with [D.]" He felt the assessment was incomplete. He continued to express concerns for the child's well-being, the mother's behaviour, and the mother's extended family.

[200] But Ms. Garibotti was very concerned that the father wished to control the process, and ultimately marginalize the mother. For example, he provided her a comprehensive list of documents, itemized in a very organized manner. Ms. Garibotti wrote that he appeared to be very informed of the court process, and was "determined to ensure what he believes to be comprehensive evidence".

[201] Ms. Garibotti reported that the father had altered her directions that she needed signed, for the release of police and child welfare documents, under the guise of wanting a fulsome process. She said "while this is presented as due diligence on the part of [the father], the concern remains on how his behaviour has impacted on [D.'s] ability to have quality time with his mother." This requirement for the signing of consents during the OCL investigations would later turn into a

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[17] Likewise, during her observation visit with the father, Ms. Garibotti observed the father to be affectionate with the child as well. She noted that no hesitation was observed from D. to his father or other family members, and he was comfortable in the home.

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major, but meritless allegation of misconduct by the father against the OCL. It consumed trial time unnecessarily.

P. The Trial Scheduling Conferences on March 10, 2023 and April 11, 2023

[202] Fryer J. heard two Trial Scheduling Conferences in the late winter/early spring of 2023. On March 10, 2023, Fryer J. ordered that the trial was to proceed in May of 2023, even if the financial issues such as equalization were not trial ready (although the parties were to make best efforts to ensure that they were).[18] On April 11, 2023, Fryer J. updated it. She made a further order for certain disclosure from both parties.

Q. The Challenges with the Mother's Parenting Time in Early 2023

[203] Unfortunately there were more challenges surrounding the mother's parenting time during the first part of 2023.

[204] There were a number of occasions in the early part of 2023 wherein the mother declined parenting time or sent the child back to the father when he acted out. The mother testified that the child was hitting her. She testified that was trying to figure out the best approach to discipline. She scheduled an appointment with Dr. Narges Hosseini, the child's latest therapist. She also talked to her own therapist, Robin Campbell. Based on Ms. Campbell's advice, the mother decided to enlist the father's help to show a united front, to teach the child it was not alright to hit.

[205] The mother testified that in hindsight, it was naïve of her to have thought that the father would work together with her like this, and that her new therapist would have had enough context to have given her this advice. While I find that the mother's motives were *bona fide,* this is one of the areas of the evidence about the mother's parenting skills that has caused me some concern.

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[18] The father's request that I should order more disclosure and schedule a further case conference to address equalization, arose out of this comment in this Endorsement. Fryer J.'s Order of March 10, 2023 did not bifurcate this case. Both parties tendered evidence about the financial issues, and both sides had more than ample opportunity to call all of the evidence that each felt they needed to call.

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R. The Consent Order for Summer 2023 Parenting Time

[206] The trial did not finish in the time allotted for it during the May 2023 sittings. On the last day allotted during the spring 2023 sittings, I had a discussion with the parties about the evidence that remained to be called. I put the matter over to the September sittings for what ought to have been an adequate amount of time.

[207] The mother asked to bring a motion for an increase in her parenting time over the summer that day. The issue quickly became moot as a result of the discussions that followed. The father indicated that he was prepared to agree to an increase to the mother's parenting time between June 1, 2023 and the end of the school year, and to a further increase during the summer months when there was no school. I indicated to the parties that I was prepared to make an order based on the father's concession. The mother agreed to this, on a strictly without prejudice basis.

[208] The Court's new Order of June 1, 2023 now provided that the mother would have parenting time on Wednesdays from 6:00 PM until 8:00 PM until the end of the school year. The weekly weekend time ordered on March 17, 2022 was to continue. Then during the summer months, her Wednesdays would increase from 10:00 AM until 8:00 PM, and the weekends extended from Saturdays at 11:00 AM until Mondays at 7:00 PM.

[209] These arrangements unraveled soon thereafter, resulting in the mother not seeing D., essentially for two months.

S. The 'After the Fact' 14B Motions Relating to the Summer of 2023

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[210] On August 31, 2023, the mother ***eventually***[19] brought a 14B Motion to seek a remedy.

[211] In her affidavit sworn August 31, 2023, the mother deposed that after I made the Order on June 1, 2023, the parties yet again made changes to it, albeit not without conflict. Otherwise, it seems that things started out well enough. However, the mother deposed that D. did hit her at times, and that she responded by giving the child a timeout. The mother deposed that the father did not then allow the child to come for a visit again. She also deposed that the father monitored her calls with the child, and refused to allow D. to attend a camping retreat with her during the month of August.

[212] The majority of the father's affidavit sworn September 7, 2023 responding to this 14B Motion consisted of argument. In two short paragraphs, the father said that the mother's affidavit was misleading, that she was having "daily parenting time with the child by video call", that she had "in-person parenting time on September 5, 2023" and that her next scheduled visit was for September 9, 2023. The father also claimed that the mother had refused to engage the services of a "reunification specialist", and that he had various appointments with Dr. Hosseini upcoming in the near future.

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[19] My emphasis on the word eventually relates to the fact that the mother waited for over a month to bring this motion. Unfortunately, after the delay in bringing the 14B Motion before the Court, the mother's 14B motion materials were not then directed to my attention by Court staff in a timely fashion either. I did not see them until September 13, 2023. This was the Wednesday before the resumption of the trial on Monday, September 18, 2023. Therefore I did not deal with it in chambers, or at the resumption of the trial, hoping that the parties would finish calling evidence during the September sittings so that the subject matter of the motion could be addressed on a full record. I permitted the mother to provide an oral update about the events that transpired during the summer, and the father cross-examined her. The father then provided his evidence and perspective during his case.

Unfortunately, in part due to these new developments, the trial did not then finish during the time allotted during the September 2023 sittings either, and had to be put over to November for its conclusion. By the end of the week allotted for this trial in September, the evidence before the Court was that the mother was still not regularly seeing this child. So I had little choice but to now hear mid trial arguments about the mother's interim parenting time on September 22, 2023. I released an Endorsement of September 25, 2023.

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[213] As it turned out, neither side's affidavit was particularly fulsome, transparent or accurate. The mother did not fully describe what happened between herself and the child. In regards to the father's affidavit, the "in-person parenting time on September 5, 2023" was a short visit where the mother saw the child at the school on the first day of school; otherwise the mother had not seen the child. And the father had no intention of facilitating another visit on September 9, 2023; in fact, he did not even facilitate a visit during the week in September that this trial resumed, claiming an inability to do so. No concrete proposal for a "reunification specialist" had ever been made by either side. By time that this trial resumed in September, Dr. Hosseini had not seen the child for several weeks during the summer. And her services were about to end. More would be revealed during the oral testimony that the Court heard, when the trial resumed.

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T. The Oral Evidence About the Very Problematic Events of the Summer of 2023 After the End of the Spring, 2023 Trial Sittings

[214] The first problem that began to unfold was more *ad hoc* changes to the schedule that the Court had just ordered. The mother testified that she had four days of parenting time after I made the Order on June 1, 2023, before the father began asking to take the child to different places during her parenting time. The mother said she agreed, but his requests kept coming.

[215] The father then asked the mother for permission to take the child on a pilgrimage to Iraq for 15 days. He had not raised the possibility of this travel at the end of the spring 2023 trial sittings, only to raise the issue with the mother directly a few days later. She disagreed for several reasons.

[216] Next, during the weekend of July 22, 2023, the mother took the child to a public swimming pool. The mother said that before she got into the pool, she reviewed the swimming pool's rules with the child, which included that he needed to remain near the mother while in the pool. The mother testified that at one point, the child got upset because a ball got thrown out of the pool. D. threw a tantrum and swam away from her. D. would not come back.

[217] The mother tried to follow the child and remind him of the rules. The mother testified that the child started screaming, hitting and scratching her. The mother took the child out of the pool and told him that he would now be in a time out.

[218] This incident occurred on a Saturday. The mother then placed the child in a time out for the rest his visit, which ended on Monday. During his cross-examination of the mother about the

events of the summer, the father suggested that the mother put the child in a “level two timeout”. The mother denied knowing what the father meant by this.

[219] The mother tried to contextualize this time out during her in court testimony in September. For example, she said he was allowed to play with his toys in his room. She said he was allowed to “come out for hugs”, to “play in the back yard”, to have meals, and to go for a “walk in the evening”. During her Reply evidence, the mother tried to elaborate about what transpired during the time out. However, my impression was that the mother minimized the severity of her response, after the fact.

[220] The parties exchanged written communications about the father’s withholding of the child after this. In them, the mother told the father that the child was supposed to be with her, and that the father was withholding him. The father’s responses were in the nature of him being unable to get the child to attend on visits. Meanwhile, the father sent the mother photographs of him taking the child to Legoland, to ToysRUs, of the child on the playing on the driveway while wearing a superhero cape, and of the child eating ice cream; in general having a fun time with his father while not seeing his mother after this swimming pool incident and the time out.

[221] The mother tried to pick the child up on two occasions for her parenting time. On one of these occasions, the mother drove to the father’s house, parked across the street and advised the father that she was there. The father responded by telling her that she was scaring D., and that D. himself was trying to call the police.

[222] The father later testified about how this supposedly scared the child, saying he hid under a blanket with a cell phone to call the police. The father said the cell phone that did not have a plan attached to it, so his attempt to call the police did not actually go through. The father then took the child to a religious gathering, at which the child allegedly told various unnamed community members, who were not called to testify, “don’t let mama take me”.

[223] But the mother had just had a video call with the child, that she recorded, and which she sought to introduce during the trial. The Court held a *voir dire* during the trial about this video, with a ruling to follow later. The father unsuccessfully challenged the authenticity of this recording, accusing, but without proving it, that someone in Mr. Stangarone’s office altered the video.

[224] During the call, the mother played with a cat photograph with the child. She then asked the child to get ready and said that she was going to come to pick the child up. Twice, the child

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said you are not allowed to come to his house. The child then said he was going to a religious gathering with his father. The mother told D. that the father could go to that gathering, but the child was coming to her house. The call ended with the child cheerfully saying "OK". He was not in any way distressed, as the father maintained. The father then changed his testimony, and said that he was not sure whether this was contemporaneous in time with the child's alleged traumatization.

[225] There was yet more conflict between the parties in the summer, now about travel. The mother twice asked the father for his consent to take the child camping. The mother said that the father did not respond on one occasion and on another, he said no, that there were "too many variables". During cross-examination, the father asked the mother whether one of the camping trips was through a "religious organization" and then suggested to her that the trip involved a Montreal Hare Krishna community. The mother denied this, although she did say that the camping trip involved mindfulness. The father questioned the mother further about the fact that she took D. to an event within a different spiritual community. During his re-examination, the father added as another reason to have objected to this trip, that if the child had gone camping, he would have been without any heat or air conditioning.

[226] Meanwhile, although the father had refused to allow the mother to take the child camping, the mother nevertheless consented to the father taking the child on the trip to Windsor. When it came time for the mother to next see the child after this trip, the father claimed, yet again, that he was trying to get the child to go visit his mother, but the child would not go. I find the father was lying to the mother about this. The father tried to dodge questions in cross-examination about the dates he was in Windsor. It was exposed during his cross-examination, that the father was still out of town, while he pretended to make efforts to have the child see his mother.

[227] The father also involved his sister to interview the child, during the summer of 2023. The father said his sister sent him a "transcript" of the conversation. The father's sister did not however transcribe her questions and the child's answers according to the father, but rather made notes after the fact based on her recollection. The father said that he had his sister do this, because there was a "climate of mistrust" and he "wanted another resource". He said he thought if there was "something written by someone else", the mother might believe it.

U. The Court's Order of September 25, 2023

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[228] At the end of the time allocated to this case during the September 2023 trial sittings, I heard submissions about the withholding behaviour. I released an Endorsement on September 25, 2023. Because this trial was still ongoing, I made limited findings only, pending its completion.

[229] I found that the mother was not seeing the child in person, contrary to an Order of this Court. I found that based on the evidence called about the events of the summer, I would not have suspended the mother's parenting time. I also found that the father did not have the right to "withdraw" his concession of June 1, 2023, that the mother could have increased summer parenting time, once it was incorporated into this Court's consent Order of June 1, 2023. I also found that the other *ad hoc* changes to the Court's prior Orders had caused problems.

[230] In the result, I merely ordered the resumption of the mother's parenting time. I ordered that the Court's Orders were to be strictly adhered to, including that there were to be no more *ad hoc* changes to them, pending the completion of the trial. I ordered the father was to continue to do the pick ups and drop offs, and not linger at exchanges. But I also ordered that if he continued to be unable to persuade the child to go, if he was unable or unwilling to take the child for visits, or if he was late, then there was no other option but to change the Order for there to be exchanges at the child's school. The latter would have entailed an expansion of the mother's parenting time.

V. The Troubling Events That Followed the Court's September 25, 2023 Order

[231] Almost immediately after the release of this Endorsement, the mother received a series of angry text messages, ostensibly authored by the child, and 15 or 16 voice recordings from the child, too. In the voice recordings, the child was completely out of control. He screamed and cried at his mother.

[232] The child said, among other things, that he never wanted to see the mother again. He said this multiple times. He told the mother that he hated her, multiple times. He told the mother that she was lying, also multiple times. The child talked about how the mother was rude to "me and my family", multiple times. He told the mother to stop coming to "our house". He called her a "stupid fat head" more than once. He told the mother she was annoying, more than once. He said "I don't love you for real this time" and that he wanted to "kill you". The child told the mother that she was never picking him up from school. He told her that she was "faking things". He made reference to calling the police, including that the father was going to call the police. In one of these recordings, the child made reference to the "rules people", which I was told, meant this Court/me.

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[233] The mother testified that conveniently, around the same time that she received the voice messages, the father sent her a text message asking her what she had said to the child to upset him, but she had not spoken to the child. Ms. Stangarone's cross-examination of the father revolved around his suggestion that the father tried to manipulate the record, to set the mother up.

[234] When the mother later talked to the child, also on September 25, 2023, a call that she also recorded, the child was still upset and tried to repeat some of the contents of his messages, although with less hysteria. He told the mother that he was not happy, and then said that he wanted to talk about why he was not happy. He told the mother that the father let him see some messages that she had sent to the father. The mother tried to redirect the conversation several times, for example by trying to get the child to draw. Towards the end of her call, the mother was able to redirect the child. She made him laugh, by sticking crayons up her nose.

[235] The mother testified that she was highly concerned after receiving these voice messages. She felt that the father had exposed the child to the details of the Court's Endorsement of September 25, 2023.

[236] I accept the mother's theory about what happened. Very clearly, the father inappropriately discussed the Court's ruling with the child, and got the child all riled up against his mother in some kind of attempt to sabotage the success of the Order. The father also tried to cover up the fact that he had done this, by preventively messaging the mother to ask her what she had said to the child, trying to shift the blame for this outburst onto her.

[237] The father partially admitted that he had done some of this. He admitted that he had some kind of conversation with this child. He testified that he told the child that "the rules have changed".[20] The father also told the child what the "options" were: either the child would have to go to his mother's house, or the mother would pick the child up at the school.[21]

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[20] The rules did not change. The child had a schedule. The father didn't follow it.

[21] These were not "options". The Court's order simply continued what had been previously ordered. But if the father could not or would not take the child to see the mother, then the arrangements for parenting exchanges would change, as would the schedule expand to permit the mother to pick up and drop off the child at school.

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W. The Father Contemplated Calling D. To Testify During this Trial

[238] On September 12, 2023, after the events of the summer and after the mother's 14B Motion had been filed, but six days before this trial was to resume, the father sent an email to Mr. Stangarone that read as follows:

> Dear Counsel, I am writing to notify you that I will be seeking leave from the trial judge to bring the child [D.A.] for chief examination by both parties at the trial. Please confirm if you *(sic.)* client will be providing consent. Thanks. R.A.

[239] Notably the child was then just 7 years old.

[240] During his subsequent testimony, the father told the Court that it had had heard from Ms. McNee-Trinidad and Ms. Garibotti. He went on to say that he wanted the Court to observe that the child is "smart", has "strong interpersonal skills" and can communicate and "accurately portray his version of facts". He also said that the two OCL clinicians "went so far as to manipulate police reports" and "they didn't act with integrity".

[241] But the father did not then actually ask to call the child to testify. He said he did not want Mr. Stangarone cross-examining the child, due to his "tone and manner". The father also told the Court, that he had read a decision in which the judge had agreed to speak to an 11 year-old.

[242] Fortunately, in the end, the father neither asked the Court for permission to call the child to testify, nor did he specifically ask the Court to conduct a judicial interview during the September sittings. But then, during the last hiatus in the trial between September and November of 2023, the father sat the child down for a 29 minutes long video interview. The father sought to tender the video in November when the trial resumed.

X. The Father's Video Interview of the Child

[243] In November, the father played his 29 minutes long video, that showed the child sitting in a chair in the basement of the father's house. The father is not seen on camera, but his voice as the interviewer is recognizable. Throughout this video, the child can be seen twitching,[22] fidgeting,

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[22] Recall that anxiety impacts the child's symptoms of Tourette Syndrome.

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and spinning in his chair. At times, the child can be seen looking away from the camera. At times, he sticks a highlighter in his mouth.

[244] The father covered a broad gamut of topics that were litigated in this case. He used leading questions and suggested answers to the child at times.

[245] For example, he elicited that the child only wanted to go to his mother's for visits of 8 hours in length. At times, he elicited this information by asking about "sleeps".[23] The father brought up this topic twice more.

[246] The father tried to remind the child about certain times in the past when he did not want to go to his mother's house. The child said that he stopped going for 1 ½ months, but didn't know why. He asked the child about whether the mother tried to come to his house, where the father was at the time, and what the discussion was after the father got out of the shower.[24]

[247] The father tried to elicit information from the child about the "time out" that the mother had put him in, during the summer of 2023. The child said that he was put in a time out "for 72 hours – which is 3 days". The father tried to get the child to discuss different "levels" of time out, but the child would not do so.[25]

[248] The child went on to say that he hit his mother because he couldn't control himself. The father then asked him whether he apologized, and then elicited that he was still put in the time out,

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[23] The child had previously told Ms. Garibotti that he wanted to have "5 sleeps" in each household.

[24] These were contested matters of fact in this case. I have already made an adverse credibility determination and a finding about the father's claim that the child was afraid. I would not change it.

[25] Whether the mother imposed a system of consequences that involved different "levels" of time outs was a factual dispute in the trial.

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passive aggressively suggesting that the mother should have accepted his apology. He asked the child how he felt.[26]

[249] The father asked the child at least twice if there was anything else that he wanted to tell the "rules people". For example, he did this once at approximately 23 minutes and 45 seconds into this 29 minutes long video, and again at the end of it. At the 23 minutes and 45 seconds interval, the child said not really. The father then prompted the child again, this time about whether he remembered anything about the "old house". The child said that the mother used to hit him when he did things by accident. The father said with an exaggerated tone, "Are you sure". The child said "I'm not lying" and "I pictured it and took videos of it in my mind".[27]

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Y. **Findings and Conclusions About the Events of the Summer of 2023 and Their Aftermath**

[250] On the one hand, I find that the mother's response to the child's behaviour in the pool was excessive. While I accept her evidence that she did not completely confine the child to his room for the balance of his visit with her, I found that she minimized her response when she later testified about it in Court.

[251] However, in regards to the father, I find:

(a) From the outset, the father has been quite prepared to use the child as leverage against the mother. He began to subtly message to this child, that his mother is mentally ill and indeed dangerous. He started to do this just days after the separation. He even recorded himself doing this, and tendered his own videos into evidence. While there may have been questions about the mother's mental health initially that needed to be

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[26] This too has been the subject matter of this litigation. The father has alleged that the mother harps on the child's mistakes, and that causes the child to experience anxiety, or some kind of emotional harm.

[27] Notably, the father obtained these statements from the child, after there had already been similar statements to the OCL clinicians, upon which they did not place much weight, after Sharon Taylor with the Society had dealt with the issue, and after a *voir dire* regarding the child's statements to this effect to Ms. Rutledge, with a ruling on admissibility pending.

explored, they were more than adequately and amply addressed once this litigation got underway, and well before the trial commenced, but the father does not accept this;

(b) The father used the swimming pool incident during the summer of 2023 as an opportunity withheld the child for half the summer and almost the entire month of September, without any legal basis to have done so. When I ruled on the motion at the end of the September 2023 sittings, I did not find the mother's response to the incident at the swimming pool warranted the father's wholesale unilateral termination of her parenting time, and the other self-help actions that he took. I heard nothing additional occurred during the completion of the trial during the November 2023 sittings that would cause me to revisit that conclusion;

(c) In the midst of the summer of 2023, the father lied to the mother and to the Court about the child's unwillingness to attend on a visit. He told this lie during his Windsor trip; the father was still in Windsor when he pretended that child would not go to see his mother;

(d) The father damaged his credibility further when testifying about the events of the summer. He testified as to the complete inability to get the child to go to visits with the mother over the summer. But as soon as I made an order that would have expanded the mother's parenting time and allowed her mother to pick the child up at school in the event of any further breaches or lateness, the mother's visits suddenly resumed. In fact, the mother testified the father showed up 15 minutes early. This very much speaks to the fact that the father **was** able to take this child to visits, but he was choosing not to do so. I do not accept the father's explanation, that the child was afraid of the alternative (ie. more time with his mother, or that the mother would get to go to his school). It was the father who did not want this; and

(e) I will make other specific findings respecting the father's October 29, 2023 video below, when addressing the admissibility of this video and the limited use that the Court will make of it.

Z. The Father's Further Conduct Towards the OCL

[252] The father engaged in additional problematic conduct leading up to and during this trial's resumption during the November 2023 sittings. The father had previously served summons to witnesses upon Kim Bush and Tashana Aziz, two Regional Clinical Supervisors with the OCL, in

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aid of him pursuing his allegations that various persons within the OCL acted unethically. On November 2, 2023, the father sent revised summons directing both to attend Court on November 22, 2023, and to provide PDF copies of various documents to him and to Mr. Stangarone. Not only had the OCL already produced its file, but the OCL did not have an electronic copy of its file; it provides paper copies.

[253] On November 9, 2023, the OCL filed a 14B Motion to seek urgent direction from the Court, specifically wanting to bring a motion to set aside the father's summons to witness. The alternative relief sought was that those witnesses only had to attend court with paper copies of the notes and records. According to the affidavit of Lori Bennett, a Senior Manager of Clinical Services with the OCL, to comply with the father's summons, the OCL would first have to create a PDF copy of its record, by scanning hard copies that had already been produced.

[254] The father responded to the OCL's 14B Motion, with an unsworn affidavit dated November 16, 2023, mostly by making arguments, including that the OCL's motion was not urgent, and otherwise saying that it was "necessary to provide documents electronically because there is a dispute concerning what information was provided to each party. He accused Ms. Bush of not providing the "full set of documents subpoenaed".

[255] I heard the motions in Court on November 21, 2023. I did not order the OCL to produce electronic copies of its file. The father then abandoned calling Ms. Aziz as a witness at this trial; he only called Ms. Bush to testify. Ms. Bush would later testify that it took her some six hours to recopy her paper file that had already been produced.

AA. The End of Trial Preservation Order

[256] The trial finally concluded on November 27, 2023. On that day, I made a preservation order pending further Order of this Court. That Order was later amended on the mother's 14B Motion to provide further particularized language that a real estate lawyer required.

[257] Below, I make provision for this preservation Order to continue until the monetary orders that I intend to make are satisfied, until the March 17, 2022 Costs Order is paid, and until this Court deals with costs of the trial.

BB. The Father's 14B Motion to Address the Child's Therapy

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[258] On March 11, 2024, the father filed a 14B Motion asking for an urgent case conference or motion to address D.'s therapy, or for an order empowering him to enroll the child in weekly therapy with Sarah Long of the Mindful Mental Health Clinic. In his supporting affidavit sworn February 28, 2024, the father explained that the child had been without a therapist since October of 2023. He accused the mother of having provided her consent and withdrawn it, for the third time. He went on to repeat his previous narrative that the mother "struggles with psychiatric illness" and has ongoing struggles with "treatment compliance". He said she was now "resisting as aggressively mental health treatment for the child as she is for herself."

[259] However according to the mother's responding affidavit sworn March 6, 2024, the mother did not do these things. She explained that after the trial, the father wanted her "open-ended" consent so he could unilaterally select a therapist. She didn't agree. They then each proposed therapists in December. She agreed to meet with Ms. Long, whereas the father would not meet with her proposed therapist. In the end, the mother agreed to Ms. Long.

[260] Ms. Long had openings at 5 PM on Wednesdays. According to the existing parenting schedule, the mother has the child on Wednesdays. This enabled her to participate in a parental debrief for the last 15 minutes of the session.

[261] The mother said that the father began criticizing her to the therapist, he booked alternate session times, and he removed the in person debrief. He even threatened to call the police if she attended the debrief. The mother tried to suggest that the parties alternate the Wednesday sessions, so they could both participate in the debrief.

[262] In an Endorsement dated March 19, 2024, I declined to schedule an urgent conference or motion, and I also declined to award the father decision-making over this therapy decision. The determination of which parent will be responsible for deciding about and managing the child's mental health was an issue at this trial. By the end of the trial the child's last therapist had stopped working with this family. The father had a role in that outcome.

[263] I also reminded the parties that the trial Judgment was under reserve. I said I would deal with the issue of the child's therapy when I released the Judgment. In so doing, I signaled to the parents that I did not need to hear any further from them about these issues, such as by way of a conference or a motion, nor would they be going before another judge.

[264] Reading these affidavits in context of the record as a whole, I am easily able to find the mother's version of events is the accurate one. I do not find the father's account to be credible.

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The mother's version about what happened respecting this therapy is consistent with the father's very own submission at the end of the trial, that he wishes to exclude her. The father himself attached an email from the mother dated February 27, 2024 stating that the mother had withdrawn her consent because the father made another appointment without her knowledge and she was being prevented from attending debriefs.

[265] My finding preferring the mother's account of what happened, is also based on the broader credibility determinations, that I make next.

PART IV: THE PARTIES' CREDIBILITY

[266] At ¶ 40 of *Virc v. Blair, 2016 ONSC 49*, Jarvis J. wrote that a credibility assessment includes the consideration of inconsistencies and weaknesses in a witness' evidence, the review of independent evidence that confirms or contradicts a witness, the consideration of whether the witness' testimony is plausible, and the consideration of demeanour, but to be considered with caution. Jarvis J. also wrote that special consideration must be given to the testimony of witnesses who are parties to proceedings; it is important to consider the motive that witnesses may have to fabricate evidence. At ¶ 12 of *Liu v. Huang, 2018 ONSC 3499,* Kristjanson J. set out similar factors for the assessment of credibility. At ¶ 13, she further wrote that the Court is entitled to believe none, part or all of a witness' evidence, and may attach different weight to different parts of a witness' evidence. Credibility is also evaluated on the evidence as a whole. Considering the evidence as a whole, I have several, significant concerns about both the father's credibility.

[267] First, I found this father was prepared to twist and distort the truth when it suited his purposes. Several times during the trial, he made statements to the effect that certain documents, including the written communications between the parties, supported his version of events. Sometimes the father said he did not have the documents readily available. Frequently, I gave the father an opportunity to come to Court the next day with the purported documents. Sometimes he returned with the documents; sometimes he didn't. Sometimes the documents that father purported would corroborate a statement were reviewed and sometimes they did not say what he purported they said. For example, the father alleged, that after the release of Dr. Khattak's report, the mother had claimed that the child had been misdiagnosed. The father later referred me to messages sent over Our Family Wizard wherein the mother had allegedly said this. But the mother did not say this.

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[268] Second, during the trial, the father sometimes ascribed words to professionals that they did not say, or that he didn't prove them to have said. The father has made a number of complaints about professionals during the time that this case has been before the Court, which he did not prove. He violated the rule in *Browne v. Dunn* during the trial.

[269] Third, the father regularly testified in an overly detailed fashion about trivial or irrelevant matters. He was often not specific about important matters. I found some of his evidence to have been completely fabricated, such as his account of the child's fear when the mother child to pick the child up from his home during the summer of 2023.

[270] Fourth, some of the father's cross-examination of the two OCL clinicians, as well as that of Ms. Bush, a supervisor, revolved around his allegations that their investigations were insufficiently comprehensive, and that the reports were not reflective of the evidence. But a great deal of it also revolved around a conspiracy that they manipulated documents in favour of the mother. I gave the father ample opportunities to prove this, and even more chances during closing submissions, to tell me specifically what he felt the evidence that he elicited had established. I asked him direct questions. The father failed to prove that the OCL behaved improperly.

[271] Fifth, there were times during this trial, when things did not go his way, that the father cited his self-represented status as an excuse. The father chose not to invest his resources in hiring a lawyer. That was his right. But the father cannot then complain about his self-represented status.

[272] Moreover, this trial took an inordinate amount of time. It was heard over three different sittings. This family, and in particular this father, was given more than a fair opportunity to prove their case. I granted the father many accommodations throughout the trial. This included taking breaks to allow him to review documents, I allowed him to return to Court the following day after certain testimony had been given, to bring additional documents, and he was given an opportunity to review case law respecting child hearsay.

[273] Throughout this trial, the father demonstrated the ability to prepare for and to present his case. He was able to prepare a detailed Opening Trial Statement, draft Orders, and conduct examinations-in-chief and cross-examinations. He prepared multiple trial briefs, an updated trial record and numerous loose exhibits. Including because the trial spanned over three different trial sittings, the father also had more than ample opportunity to prepare, and prepare again, for examinations.

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[274] Finally, as I have already alluded to in the overview section, and elsewhere in this Judgment, I have serious concerns about the father's good judgment, when it comes to this child. I find that the father embarked on this approach to the litigation because underneath it all, he is angry at the mother. He was intent on punishing the mother for her affair. He was also very prepared to publicly attack her character during this trial. To use his own words, the mother wanted to live a "Florida spring break lifestyle". He took the opportunity to disparage and humiliate her more than once during this trial, testifying about this so-called 'lifestyle'.

[275] The father does not and is not capable of supporting and promoting the mother's relationship with this child. He did not in the past cooperate to expand her parenting time in a reasonable way. He took a scorched earth approach to this case, with a view to spinning a false narrative, unsupported by the overwhelming weight of the evidence. He attacked the mother, involved the child in the litigation, coached the child with a view to undermining the mother son relationship, and tried to sully the good reputation of some of the professionals involved, in the process.

[276] In contrast, throughout this long trial, I generally found the mother to be a calm and thoughtful lady, concerned for the well-being of her child. Her testimony was for the most part internally consistent, and it was consistent with the other evidence. She was for the most part unshaken in cross examination. While I do find that she minimized her response to the swimming pool incident during the summer of 2023, I found that in general she was prepared to seek out professional advice. She was also prepared to admit when she made mistakes, such as the omission on her Form 35.1, which she corrected.

[277] Because the father has called into question the integrity of several professionals who work in the family justice system, I intend to address this, here and now. I found Ms. McNee-Trinidad, Ms. Garibotti and Ms. Bush to be credible witnesses. I found no evidence that either have acted in an underhanded or unethical fashion, or that either misled the Court. They each did their jobs in a professional manner, confronted with an obstreperous litigant, intent on complaining when things didn't go his way. Mr. Stangarone and Ms. McArthur have also behaved appropriately and professionally.

[278] I have throughout this Judgment made specific credibility determinations about various events and aspects of the evidence. To the extent that I have not otherwise specifically set out which version of events I accept about the evidence, where there is a conflict in the parties' evidence, I prefer the mother's evidence.

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PART V: EVIDENTIARY ISSUES

[279] A number of evidentiary issues arose during this trial. The parties agreed to deal with these mostly by way of a blended *voir dire* with evidentiary rulings to follow.

A. The Child's Hearsay Statements About Physical Abuse

[280] The child has made several statements that the mother had "hit him" in the "old house". He made these statements to the OCL clinicians, to Ms. Rutledge, and again in the video that the father made on October 29, 2023.

[281] While I am prepared to presume necessity is established given the child's age, the child's statements that the mother used to hit him do not satisfy a threshold reliability analysis for admission into evidence for their truth. There are other very plausible explanations that underlie the child's statements, that do not point to the mother as a perpetrator of physical abuse towards a child.

[282] For example, in reference to one of the physical incidents talked about, Ms. McNee-Trinidad testified that she understood the mother grabbed the child's arm to intervene during a fight the child was having with his cousins. Based on her follow up interview with the mother, it was a "very quick grab" and the mother was trying to protect the child from harm, not abuse him.

[283] Another example can be found in the children's aid society case note of Ms. Taylor. There, she did not find the child to be at risk, and believed that "custody/access" issues were "more at play then the child being at risk given the court order in place". Ms. Taylor also felt the father was "panic stricken" that the child was going to get hurt.

[284] A third example of the dangers of accepting the child's statements for the truth of their contents, and the extent to which the Court cannot trust their reliability, was further revealed during the *voir dire* involving a statement made to Ms. Rutledge. The father introduced Ms. Rutledge's letter to the OCL dated September 30, 2022, in which the child spoke fondly about both parents, but also in the first few months of therapy made comments about the "old house" in which he said the mother hit him if he did something wrong. The Court held the matter down for the father to review the legal principles that apply to admit a child's out of court statements, before this particular examination continued.

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[285] When the witness resumed testifying, Ms. Rutledge testified that she did not record in her notes the question that she asked the child that led to the answer about hitting. While she said she found the child insightful, she was not able to describe D.'s level intelligence, stating this was not her role to do so. The father himself elicited that the child did not disclose to her, that he was afraid of a caregiver. In fact, he said that he missed his mother when at the father's house, and *vice versa*. The child had also said this to Ms. McNee-Trinidad.

[286] In cross-examination, Ms. Rutledge admitted that she did not call the children's aid society after the child made these statements to her. She understood it to already be involved. Ms. Rutledge also acknowledged in cross-examination, that the father was very involved in therapy. He sent many emails and made many calls to her. The father took the child to most of his therapy sessions.

[287] From the outset of the child's therapy, the father spoke of an abusive mother to Ms. Rutledge. In his intake form that he completed, the father told Ms. Rutledge that the child had already reported to him, that the mother hit him. Soon thereafter, the child made statements in therapy. In the intake session on September 1, 2020, that was scheduled for 30 minutes (and that ran long and took 45 minutes), the father also admitted to Ms. Rutledge that he had been recording the child frequently.

[288] And what Ms. Rutledge did not offer up, because the child did not say these things and she did not ask, were any further particulars about the alleged hitting. There were no details provided about when it allegedly took place, how it allegedly occurred, who was present, and so forth. The child would have been less than four years old when this hitting supposedly occurred, and the child would have been retelling this years later. Importantly, in Ms. Rutledge's letter to the OCL of September 30, 2022, the child also said that the mother did not hit him now.

[289] Ms. Rutledge testified on June 1, 2023. When the trial resumed during the September, 2023 sittings, the father tried to offer up the details that Ms. Rutledge had not provided. He claimed to recall a December 2019 incident, when the child would have been just three years old, that he described as "difficult". He alleged that he heard screaming upstairs, and walked into the room, to find D. "face down" on the carpet, with the mother's knee lodged into his back, while she was punching him with both arms "uncontrollably". He said he removed the child. Later that night, he claimed to have "set a hard limit" with regards to physical discipline. He said that in September or October of 2020, the mother not only started "gaslighting" him and "the rest of the social

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workers", but also the child, saying that she had never hit him. The father would then conduct his video interview of the child on October 29, 2023, and bring up the hitting once more.

[290] As set out earlier, there is evidence of messaging to this child, starting immediately after the separation. I have already found in my credibility assessment, that the father is motivated to establish a particular narrative.

[291] In conclusion, the child's statements about being hit by his mother in the past shall not be admitted for the truth of their contents.

B. The Lettered Exhibits

[292] There were twelve lettered exhibits for which a ruling about admissibility is outstanding.

(1) The Parties' Recordings

[293] The parties have each sought to introduce various video or audio recordings. They are identified as lettered Exhibits "C", which was later marked Exhibit 130, and Exhibits "J", "K" and "L".

(2) The Father's Recordings

[294] I considered excluding all of the father's recordings for several reasons.

[295] First, at ¶39 of *Van Ruyven v. Van Ruyven, 2021 ONSC 5963,* Kurz J. wrote that "the attempt to admit secretly made recordings by one parent of another and/or the child/ren has surged from a trickle to a gusher. I find that I am regularly provided with secret recordings that one party has made of the other, which the recording party asks me to then consider in order to prove the instability or perfidy of the other. Most of the times, the recording is an edited or selectively recorded version of a highly contentious argument between the parties."

[296] Apparently, there are many other recordings that the father has made, not just those that have been shown to the Court. For example, the father testified that he had his dash camera on at basically every parenting exchange. It may very well be, that there are many, many recordings of benign interactions, or perhaps even loving interactions between the mother and child, that are inconsistent with the father's theory of the case. It is difficult, if not impossible, to conclude that the father's recordings that he did tender, accurately depict facts that the father wishes the Court to find, when only a few have been handpicked from an abundance. There is certainly not, as I

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have already found, an absence of an intention to mislead: see *Rodger v. Strop, 1992 CarswellOnt 387;* see also *Webster v. Suteu, 2015 ONCJ 538 ¶ 44.* Allowing the father to introduce just a snippet of his recordings without the full context is prejudicial to the mother, because she cannot respond.

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[297] Second, in seeking to admit his recordings, the father himself acknowledged an awareness of the policy discouraging recordings in family law. Despite knowing about this policy (because he even said he obtained legal advice about this), the father nevertheless decided to embark upon his recordings to help him regain his "own perception of reality" and so he could review the videos to confirm that the mother is a "person who lies" and "weaponizes the litigation to further her agenda". What I find he was really doing, was creating evidence to use against the mother in this lawsuit, or he thought, to paint himself in a positive light.

[298] Third, I considered whether it was necessary in this Judgment, to canvass in more detail a number of other authorities concerning the admissibility of recordings in a family law proceeding, for example because not every recording made in this case was a surreptitious one. But I need not do so. At ¶ 40-43 of *Van Ruyven v. Van Ruyven,* Kurz J. found that there should be a presumption that the prejudicial effect of secret recordings outweighs their probative value. He held that the presumption could not be rebutted short of evidence disclosing "serious misconduct by a parent, significant risk to a child's safety or security, or a threat to another interest central to the need to do justice between the parties and the children." Many of the principles and policy statements in the cases that Kurz J. considered, and in *Van Ruyven v. Van Ruyven* itself, would have some application, even if the recordings were not surreptitiously made.

[299] However in the end, despite all of these frailties and the admonition in the case law, the parties generally agreed that the father's recordings could go in. Their dispute then revolved around for example whether the Court should rely on any child's statements contained therein for the truth of their contents, or for some other reason.

[300] I am reminded of the adage, that one should be careful for what they wish. I will admit the father's recordings into evidence. But I do not necessarily do so for the uses for which these recordings were tendered by the father.

[301] As I have already explained in several instances, the father's videos do not help his case. The fact that he has made these, and then tried to use them in this case in the manner that he did, reflects very poorly on him. At the risk of repeating myself, the father's own videos establish that

he does not support the child's relationship with the mother. His actions on October 29, 2023 were entirely inappropriate and particularly egregious.

[302] With reference to the father's video recording of that latter date in particular, and the oral testimony about it, I find the evidence established that:

(a) The father breached paragraph 17 of the earlier, consent Order of Fryer J. dated December 3, 2020, by talking to the child about this case. Several times throughout this video, the father made is clear to the child, that the purpose of the video was to communicate information to the "rules people" (meaning this Court/me). At one point when questioning the child about the events of the summer of 2023, he stated to the child that the video was "for the rules people" because "it's important they know what happened". At another time the father said that the "rules people get to make the rules" but we "get to say what we want". When the child answered one of his questions in another language, the father said "the rules people talk English";

(b) The father chose not to pursue his request to Mr. Stangarone, to have the child testify, or to be judicially interviewed. I infer he knew that these requests were fraught with problems. Quite apart from the fact of this child's young age coupled with his medical diagnoses, the father knew that this child has been subjected to interviews or questioning by others like doctors, therapists, and the OCL clinicians. He knew that it was very unlikely that this Court would allow him to call a 7 year old to testify, or embark upon a judicial interview;

(c) This October 29, 2023 video was not even the first time this child was questioned by someone on the father's behalf. Recall that the father testified that he had his sister question the child, too;

(d) One of the father's very clear purposes in making this video was to set the record straight, factually speaking. As I have already very specifically explained, the broad gamut of topics that the father covered with the child, covered contested matters of fact. The father also wanted to advocate for what is his view, that the OCL did not accurately detail the child's views and preferences. He tried to do so, by having the child do it for him; and

(e) It does not unnoticed by this Court, that earlier in the trial, the father had a limited understanding about how to introduce children's hearsay evidence. As I just

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> explained, when he tried to do introduce the child's statements that his mother had previously hit him through Ms. Rutledge, I held the matter down for the father to review a case about child's hearsay. It was fairly obvious in the *voir dire* that followed, that Mr. Stangarone had raised serious questions about the threshold reliability of the child's statements. The father then tried himself to provide more facts about physical abuse, and he tried again, to get the child to say so, via this video.

[303] As a matter of policy alone, the Court would not rely on these out of court statements of this child, taken improperly and in highly suspicious and problematic circumstances, to resolve contested matters of fact or questions about the child's views and preferences. On the specific merits of this case, the father's video is equally not probative when it comes to the Court's findings about various factual matters like the child's views about the parenting schedule, the mother's disciplinary techniques, or whether there had been past physical abuse.

[304] What it is very probative of, is the father's attitude and conduct, and the lengths to which he was prepared to go. The other evidence surrounding this video was also probative of his lack of insight. At the end of this trial, when the father testified about the October 29, 2023 video that he made, he was completely lacking in any awareness of the damage he caused to his case, and more importantly, to the child. Instead, the father told the Court why his interviewing techniques (of the child) were sound, something that he also attempted to explain with reference to his sister's earlier interview of the child. Meanwhile, the father had just subjected this to a little boy to what Mr. Stangarone would later characterize as an "interrogation", knowing full well that D. suffers from anxiety, he is impacted by the separation, and he is impacted by this litigation.

[305] The fact that the father did this very much causes the Court to significantly question his judgment. I draw an inference that the father has caused this child to suffer anxiety. I am prepared to go one step further, in the section of this Judgment about family violence, when I explain why I find that the father's video is an act of psychological abuse towards this child.

[306] During her Reply evidence, the mother testified that watching this video made her afraid for the child's physical and mental health.

(3) The Mother's Recordings

[307] The father challenged the authenticity the mother's recording at Exhibit "J". After first not objecting to its admission, the father later raised a fairness argument about the mother's video that was ultimately marked as Exhibit "K".

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[308] I find the father failed in his attempt the challenge the integrity of the mother's counsel, and therefore the authenticity of the recording at Exhibit "J". The father's argument does not merit any further analysis and so I say nothing further about it.

[309] While not dispositive of the admissibility issue, the audio clips/Exhibit "K" that the child sent to the mother while in the care of the father are not surreptitious. But moreover, I find them to be quite probative respecting the events of the summer of 2023 and the aftermath following this Court's Order of September 25, 2023.

[310] I find the mother's recordings of her video calls with the child on August 5, 2023 and September 25, 2023 to be very probative about the father's motives and his credibility. I also find these recordings to be very probative of the damage that the father is trying to cause to the mother-son relationship.

[311] I find the August 5, 2023 recording in particular to be an important piece of evidence that rebuts the father's assertions about the child's state of mind. Again and to be clear, I do not find that the child was afraid of his mother, as the father said. This recording stands in contrast to that assertion.

[312] The recordings that the mother sought to introduce will therefore be admitted into evidence for these purposes.

(4) The Mother's Journals

[313] These disputed lettered exhibits are Exhibits "F", "G", "H" and "I".

[314] The fact that the father took six or seven of the mother's private journals at the time of the separation became a very contentious issue in this case. His taking of her journals impacted the OCL's investigations, and this trial.

[315] I will only describe the contents of these journal entries in this Judgment briefly and in a non-detailed fashion, in view of my ruling that they are protected by a case by case privilege. Exhibit F is a note that the mother wrote, that is not from a journal book *per se,* but that was on a separate piece of paper. Exhibit "G" contains a list of other journal entries, and then the journal entries themselves. Exhibit "H" is a journal entry that the father tried to introduce during his own examination-in-chief. He described that the mother had written it about the holiday Eid, and he attempted to tie it to something he alleged happened in the past. The father testified that he had

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"no choice" but to rely on the journal entries marked as Exhibit "I" because the mother asserted he was abusive and the cause of anxiety. He sought to tender this journal entry to challenge the mother's credibility.

[316] These journals are to be excluded from the evidence in this case. The Court will order that these lettered exhibits shall be sealed. The father shall also be ordered to destroy the copies of the mother's journals that he has at later of the conclusion of an appeal period, or an appeal if there is one (unless of course the appellate court orders otherwise). My ruling is based on the findings of fact and analysis that now follows.

(5) Findings of Fact Respecting the Mother's Journals

[317] While the mother may have already been writing journals earlier on, she nevertheless testified that it was with the advice of her therapist, that she journaled during the marriage. She did this as a therapy tool in aid of her mental health, which she said she found helpful.

[318] The mother journalled when the family was away on vacation, too. The mother sometimes made notes using hotel or other loose pieces of paper, that she then put into, or stored with her journals. For example, the father confronted the mother with one of these writings, which the mother said was in fact a journal entry.

[319] The mother testified that she did not allow the father to have access to her journals at any time during the marriage. She denied that they tried to write journal entries together, to "manage the [mother's] various stakeholders" as the father suggested to her. While the mother did not keep these journals locked away, she testified that she kept them separate from him.

[320] The father took some of the mother's journals unilaterally and surreptitiously upon the separation, without her consent. While the father would later return them, he did not do so without first photocopying them for their later use in this case.

[321] The mother testified that she now has more difficulty journaling. She previously viewed her journals as a safe space, but the father's conduct has made her nervous to journal.

[322] The father tried to use these journals in at least three ways in this case.

[323] First, the father tried to have both OCL clinicians read the mother's journal entries. Ms. McNee-Trinidad told the father that she would not be reading the mother's journal entries. She also explained that she had been told by the mother's lawyer at the time, that the journal entries

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were not included in the Continuing Record. Ms. McNee-Trinidad later learned that the journals did form part of the Continuing Record.[28] She then questioned whether she had made a mistake in not reviewing them.

[324] Ms. Garibotti also refused to read the mother's journals during her investigation. She too felt that they were the mother's personal and private entries, and in any event not necessarily indicative of medical diagnoses.

[325] Second, the father took journal entries with him, when he went to see the Justice of the Peace, in the fall of 2021. This is discussed later, in the Court's analysis of family violence.

[326] Third, the father tried to introduce them during this trial. The mother said she found this upsetting.

(6) Analysis Respecting Case by Case Privilege

[327] The mother seeks to exclude the journals. She asserts they are privileged.

[328] The Supreme Court's decision in *M.(A.) v. Ryan, 1997 CanLii 403 (S.C.C.)* concerned a motion for production of counselling records, but the privacy and privilege analysis is applicable.

[329] Everyone owes a duty to give evidence relevant to the matter before the Court, so that truth may be ascertained. But privileges are an exception to this fundamental duty, where it can be shown that they are required by a "public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth": see *M. (A.) v. Ryan ¶ 20.*

[330] While there is no blanket privilege here, the kinds of privilege that may exist at law are no longer confined to "centuries' old categories". The common law permits privilege in new situations, "where reason, experience and application of the principles that underlie the traditional privileges so dictate". If the Court determines a privilege exists, there is no residual discretion to

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[28] This does not matter in the analysis. Just because a document is filed in the Continuing Record does not make it admissible at trial.

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order the production: see *M.(A.) v. Ryan ¶ 15-17* (or by extension, to admit and rely on these documents).

[331] The four-prong "*Wigmore* test" can apply to determine whether these journal entries are privileged. The test requires the Court to consider:

(a) Did the communication originate in a confidence?;

(b) Was the confidence essential to the relationship in which the communication arose?;

(c) Was the relationship one that must be "sedulously fostered" in the public good?; and

(d) If all the above circumstances are met, do the interests served in protecting the communications from disclosure outweigh the interest in getting at the truth and disposing correctly of the litigation?

See *M. (A.) v. Ryan ¶ 20*

[332] The Supreme Court specifically rejected an "all-or-nothing" approach in *M.(A.) v. Ryan*. The Court may order disclosure of some but not all documents, or edit them, or impose conditions about who may see or copy the documents, "…to ensure the highest degree of confidentiality and the least damage to the protected relationship, while guarding against the injustice of cloaking the truth". See *M. (A.) v. Ryan ¶ 32-37, 39.*

[333] In my view, the first three branches of the *Wigmore* test are met. I do not accept that the parties journalled together, as the father tried to suggest. And regardless of the line of inquiry of the father, that the mother may have journalled before starting therapy, the entries that the father sought to introduce all post-dated the mother being in her therapy. Those journals would have still been private even if they had not been made in aid of therapy. But the fact that she did this as a tool of therapy aggravates further the seriousness of the father's actions in my view.

[334] The fact that the father father's actions have impacted the mother's feelings about her therapy is counter to what should be promoted in a case of this nature. Where one parent is making allegations about the other's mental health, and therapy is one of the recommendations by which the mother will maintain good mental health, that therapy should not be interfered with.

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[335] In regards to the balancing required under the fourth branch of the *Wigmore* test, these journal entries are minimally probative of credibility or of the mother's mental health, especially when considered in context of the overwhelming amount of other evidence on these topics. And the Court's Orders must be reflective of *Charter* values. Just because there may be an alleged credibility issue, or a parent with mental health struggles, does not blow the door wide open for the admission of this kind of evidence, especially when it has very limited probative value. Recognizing and protecting a case by case privilege will be beneficial when it addresses any inequalities that would be perpetuated by the absence of protection: see *M. (A.) v. Ryan ¶ 29, 30.* I find that the father's approach to this evidence has harmed the mother's dignity.

[336] Finally, at ¶ 22 of *L. (H.J.) v. E. (W.V.), 2001 CanLii 25255,* Borenstein J., of the Quebec Superior Court, wrote specifically about journals:

> The Court has a duty to protect these rights and a person has the right to see that his most private reflections which he keeps in his diary which he then locks up, are not exposed. The fundamental right of respect of one's privacy would be breached if the Court allowed the wife to produce the evidence obtained under such circumstances and its use would tend to bring the administration of justice into disrepute. The Court maintains the objection and declares the diaries inadmissible.

[337] I find the mother's journals are protected by a privilege. They are to be excluded from the evidence, and various confidentiality orders will attach.

(7) The Text Message Between the Father and the Mother's Sister

[338] Exhibit "D" is a series of text messages between the father and the mother's sister, one of which is dated June 5, 2020. The discussion revolves around the mother's temporary stay in the hotel after the separation. The father added his own commentary at the top of the page on which these text messages were photocopied. That commentary was struck during the trial.

[339] Some of the text messages were written by the father and some by the mother's sister. The mother raised a hearsay objection, as her sister was not called to testify. During the line of inquiry that followed, the father asked the mother to admit that he had taken certain steps at the time of the separation, or whether her sister had told her that he had taken those steps.

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[340] What the father wrote about the mother going to a hotel after the separation, is not particularly contested terrain. The father was also able to give his own evidence about what he did. No issues in this case turn on these test messages. They are not admitted.

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(8) The Mother's TD Bank Account Transactions, Her Other Financial Documents and the Father's Ongoing Complaints About his Employer Audit

[341] The mother opened new bank accounts after the date of separation. Tab 44 of the Mother's Supplementary Exhibit Brief contains print-outs from the bank, of the transactions in and out of the mother's new TD Bank Chequing Account, as well as some statements of other accounts, credit card statements, and student loan documentation. These documents were marked as lettered exhibit B during the trial because the father objected to the authenticity of the chequing account print outs from the bank.

[342] The father complained that the mother produced a transaction summary and argued that she did not comply with an order for financial disclosure. He went on to say that she somehow manipulated documents to show that she complied with a prior disclosure order. He said she controlled documents in some fashion to prevent him from getting a spousal support deduction. He said this was a form of financial control.

[343] The father also testified more than once about an employer audit that he is undergoing, and that he says the mother has to participate in. He claimed that the mother's bank statements weren't authentic, and that this somehow posed a problem in the audit. He also claimed that she needed to sign a form and take other steps.

[344] In the draft Order that he tendered at the end of the trial, he asked for an order that "the TD Bank to release directly to him statements generated between June 1, 2022 and August 1, 2022 for any accounts held by the mother, at a minimum to include the accounts listed in [the mother's] Financial Statement [sworn April 17, 2023]".

[345] By contrast, the mother testified that she obtained the print-out by attending at the bank and asking the bank to generate this document, as she could not do it herself online that far back in time.

[346] These multiple arguments of the father are without merit. The father did not prove these different allegations of document manipulation. This is yet another example of the father baldly asserting that someone, whether the mother, her current lawyer, her former lawyer, the OCL, or Dr. Walker-Kennedy behaved with impropriety.

[347] This was also not an example of financial control. The father was not entitled to a spousal support deduction: see again the Consent Order of Fryer J. dated December 3, 2020, which provides that the funds the father paid were an advance to the credit of support or property, to be sorted out later. Payments made under such an Order are not spousal support, and are not tax deductible.

[348] There is no serious question in this case that the mother had very little by way of resources of her own, either during the marriage or after the separation. The father was the one who retained financial control.

[349] Finally, I already made an order about the financial audit on September 19, 2023. I do not intend to deal with the financial audit any further.

[350] Other than an enclosure letter from Mr. Stangarone's office dated May 9, 2023 and a letter from TD Bank dated April 18, 2023 that I already struck, the balance of the documents behind this tab are business records and are admissible. There shall be an order accordingly.

(9) Dr. Khattak's 2021 Assessment Report

[351] Dr. Khattak, whom I have referred to already in this Judgment, is a pediatrician with KidsClinic. His practice is focused on developmental and behavioural pediatrics. D. was referred to Dr. Khattak for an assessment regarding anxiety and an acute stress disorder in 2021, as the child had then been demonstrating tic-like behaviours. Dr. Khattak assessed the child on June 28, 2021 and again on September 3, 2021.[29]

[352] The assessment report of was initially marked as Exhibit A. It was made a lettered exhibit because it was not immediately agreed whether he would be called to testify or whether his report

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[29] His report is undated.

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would otherwise go in under the *Evidence Act*. This issue later resolved. His Report has already been made an exhibit.

(10) The Medical Note of Dr. Kitab dated March 26, 2018

[353] Exhibit "E" is a medical note of Dr. Kitab dated March 26, 2018. The parties also agreed that this note could be admitted into evidence. There shall be an order accordingly.

PART VI: ISSUES AND ANALYSIS RESPECTING THE PARENTING ISSUES

A. The Applicable Statutory Provisions Respecting Decision-Making Responsibility and Parenting Time

[354] A parenting order is defined in section 2(1) of the *Divorce Act* as an order made under section 16.1(1). Pursuant to section 16.1(1)(a), the Court may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by either or both spouses.

[355] Decision-making responsibility is defined in section 2(1) as the responsibility for making significant decisions about a child's wellbeing, including in respect of health, education, culture, language, religion and spirituality, and significant extra-curricular activities. Parenting time means the time that a child of the marriage spends in the care of a person referred to in section 16.1(1), whether or not the child is psychically with that person during the entire time.

[356] Pursuant to section 16.1(4), the Court may allocate parenting time or decision-making responsibility in accordance with sections 16.2 and 16.3, it may order terms respecting communication, and it may provide for any other matter that the Court considers appropriate. The Court may also make an order for a definite or indefinite period of time or until a specified event occurs, and it may impose terms and conditions, in accordance with section 16.1(5).

[357] When there is an application for a parenting Order, the Court's only focus must be the best interests of the child or children in question: see section 16(1). This Court is to consider all factors related to the circumstances of the child when determining best interests. Section 16(2) requires that when considering the factors in section 16(3), the Court is to give primary consideration to the child's physical, emotional and psychological safety, security and well-being. Section 16(3)

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requires the Court to consider all factors related to the child. There is a non-exhaustive list of eleven criteria in the section.

[358] Pursuant to section 16(5), the Court is not to take into consideration the past conduct of any person unless the conduct is relevant to the exercise of parenting time or decision-making responsibility. There have been a multitude of allegations about past parental behaviour in this case, some positive but much negative.

[359] Pursuant to section 16(6), in allocating parenting time, the Court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child. How this provision is to be interpreted, was recently addressed by the Supreme Court in *Barendregt v. Grebliunas, 2022 SCC 22 ¶ 133-135.*

B. Applicable Legal Principles and Analysis Concerning Joint Decision-Making Responsibility

[360] Although both parents have essentially sought sole decision-making responsibility, the first OCL Report recommended joint decision-making responsibility, and some form of consultation has been part of the principal and alternative positions being taken by one or the other parent at points during this trial. The legal principles applicable to joint decision-making are well known: see *Kaplanis v. Kaplanis, 2005 CanLII 1625 (Ont. C.A.)*: see also *Roloson v. Clyde, 2017 ONSC 3642 ¶ 59* in which Justice Chappel provides a helpful list of factors to consider.

[361] In particular, it is well-known that joint decision-making is generally only appropriate in cases where there is evidence of historical and appropriate communication between the parents. Just because one parent professes an inability to communicate does not preclude an order joint decision-making. Nor is the standard of perfection required. But where there is poor communication, joint decision-making should not be ordered in the hopes that two parents' communication will approve. There must be some evidence before the Court that, despite their differences, the parents are able to communicate effectively with one another.

[362] Courts are sometimes willing to order some form of joint decision-making, even in the face of parental conflict, where such an order is considered necessary to preserve the balance of power between the parents. This is particularly in cases where both parties are caring and competent parents, but where one party has been primarily responsible for the conflict. That is exactly what Ms. McNee-Trinidad recommended in the First OCL Report.

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[363] But as Ms. Garibotti later recognized in her analysis in the Second OCL Report, and I agree, joint decision-making will not work in this case. These parents' abilities to communicate and co-operate is non-existent. Especially here, where there has been very problematic behaviour on the part of the father, the Court is concerned that any form of joint decision-making or parallel parenting is more likely to inflame the parents' conflict and expose D. to it. That very much militates against such an Order: see *S.S. v. S.K., 2013 ONCJ 432 ¶ 43.*

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C. Analysis Respecting the Statutory Best Interests Factors

D. The Child's Needs

[364] Section 16(3)(a) provides that the Court shall consider the child's needs, given the child's age and stage of development, such as the child's need for stability. That entails articulating what the child's actual needs are.

(1) The Child's Mental Health Needs

[365] D. exhibits certain behavioural issues, he has anxiety, particularly when he is separated from his parents, and he has a mild form of Tourette Syndrome. In view of D.'s health and behavioural issues, it goes without saying that this child needs to have healthy relationships with both of his parents.

(i) The Parents' Evidence About the Child's Behavioural Issues

[366] The Court heard much evidence about D.'s behaviour and anxiety, from the parents, from other witnesses, through the documentary evidence, and from the professionals involved in the child's care. For example, both parents and the maternal uncle explained testified that D. has anxiety and a "tics disorder". Both parents testified about the child's aggression, which includes hitting.

[367] The father's presentation suggested or implied to the Court that the aggression was exclusively, or at least primarily towards the mother. For example, the father asked questions of witnesses to establish that D. had not been aggressive with his therapists.

[368] But while the child has certainly been aggressive with his mother, the mother has not been the exclusive target of this. Each of the mother, the father, and the maternal uncle testified that D. would get into scuffles with his two cousins. The Court also heard evidence about conflict that the child had with other students at school, including recently. The Court heard evidence that the child had been aggressive with the father, too.

[369] The father believes that the mother is the cause of the aggression. Ms. Garibotti expressed a concern about this belief. The father has tied the child's mental health to others in the mother's family, too. For example, the father testified, without any expert evidence to this effect, that the child now has the "hereditary make up of an individual likely to have mental health issues" because the maternal grandmother and aunt are diagnosed with bipolar disorder and schizophrenia.

(ii) Dr. Khattak's Assessment of the Child

[370] Dr. Khattak diagnosed the child with Generalized Anxiety Disorder and Separation Anxiety Disorder. In his Report, he wrote that D. experiences excessive worry more days than not. He wrote that D. has difficulty controlling his worries. He wrote that this worry on occasion disturbs his sleep, and the physical symptoms of anxiety are noticeable and interfere with his ability to function.

[371] In regards to separation anxiety, Dr. Khattak wrote that the child demonstrates developmentally inappropriate and excessive fear or anxiety concerning separation from those to whom he is attached. He has recurrent excessive distress when anticipating or experiencing separation from home or from major attachment figures. He worries excessively about losing major attachment figures or possible harm to them. He is reluctant to sleep without being near a major attachment figure.

[372] One of the reasons Dr. Khattak had to be called to testify, as opposed to his evidence going in by way of his written report alone, was that the father would not admit that the mother is a major attachment figure referred to in the report. Dr. Khattak confirmed this during his oral evidence.

[373] Dr. Khattak recommended individual counselling, a referral to a trauma specialist if the regular therapist reported D. demonstrating any symptoms of trauma, limits on excessive screen time, parental education, and that D. obtain an IEP. As set out earlier, Dr. Khattak made recommendations for transitions between households. He also made various recommendations for D.'s school.

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(iii) The Child's Tourette Syndrome

[374] The father believes that the child's contact with his mother aggravates his "tics".

[375] However, the father introduced the Report of Dr. Pearce dated February 1, 2022, obtained after the assessment of Dr. Khattak. This Report went in on consent, without Dr. Pearce testifying.

[376] Dr. Pearce did not find that the mother aggravated the child's "tics". Rather, she diagnosed D. with mild Tourette Syndrome, writing that the tics did not interfere with his day-to-day functioning. She recommended that the child be monitored for potential autism spectrum disorder as he progresses through school, given reports of some social skills difficulties from teachers.

[377] Dr. Pearce's Report also indicates that psychoeducation was provided about the assessment and its recommendations. She specifically wrote that her assessment did not include an assessment of parenting capacity or abilities.

(2) The Child's Other Health Care Needs

[378] This child had a number of health care professionals involved in his care. While complaints have been made about the father perhaps over involving health care professionals, what is notable, is that D. does not currently have either a family doctor, or a therapist; two essentials for his continuity of care and to address his anxiety, its behavioural manifestation, and his aggression.

[379] The child's doctor used to be Dr. Vinoja. Dr. Vinoja went on a maternity leave at the end of 2021. Since Dr. Vinoja's maternity leave, the child has been taken to walk-in clinics, and now most recently to Dr. Gihan, who the father described as the former family doctor of both parents. In reality, he is the father's doctor; Dr. Gihan has not been the mother's family doctor for quite some time. The parents have been unable to agree on a new doctor.

[380] Ms. Rutledge, who the father called to testify, is the registered psychotherapist, whom the father initially involved to provide counselling for the child, following the separation. Ms. Rutledge saw the child for weekly or bi-weekly therapy sessions between September of 2020 until August of 2022. Her final session with D. was in November of 2022, at which point D. was transitioned to a new therapist.

[381] The father made the decision to change therapists, because the child was apparently less willing to "self-disclose". The father also felt that someone with more expertise was required. He found Dr. Hosseini.

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[382] Dr. Hosseini, whom the father also called to testify, is a clinical psychologist. She provided counselling for the child between June of 2022 and until October 3, 2023. But in July of 2023, Dr. Hosseini told the parents that she could no longer provide therapy for the child, "due to a personal matter".

(3) The Child's Educational Needs

[383] The child attends a school that is close to both parties' residences, although it is slightly outside the mother's catchment area. The mother confirmed with the school, that the child could continue to attend school there, for example, if the child began living with her more of the time. Dr. Khattak's report has been provided to the child's school. There is already an IEP in place.

(4) The Child's Cultural, Religious and Spiritual Needs

[384] In general, the parties are in agreement respecting culture and religion. They both agree that the child should be raised in the Muslim faith. The parents differ in the way they each practice their religion now.

[385] The father testified that he comes from a close-knit community of 100 families. He testified that members of his community attend between 60 and 70 religious programs together. He testified that people of this community watch each other's children. He wants D. to be part of this community, but said that the mother has chosen to leave this community, because the choice to live in a "faith centered community caused her anxiety". He seems to believe that the mother is moving the child "from community to community as [she] spends her time discovering herself".

[386] I agree that it is important that the father should be able to involve D. in his community. But the mother is not objecting to this. At its core, the problem is that the father's view of what is entailed for the child to participate involves curtailing the mother's parenting time.

[387] In my view, the most significant parental dispute over culture and religion to date, concerned the child attending the Saturday school. This caused problems, at least until the Court's Order of September 25, 2023, because of its impact on the parenting schedule, how the parties handled that impact, and the conflict that generated in the process. That is not the only dispute about religion and culture, however. I will identify and resolve the others in this Judgment, too.

E. The Father's Ability and Willingness to Manage the Child's Behavioural Issues, Mental Health, Other Health Care and His Education

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[388] Having now identified what the child's needs are, section 16(3)(h) directs the Court to consider these parents' abilities and willingness to care for and meet the child's needs. I will address the father's abilities and willingness first; I address this factor as it pertains to the mother separately.

[389] In the second OCL Report, Ms. Garibotti recommended that despite a number of short comings and concerns she had about him, the Court should nevertheless empower the father to make final decisions about this child, after consultation with the mother. Her analysis is largely based on the *status quo* of the father having done so since the separation, and the fact that joint decision-making is contraindicated. While I agree that joint decision-making is contraindicated, I cannot give effect to this recommendation. I do not find that the father is better able to manage the child's health and education for six reasons.

[390] First, the father has provided misinformation about the mother to the child's health care professionals, such as to Dr. Pearce and to Dr. Khattak.

[391] I do not fully know what Dr. Pearce did with the information that the father provided,[30] since she did not testify, but her Report states that the father wrote in his intake form that:

(a) The mother was struggling with marijuana use, and there was one incident during pregnancy where he had to intervene, because she was "secretly purchasing it";

(b) Various family members of hers have a plethora of mental health issues;

(c) The child suffered from anxiety "related to prior abuse from the mother (physical, emotional and psychological)", and he claimed his family doctor believed the child's tics were "secondary to an anxiety disorder, which was believed to be the result of an "abusive relationship with the mother"; and

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[30] (other than providing education to the parents, and writing that she was not conducting a parenting assessment)

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(d) The child's tics escalated since mid-February of 2021.[31]

[392] Dr. Khattak testified he recognized the need to some degree to take what the parents were saying with a grain of salt, as they were in a high conflict separation.

[393] Second, although neither Dr. Khattak, whether in his Report nor during his oral testimony, nor Dr. Pearce in her written Report, have ever said that the solution to the child's behavioural and health issues is to curtail the mother's parenting time, that is exactly what the father believes the solution to be. At his very first interview with Ms. Garibotti, the father told her that the child's tics subsided when the mother's parenting time reduced. He also told Ms. Garibotti that the mother causes the child stress. Likewise, the father claimed in cross-examination, that after he stopped the mother's visits with the child for over two months during the summer of 2023, the child's behaviour improved.

[394] The father argued with Mr. Stangarone about whether the child experiences anxiety when away from his mother. He would not concede this, [32] even though his own, professional witness, Dr. Khattak, later said this when he testified. To be clear, Dr. Khattak said he had "no doubt" that both parents were major attachment figures for this child. Dr. Khattak was also of the view that the withholding of the child from the mother for a prolonged period of time, like that which occurred over the summer of 2023, would have caused an escalation in the child's anxiety. What this means, as Ms. Garibotti has also written, is that this father is unwilling or unable to digest and incorporate professional advice about this child, that is not consistent with his own views and narrative.

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[31] The father testified that there were "challenging facts" in the correspondence during this time frame.

[32] The father had no problem claiming that the child has "separation anxiety" when away from not only him, but also his sister, and his mother, yet he would not acknowledge the mother. He even deflected a question about whether he thought the child's relationships with these other relatives were closer than the child's relationship with his own mother, making a casual comment about how close the child was with a particular niece.

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[395] Third, the father has not necessarily made good health care decisions for this child, either. For example, his decisions about the child's therapy have culminated in this child now not having a therapist.

[396] Fourth and relatedly, I find that the father has been shopping for a professional who will support his view that the mother is the problem. So far, this has included Ms. Rutledge, Dr. Hosseini, Dr. Khattak, Dr. Pearce, Ms. Long, and even chiropractors. The father also tried to persuade or influence the OCL clinicians, and Dr. Walker-Kennedy's assessment of the mother.

[397] Again, Dr. Pearce wrote that she did not undertake a parenting assessment. Dr. Hosseini said more than once during her testimony that she did not undertake an assessment of the child too, as that was not her mandate. She also testified that the parents signed an agreement not to involve her in Court, yet the father served her with a summons and compelled her attendance.

[398] Meanwhile, to Ms. Garibotti, Dr. Hosseini said that the child had not reported any concerns about either parent. And in her subsequent written report dated April 3, 2023, that the father himself tendered, Dr. Hosseini wrote that the child talked positively about both his parents and expressed enjoyment of different activities done with them. He also spoke fondly about two cousins on both sides of his family. Most recently, the father misrepresented the state of affairs about the child's therapy, respecting his conduct with Ms. Long. The mother's evidence is that the father tried to malign her, to Ms. Long.

[399] The Court observes that despite looking for one, the father has not yet found a professional willing to give him the opinion that he is seeking. Yet he has kept on trying to find one. At one point during the trial, he wanted a "reunification specialist" to be ordered, a request he later abandoned.

[400] Fifth, the child's school attendance has been an issue under the father's watch. According to D.'s Report card dated June 28, 2023, by the end of grade one, the child had been absent 51 days, and late 5 times. The father admitted that during the first week of the 2023-2024 school year (which was only a four day school week to begin with), he kept the child home for "religious and illness reasons" for three of those four school days. According to the November 15, 2023 Report Card, the child had already been absent for 9.5 days during the first two and a half months of the school year. Given the child's educational needs, this is a problem.

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[401] Sixth, the father has also spread information about the mother in the educational realm. I refer again to the school principal's call to the children's aid society, early on after the separation, to inquire whether information could be released to the mother.

[402] For all of these reasons, I find the father cannot be given decision-making.

F. The Father is an 'Unfriendly Parent'

[403] At ¶ 133 of *Baredgret v. Grebliunas,* Karakatsanis J. referred to the "friendly parent rule", which instructs courts to consider the willingness of a parent to foster and support the child's relationship with the other parent in the best interests' analysis. I find that the father is an 'unfriendly parent' and this too militates against providing him with decision-making responsibility. The reasons I draw this conclusion, are overwhelming.

[404] Much of the evidence, relevant to other best interests' factors, is also again relevant here. As Ms. Garibotti succinctly and accurately said in the Second OCL Report, the father demanded supervised contact with the mother early on, and that it continue until a court order was made (being the March 17, 2022 Order). He refused to agree to various supervised agencies, and insisted that he be present for community visits. He was been unable to execute significantly more time, or accept positive assessments of the mother's behaviour.

[405] At the risk of repeating myself, I find the father has:

(a) created a post-separation *status quo* that departed from the parenting arrangements during the marriage;
(b) unnecessarily insisted on restrictions to the mother's parenting time, for far too long;
(c) excluded her from the full participation in the child's life;
(d) delivered inappropriate messages to this child about his mother's mental health and used the child to communicate messages;
(e) inappropriately involved the police and child welfare agencies;
(f) refused to move the location of the mother's parenting time to Ajax in 2021, even if still supervised, resulting in the child having to commute back and forth between Ajax and Stouffville, when there had already been problems with the commute and these exchanges;
(g) refused to allow the mother to talk to the child about his home, and criticized her when she did this on her own;
(h) spread misinformation to others about the mother;
(i) interfered with her parenting time in multiple different ways;

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(j) refused to allow the mother to attend at his house for exchanges;
(k) withheld the child for vast amounts of time during the summer of 2023;
(l) breached orders of this Court;
(m) lied about his whereabouts (in Windsor) while pretending that the child would not attend visits;
(n) involved the child in the dispute and got the child riled up, to the point that the child was verbally abusive towards his mother, after this Court's Order of September 25, 2023;
(o) conducted his own video interview of the child; and
(p) most recently, refused to allow the mother to attend therapy debriefing sessions, while this decision was under reserve.

[406] Some of these examples would have been known to Ms. Garibotti when she wrote the aforementioned conclusion in the Second OCL Report; other examples post-date it. The subsequent examples serve to reinforce her conclusion.

[407] The father had ample opportunity to change. He has instead become more rigid, entrenched and extreme in his positions. All of these examples very much persuade me that the father is not supporting, and is not capable of supporting the mother's relationship with the child.

[408] By contrast, I am not concerned that the mother might marginalize the father as the child's parent. I find she has not and will not do so.

G. The Father's Communications to the Mother Are Overly Lengthy, Detailed, Controlling, and Dictatorial

[409] Section 16(3)(i) provides that the Court shall consider the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child.

[410] The mother testified that the father had sent her lengthy messages, broken down into topics, like "injuries", "medical", "emotional", "behavioural", "parenting", "logistics" and so forth. Both sides tendered voluminous communications between them (ie. hundreds if not thousands of pages

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of text messages and Our Family Wizard Messages).[33] Most if not all of the Our Family Wizard messages that I reviewed reveal that the father used this format. The mother also testified that the father would send these messages, and then repeat himself in subsequent ones, asking her things that he had already asked earlier.

[411] The mother testified that the father told her that she had to write these kinds of detailed messages to him too, and when she did not, he accused her of not following an order and of not communicating. The mother viewed these messages from the father as "over communication", something that she discussed with the OCL clinicians during the section 112 investigations.

[412] The father testified that he thought his detail was a good thing, saying that he thought he was keeping the mother involved.

[413] Ms. Garibotti described the Our Family Wizard messages as "challenging". She said there were many examples where both parents had used Our Family Wizard to further their position and discuss court issues. She said they were confrontational in their communication. However she also wrote that the father is giving suggestions and directions to the mother more often to "assist" the mother in managing the child's behaviour. She wrote that these messages can be perceived as derogatory and condescending. She wrote that the father's messages were often long and detailed with several paragraphs and headings, and the communications should be streamlined.

H. Additional Examples of the Father's Control

[414] There are other examples of the father engaging in controlling behaviour, in tandem with these written communications.

[415] One additional example is that the mother wanted to take the child to Coldwater Ontario for a family reunion during the summer of 2022. The proposed trip was for a mere four days in duration. While the father consented to this trip, he imposed conditions. He went to the area and

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[33] While these voluminous messages are briefed, the Court was clear with the parties that it would not be reading all of their communications, and they needed to make specific reference to individual messages during the trial if they wanted the Court to consider these.

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stayed nearby. He insisted on seeing D. during this trip. The child went to stay with the father for one overnight with his father in the middle of this short trip.

[416] When he was cross-examined about this, the father claimed to be supportive, saying that he wanted the child to have "new memories" with the mother and her family. He also claimed that he offered to stay nearby in case the mother was uncomfortable. But the father's written message to the mother of July 6, 2022 shows exactly how he dictated the terms of this trip:

> He has therapy Tuesday evening so he won't be able to come with you guys for check in. I will bring [D.] to the address you shared on Wednesday morning. He will spend Wednesday night with you and if on Thursday he's missing me, I will pick him up for a few hours and drop him back. If he's really cranky, he might spend Thursday evening with me. Then on Friday or Saturday he will drive back with me. I might stay up north with him Friday night so I can get some vacation time with him also. I will keep him this weekend on Saturday instead of sending him to you.

[417] The father also went on to tell the mother to set up a space where the child could have "alone time" from the other persons on the trip, "if he's overwhelmed". He directed her to "discuss a secret word he can whisper to you if he's reaching a breaking point and needs you to immediately rescue him", saying that he himself does this with the child.

I. The Father Engaged in Several Acts of Family Violence

[418] Section 16(3)(j) of the *Divorce Act* provides that family violence and its impact on, among other things, the ability and willingness of any person who engaged in the violence to care for and meet the needs of the child, and the appropriateness of making an order that would require persons to cooperate on issues affecting the child, are factors related to the child's circumstances in the best interests' analysis.

[419] Family violence has always been relevant in the assessment of a child's best interests. It is now defined in section 2(1) of the *Divorce Act.* The definition is broad. It means any conduct, whether criminal or not, by a family member towards another family member that is violent or threatening, or that constitutes a pattern of coercive and controlling behaviour, or that causes the other family member to fear for their own safety or for that of another person, and, in the case of a child, includes direct or indirect exposure to such conduct. The definition then includes a non-exhaustive list of nine kinds of behaviour that constitute family violence. The Court is not

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precluded from finding that other conduct fits within its meaning, too: see ¶ 27 of *McLellan v. Birbilis, 2021 ONSC 7084.*

[420] The mother says the father engaged in coercive and controlling behaviour that qualifies as family violence. In *Barendregt v. Grebliunas,* the Supreme Court discussed that family violence can be difficult to prove. While that is very much so, in this case, a number of the examples outlined elsewhere in this Judgment, were patent, and not at all difficult to prove. The father himself established some of this evidence for the mother. I adopt and will apply, without needing to repeat it, Chappel J.'s definition of coercive and controlling behaviour, that is at ¶ 183 of *M.A.B. v. M.G.C., 2022 ONSC 7207.* Problematic litigation conduct, such as litigation bullying, can be a form of family violence, too: see for example *C.L.M. v. M.J.S., 2017 BCSC 799¶ 392;* see *N.N. v. S.M., 2022 ONCJ 482 ¶ 122;* and see also *S.C.H. v. S.R., 2023 ONSC 4928 ¶ 511.*

[421] In this case, I find the following three examples to be particularly egregious and worthy of emphasis. First, during this trial, and to others at other times, this father scurrilously alleged, that the mother was basically an unchaste woman, of a lesser moral character than he. He accused her of having had multiple partners, of having had multiple abortions in the past, and he even said that she used "street drugs" during the pregnancy. He told the latter to various professionals involved in the child's care as well, in an attempt to skew their processes. Quite apart from the irrelevancy of matters like a person having a prior partner or an abortion, the father proved none of these things. This father was able, with far too much ease, to launch this vicious attack on the mother.

[422] Second, the Court finds it shocking that in November of 2021, after the release of both Dr. Walker-Kennedy's comprehensive assessment and the First OCL Report, this father went to have a meeting with a Justice of the Peace in an attempt to have the mother forcibly hospitalized. To this meeting, the father brought some of the mother's journals. I did not at all find the father to be credible when he claimed that his purpose was not to have the mother "admitted" but rather to "help [her] to get admitted", because "often it is a loving family member" who does this.

[423] I also found the father to be disingenuous when he said that the Justice of the Peace's refusal to act, apparently because the parties were embroiled in a divorce proceeding, "broke his heart" because he "wanted [the mother] to have positive interactions", "good memories", and he wanted the child to have "good memories of his childhood".

[424] Understandably, the mother testified that she too found this evidence to be "shocking". She also found it to be "violating".

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[425] Third, and I repeat again, that this father essentially co-opted a 7 year old child to scream and yell horrible, abusive messages at his mother, as recently as September 25, 2023. He then sat the child down for his video interview a little over a month later. At best, this reveals a serious lack of judgment and a lack of parenting skills on his part. But I also find this is psychological abuse: see also ¶ 122 of *Bors v. Beluta, 2009 ONSC 7029 (aff'd by 2021 ONCA 513)* .

[426] As a finding of family violence has been made, section 16(4) directs the Court, when considering the impact of family violence under section 16(3)(j), to consider a further list of factors. Those include the nature, seriousness and frequency of the violence and when it occurred, whether there was a pattern of coercive and controlling behaviour in relation to a family member, whether the violence was directed towards the child or whether the child was exposed, safety concerns, any preventative steps taken and "any other relevant factor".

[427] I find the father has engaged in a pattern of coercive and controlling behaviour consistently over time since the separation. In so doing, he has involved the child. He has engaged in psychological abuse of the child. He has not taken adequate preventative steps to address this behaviour. He has not accepted professional feedback or changed his attitude.

J. The Mother's Mental Health and Whether It Impacts Her Parenting Abilities

[428] The father has time and time again made a plethora of allegations about the mother's mental health and to a lesser degree, about the mental health of other family members, like her sister. He basically asserts that the mother is unable to parent, and the child is at risk in her care, or around other members of her family.

[429] In *P.P. v. A.V., 2021 ONSC 7459* and more recently in *Gerasimoloulos v. Sambirsky, 2024 ONSC 2368*, Himel J. and Kraft J. respectively, referred to the Revised AFCC-Ontario Parenting Guide, Microsoft Word – AFCC-O Parenting Plan Guide (Version 2.0, December 2021).doc (afccontario.ca) and the principles discussed therein regarding mental illness as instructive. They quoted from page 45 of the guide, which provides some guidance about how to address mental health in a parenting proceeding. In regards to a parent who is compliant with a treatment plan, or where parenting is not affected, regular parenting time can be established or resume. The guide also provides that if mental health is property addressed, a child will benefit from a relationship with the parent.

[430] In this case before me, the mother's mental health has been adequately, and indeed exhaustively explored. The mother's current mental health diagnoses are an adjustment disorder,

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anxiety and depression. There were times in the past, during the marriage, at the height of the parties' relationship troubles, and as the separation unfolded, that the mother was distressed, including thoughts of self-harm. But the mother receives therapy, and the overwhelming evidence is that her condition is stable.

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(1) Dr. Walker-Kennedy's Psychological Assessment of the Mother

[431] Pursuant to the Consent Order of Fryer J. dated December 3, 2020, the parties each agreed to undergo psychological assessments by Dr. Walker-Kennedy. Dr. Walker-Kennedy has a Ph. D in psychology that she obtained from the University of Toronto in 2010. She has been in private practice since 2011, conducting individual family therapy, psychological and psychoeducational assessments since 2013, and custody and access assessments since 2015. She has participated in additional training and continuing education, including undertaking assessments and testing. She has undertaken numerous psychological assessments and prepared reports for both adults and children.

[432] Dr. Walker-Kennedy was qualified in psychology and psychological assessment, to give opinion evidence "on the psychological issues of the parties regarding their mental health and attention issues". The father did not object to her being qualified to give opinion evidence. He later questioned her about the fact that she is a psychologist, not a psychiatrist.

[433] In addition to her own interviews, assessment and testing of the mother, Dr. Walker Kennedy's Psychological Report of the mother dated June 30, 2021 also states that she reviewed the mother's medical records from 2016 to 2020.[34] Dr. Walker-Kennedy concluded that that the mother's hospitalizations occurred after experiencing severe disagreements with the father, where she felt demeaned, belittled and verbally abused by him. While this led the mother to feel a sense of hopelessness and she experienced transient thoughts of suicide, all of the hospital records indicated a mild risk. Dr. Walker-Kennedy's impression of the mother, was that she was doing the best she could to cope with the things that had happened to her, including the isolation she experienced during the marriage, and a very distressing separation.

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[34] Despite the father's criticism of this, Dr. Walker-Kennedy did not review earlier medical records, as these were dated, and she did not find that these would have been as cogent.

[434] Dr. Walker-Kennedys' Report diagnoses the mother as follows:

> The information gathered from clinician interviews, observations during the testing, results of the self-report questionnaires, review of medical records, indicate that [the mother] has many symptoms best understood in the context of an Adjustment Disorder with Mixed Anxiety and Depressed Mood.

[435] Dr. Walker-Kennedy further noted that the mother had reported, "a reduction of her symptoms after her separation but is still somewhat anxious and depressed because of the limited time she has with her son and the restrictions placed on her access time. She indicated feeling very stressed, feeling unfairly treated and as generally having low levels of anger and hostile feelings although she is currently feeling frustrated by the current situation she finds herself in."

[436] Dr. Walker Kennedy wrote there were "no indications of psychotic symptoms, including persecutory delusions, bizarre mentation, psychotic experiences, persecutory ideas, psychotic symptomatology, bizarre sensory experiences, though disorder, and schizotypal characteristics".

[437] Dr. Walker-Kennedy did not find any evidence of significant mental health issues. She noted that the mother appeared to be working hard to adjust to her new life and her strong desire to be able to parent and work as an artist.

[438] Dr. Walker-Kennedy recommended that the mother attend regular weekly therapy sessions for 4-6 months, or as determined appropriate by her therapist in consultation with the mother. She encouraged the mother to read certain educational books about parenting-post-separation. She also recommended that the mother take a parenting course for parents after a divorce.

[439] Notably, the father tried to interfere in Dr. Walker-Kennedy's process too, and influence the outcome. Unsolicited, he provided to Dr. Walker-Kennedy, a chart that he prepared about the mother, and which went on for several pages. Dr. Walker-Kennedy found this to be unusual; she was surprised. She also reviewed it and found aspects of the chart to have been inaccurate. She felt that the father was attempting to advocate for his position, being that the mother had significant mental health issues, a conclusion that Dr. Walker-Kennedy did not draw.

[440] Like he did with the OCL witnesses, the father's cross-examination of Dr. Walker-Kennedy focused on the collateral information that Dr. Walker-Kennedy collected, the information that she did not have, his suggestion that her assessment was based primarily on self-reporting, and his own review of the mother's medical records. He asked Dr. Walker-Kennedy questions

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about his theory, that the mother is resistant to treatment. Dr. Walker-Kennedy disagreed with the father's suggestion that the health records she received pertaining to the mother were "spotty". She testified that she had confidence in her conclusions.

[441] The father did not undermine Dr. Walker-Kennedy's evidence during cross-examination. Nor did the father prove that the mother suffers from "treatment resistance", that she "operated with irrational fear" during the marriage, or that she had "the most loving interactions with the child" when under the care of a psychiatrist and taking medication in the past, but now she does not have a good perception of reality. Consequently, I am prepared to attach great weight to Dr. Walker-Kennedy's expert opinion evidence.

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(2) The Therapy Evidence

[442] The mother called her current and former therapist to testify. The mother's former therapist Ms. Donnelly felt that a lot of the mother's difficulties were related to exiting a relationship that had "key marks of domestic violence". Both Ms. Donnelly and Ms. Campbell testified that the mother was dedicated in therapy, and wanted to be a good parent.

K. Findings and Conclusions About the Mother's Mental Health

[443] Ms. Garibotti's analysis and conclusions about the mental health evidence is instructive. She noted that the father presented concerns for the child's mental health and believes that his anxiety was a result of unresolved trauma and contact with the mother. She noted the father's concerns about the mother's parenting overall. She also noted that after her second interview with him, the father gave her an article about the impact of "toxic stress" on child development, suggesting that D. is exposed to this kind of stress from his mother only. But she then wrote that the father's attempts to link of D.'s anxiety to contact with the mother are "worrisome". She wrote that there was no evidence to support this. She wrote that D.'s anxiety might be connected to poor interaction between his parents, in addition to his limited contact with the mother.

[444] Ms. Garibotti specifically cautioned that D.'s "symptoms of anxiety should not be used as leverage to determine contact with either parent", that it is important for his development that he have healthy relationships with both parents, and that both parents must support and speak positively of the other to the child. She wrote that if the child raised an issue with one parent to the other, he should be redirected back to that parent.

[445] Ms. Garibotti also reported that there was no information from any of the professionals involved that the mother's mental health diagnosis impacted her parenting at this time. She said that that the father, by arguing only a psychiatrist could determine her true mental health, further marginalized the mother. She concluded that the mother is able to determine when to access therapy, dependent on her life circumstances at the time.

[446] In this latter regard, Ms. Garibotti's analysis is completely consistent with what Kraft J. recently wrote at ¶ 107 and 109 of *Gerasimoloulos v. Sambirsky*:

> The phrase "Mental Health is Health" is derived from a movement wanting to change the way mental health is treated to be as similar as physical health is treated. The purpose is to give mental health the attention it deserves in the health care system and also for mental illness to be given treatment, not judgment.
>
> ….
>
> The role of the Court is to recognize stereotypes, bias, and discrimination against marginalized groups and/or individuals when such issues present and ensure that decisions are not based on any such biases, or reliance on stereotypes…
>
> A parent's mental illness is not, on its own, a reason to deny someone decision-making responsibility or limit someone's parenting time. The issue, as with all parenting matters, is whether an illness, be it physical or mental, impacts a parent's ability to care for a child or places a child at risk.

[447] Applied to the facts of this case before me, it would not be in D.'s best interests to terminate the mother's parenting time, or continue the restrictions, that were previously in place, for too long. To do otherwise would be to deny the mother "equal treatment under the law" and the child his right to a relationship with the mother. That would not be in D.' best interests "or in keeping with the role of a Canadian court to assess the circumstances of [this child], with the parents [he has]."

[448] The father's argument that the child is at risk around the mother's sister is also based on stereotypes, bias and discrimination. No specific examples of harm ever being visited on this child were offered up.

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L. The Court's Different Concerns About the Mother's Parenting Abilities

[449] Earlier I indicated that I had three specific concerns about the mother's parenting abilities. I have already made findings about two of these matters, but will mention them again in brief, to be followed by the third.

[450] First, at the outset of 2023, the mother reduced her parenting time by sometimes sending the child back to the father's house a number of times, albeit she did it naïvely on the advice of her therapist at the time. Second, the mother was unable to handle the child again, in the summer of 2023, following the incident in the swimming pool.

[451] The third concern I have, is that by the time this trial concluded in November of 2023, the mother had not yet subscribed for the parenting app used to communicate with the child's teacher at school. The issue was first raised during the trial time in September 2023, some two months earlier. Given the father's accusations that the mother in the past delayed providing consent to therapy or other things, it struck me as odd, that the mother did not sign up right away, after the issue was raised in Court. The mother's evidence when the trial resumed in November of 2023, was something to the effect that she had not yet gotten around to getting the app, but she would do so soon.

[452] While this may seem minor in nature in relation to the plethora of other, more serious issues raised during this case, I confess that it has caused me to pause.

[453] At the same time, I recognize that the mother has faced difficult circumstances, and her opportunities to parent have been limited. I am also mindful that since my Order of September 25, 2023 (apart from the immediate fall out that the father caused), the undisputed evidence during the November trial week that followed, was that the mother's parenting time resumed without incident.

M. The Status Quo and the Parties' Plans

[454] Section 16(3)(d) provides that the history of a child's care, ie. the *status quo,* is a relevant best interests' factor. The Court shall also consider any plans of care for a child in accordance with section 16(3)(g), although it is not bound by either's plans if not in the child's best interests: see section 16(6)(1).

[455] In regards to the *status quo,* I have already found the mother was the child's primary parent during the marriage, whereas the father has been the primary parent since the separation. But

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this post-separation *status quo* was imposed while the father's various mental health and other allegations have been explored.

[456] Although that exploration is complete, the father's plan at the end of the trial remains to essentially write the mother out of the equation. That is not in the child's best interests. The mother's plan does not do that; her position is balanced and involves both parents having a lot of regular time with D.

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N. The Child's Relationships With His Parents, Other Family Members and the Child's Views and Preferences

[457] Section 16(3)(b) provides that the Court should consider the nature and strength of the child's relationships with each spouse, grandparents and other persons who play important roles in the child's life.

[458] The father is one of the child's major attachment figures. Although the father did not call any evidence from the others in his household, I also accept that other members of the father's household, like his paternal grandparents, play important roles in the child's life. But the child's mother is equally important as the father, which Dr. Khattak had "no doubt" about.

[459] Relatedly, section 16(3)(e) provides that the Court shall consider the child's views and preferences, giving due weight to the child's age and maturity unless they cannot be ascertained. It is important to note for context, that the child has just turned 8. His views and preferences are not dispositive of this case. In any event, the most reliable evidence about the child's state of mind comes from the information that was elicited through the two OCL assessments, and even the medical assessments about the child's anxiety, that the child wants to spend more time with his mother. He misses each parent when he is away from that parent. The child's statements, upon which the father would have the Court rely, are not reliable.

O. Conclusions Respecting Decision-Making

[460] Supervision was put in place in this case almost immediately after a volatile separation, when there were a number of allegations and unknown circumstances. But it is well known that supervised parenting time is not normally a permanent outcome. It is well known that supervised parenting time is intrusive, even where the supervision occurs in the home setting of a family

member.[35] It is also the father's onus in this case to demonstrate its continued necessity: see the recent decision of Kurz J. in *Y.S. v. J.S., 2024 ONSC 1028 ¶ 22, 23,* summarizing these principles. The father has not discharged that onus. Nor has he satisfied the Court that the mother's full participation in D.'s life should be restricted, either in whole or in part.

[461] The available evidence about the mother has very much changed over the three years between the time of separation and this trial. What has not changed is the father's attitude. The father squandered the opportunity given to him after the March 17, 2022 motion, elongated when Fryer J. adjourned the trial from the spring of 2022 to the spring of 2023, to learn, to accept the evidence and to change his ways. Instead, he continued to assert that the mother was unwell, that she was the cause of the child's anxiety, and that that others in her household posed a danger to this child. He attacked the professionals involved. He engaged in conspiracy theories. He committed acts of family violence. I agree with Mr. Stangarone's closing argument, that the father's "abusive tactics were exposed" during this trial. His attitude and positions became even more extreme as the trial concluded.

[462] I have considered all of the options respecting decision making. I considered awarding joint decision making, as Ms. McNee-Trinidad recommended, but these parents are not candidates for such an order. I also considered the recommendation in the Second OCL Report, that despite a number of short comings and concerns Ms. Garibotti had about him, the Court should empower the father to make final decisions about this child, after consultation with the mother. But that conclusion is largely based on the *status quo* of the father having done so since the separation. I do not have confidence in the father's ability to discharge this important responsibility in accordance with the child's best interests. As said earlier, I also have some concerns about the mother.

[463] Therefore, in conclusion, I have decided to map out the decisions that need to be made about this child to the best of my ability, and with as much detail as possible. In that regard, there are two immediate decisions that must be immediately made relate to the child's health care.

[464] Both parents want a new doctor for the child, who practices near where they live. The mother wants to take the child to her doctor, or select some "neutral". The father wants Dr. Gihan.

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[35] (albeit that is less intrusive)

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But the father has already told Dr. Pearce, that his family doctor allegedly thinks that the "child's tics were secondary to an anxiety disorder, which was believed to be the result of an abusive relationship with the mother". Although Dr. Gihan was not called to testify and I have doubts about the accuracy of that hearsay information, what I do find, is that the father has more probably than not, disparaged the mother to Dr. Gihan already. I specifically find that if the father is empowered to select Dr. Gihan, the mother's interactions with him as D.'s parent will be tainted, right from the get go. I will therefore make a specific order that the mother's family doctor shall also be the child's doctor. If that person is unable or unwilling to act, the mother can select someone else.

[465] I also intend to make an order for the child's therapy to resume with Ms. Long. Although the father selected her, the mother agreed to her. While I am concerned that misinformation about the mother has already been provided, there is no other option before the Court. And that can be remedied by directing that Ms. Long may read this Judgment. If for some reason my order cannot be implemented, such as because Ms. Long will not act, then the mother can choose an alternative.

[466] In regards to the child's culture, religion and spirituality, there is no issue with the father participating in religious, cultural or community events with D. on his own time. Specifically in regards to the child's Saturday school at the father's mosque, the schedule that I will put in place for the next year accommodates the father taking D. to that school each week. Thereafter, each parent can decide how D. will spend his Saturday mornings when with that parent.

[467] Regarding other cultural or community events, on the one hand I agree with Ms. Garibotti's finding, that it is important that the child participate in these. But Ms. Garibotti equally found that such events should not overly intervene into the mother's parenting time. While she recommended adjustments to the schedule for major religious events, but with make-up time for the mother, she did not define what "major" means. And as I have already found, there have been a plethora of problems with *ad hoc* changes to the schedule. Making provision for *ad hoc* changes, with make-up time, does not work particularly well with high conflict families, like this one. Another difficulty is that parties did not call any evidence about when these community events will happen in the future. I suspect the timing of these "between 60 and 70 religious programs" is not always set in stone. It is very hard if not impossible for the Court to try to craft terms under the circumstances. The sheer number of these must in the end mean that the child will not be going to each and every one, because his time with his mother also needs to be prioritized.

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[468] Therefore, with the limited exception of some religious holidays, I find that the mother should get all of the parenting time that she will be entitled to under the Court's Order. She will be free to spend her time with the child as she sees fit, which can include participating in community events, or doing other things. The father can do the same on his time. It the parents want to cooperate to make *ad hoc* changes they can, but because of past problems, I will not order them to do so. And I caution both to be careful if they decide to do this. This should not be seen as invitation for the parties to come back to Court, if problems unfold.

[469] The father is not allowed to dictate what mosque the mother chooses to attend with the child, nor is he to pronounce that she cannot take D. to other spiritual events, even if not strictly Islamic in nature. For example, should she wish to do so in the future, she can take the child camping, even if it has a meditation, or a different spiritual component to it.

[470] In trying to map out various decisions, I recognize that not every decision can be today contemplated and delineated. Other decisions will have to be made. The mother will be given the residual power to decide any parenting issues, not otherwise dealt with in this Judgment. In ordering this, I found the mother to be far more thoughtful and measured in her approach. She is desirous of finally being allowed to parent that child in a meaningful way. She will support the child's relationship with the father.

[471] So that it is crystal clear, I do not find that this father should be making any final decisions. The mother needs to be given an unhindered opportunity to parent without interference from the father. While I will order her to seek the father's input before making significant decisions and while I will make provision for the sharing of information, there will be limits placed on this. Her obligation to consult will be brief, and any responses to be sent back shall be pointed.

[472] And so that it is equally clear, the concerns I have about the mother's trial and error approach to discipline, or her inaction earlier this school year in dealing with the school, do not override the overwhelming evidence about the unsuitability of the father as a decision-maker. I intend to try to craft an order that will hopefully increase the chances of success. The alternatives will only set this family up to fail, in my view.

P. Conclusions Respecting Parenting Time

[473] In regards to regular the parenting schedule, I intend to order a schedule for the next year, to end at the end of the 2024-2025 school year. I intend to divide the weeks such that the mother has the child for three overnights and part of the fourth day, and the father has the child with him

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for the remaining approximately half of the week. The division is to take place in the middle of the weekend, and on Wednesday nights. The father will have the latter part of the school week and the first part of the weekend, to include when the Saturday school occurs. The mother will have the second half of the weekend and the first half of the school week.

[474] I have taken the following principles into account in ordering this. By dividing the weeks in this fashion, both parents will get some reprieve and support during their weekday time. In that regard, the child's school attendance has been a problem under the father's watch. He will now be with his mother during part of the school week and hopefully this problem will abate. Both parents must send this child to school, regularly.

[475] A second advantage is that the child will not be away from either parent, for too long. I find this to be important right now pending the resumption of the child's therapy, in light of his separation anxiety, and the amount of time he has already been away from the mother.

[476] A further advantage, is that except respecting religious holidays, I do not need to make any further orders for the division of school closure days like PA days, or other school holidays. Neither asked me to really do that anyway. Long weekends will naturally be split. If there is any school closure on Friday the child will benefit from having additional weekend time with his father. The father can take the child to the Saturday school each weekend, without any further discussion or negotiation about it. When there are school closures on Monday, the child will benefit from having additional weekend time with his mother.

[477] While the mother asked for a slightly different division of the March break, it will also be naturally split under the regular schedule. I am prepared to make some accommodation for additional time in the summer, to permit reasonable travel, since there have been disputes about this in the past.

[478] A major draw back of this schedule is that it deprives the child of a full weekend with each of his parents. I find that should not be in place indefinitely. Therefore, I considered ordering a review. In my view, both of these parents need to obtain some parenting education. The child's therapy also needs to resume. However I do not intend to give the father more time to coach and influence this child, with a view to gathering evidence for the review. The new goal moving forward needs not to be to defeat the other parent in Court in a review, and to continue to emotionally harm the child in the process.

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[479] Therefore, because I did not hear any evidence about wait lists for a parenting course, and there was no specific plan for a new therapist (ie. name of a professional, qualifications, wait lists, cost, consent for him or her to act) from either side when this trial concluded, I have selected a year until the schedule will change. The Court's expectation is that therapy will resume as soon as possible and the parents will take a parenting course over the course of the next 12 months.

[480] The child will have time to become accustomed to the reality, that he will have generous amounts of time with his mother. In that regard, there may very well be outbursts once this new schedule begins. I expect they may occur. These should not in themselves amount to material changes in circumstances.

[481] Commencing at the end of the 2024-2025 school year, the 2-2-5 schedule proposed by the mother will prevail.

[482] An order needs to be made about explaining the new regime to this child. The father has already demonstrated a dismal ability to do so following the release of the September 25, 2023 Endorsement. To avoid a repeat of the events of September 25, 2023, the father is not to discuss anything in this Judgment with the child, nor is he to instruct anyone to do so on his behalf. I will make provision below, for how the child is to be told about the new schedule.

[483] In making these orders, I seriously contemplated reducing the father's parenting time. However I have refrained from so doing given the child's separation anxiety, and the fact that I was not asked by either side to make such an order. At the same time I am specifically ordering that the father's ongoing failure to support the mother's relationship with the child, shall constitute a material change in circumstances that will entitle the mother to return the matter to Court to seek a reduction of his parenting time. So too will any further breaches of court orders by the father.

[484] Orders need to be made about this child's exchanges. Dr. Khattak put a protocol in place. Despite that, there have been major problems surrounding the child's exchanges, including long drawn out exchanges, temper tantrums and meltdowns, the child not seeing his mother, and the father professing an inability to take the child to see his mother. There have been abusive messages from the child, directed at his mother, followed by the father's video interview of the child after this Court's most recent parenting Order of September 25, 2023. All of this must immediately stop. For the next year, there shall be an order that exchanges will take place at the child's school, or ideally at his therapy, or worst case, in a neutral location in the middle of the week, and at the Durham Supervised Access Center on weekends, if that is available.

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Q. Religious Holidays

[485] Lastly, in regards to religious holidays, in the First OCL Report, Ms. McNee-Trinidad recommended that all religious holidays should be split equally. In the Second OCL Report, Ms. Garibotti took an *ad hoc* adjustment and make up time approach to adjusting the regular parenting schedule.

[486] The mother says that religious holidays should fall where they fall on the regular parenting schedule, as the dates of these change. The father disagrees. In the draft Order he tendered with his Opening Trial Statement, he proposed that the mother could have three, 9 hour periods of time, for Eid ul Fitr, Eid ul Adha, and for the Meraj Celebration. He proposed that the child would spend the balance of the Shia holidays with the father, and if there was a dispute concerning the moon sighting date and the lunar calendar, the official date endorsed by the ISIJ of Toronto would be the correct date. He also wanted me to order the mother to accompany the child to her family's annual Majlis at her parents' home, and said there should be some kind of communication about this 30 days in advance to coordinate logistics.

[487] In his draft Order tendered at the end of the trial, he removed all provisions about religious holidays, not because he no longer cares about this, but rather because he proposed to terminate the mother's parenting time completely. I find he assumed he didn't need to specify his requests for religious holiday time any longer, because he assumed he would have them all by default anyway.

[488] I find this change in position to have been made in bad faith. The Court could have made no order at all as he asked, but that would not be in D.'s best interests. What I find to be in D.'s best interests, is that he is able to participate in his religion, with both parents, but also balanced against the need to see his mother.

[489] But like the situation respecting the other religious, cultural or community events, there are major gaps in the evidence about the religious holidays. Therefore, while the Court is loathe to allocate any more court time, I am prepared to entertain limited additional submissions to see if a further order for the sharing of **some** holidays can be accommodated, without this matter descending into the problems of the past, when the parties were unable to implement *ad hoc* changes to the parenting schedule, without conflict.

R. Travel

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[490] In her Opening Trial Statement, the mother proposed that either parent could travel with D. to countries that were signatories to the Hague Convention with the written consent of the other parent. She otherwise proposed relatively standard travel terms about the exchange of travel itineraries and the signing of consents. The mother's draft Order tendered at the end of the trial is now completely silent as to travel, although she would like the Court to make her the custodian of the child's documents, including his passport.

[491] By contrast, the father proposed that he would be able to travel without travel consent from the mother. He did not make provision for her to travel. He proposed that she could have make up time when he gets back from a trip, which is meaningless given his request to terminate her parenting time. Were I to order the latter, there would be nothing to make up. During closing submissions, the father indicated he would be agreeable to providing the mother information about the trips that he wants to take.

[492] I find neither parents' positions about travel to be in the child's best interests. The evidence is that both parents have in the past wanted to travel with this child, there has been unreasonableness from the father, and resulting conflict surrounding travel.

[493] In regards to the mother, I find that she should be able to take reasonable trips with the child during her parenting time. I find there to be too much risk of the father imposing unreasonable conditions and restrictions, were his consent to be required, as he has done in the past. I will therefore make provision for the mother to take reasonable trips with the child during her parenting time, without requiring either the father's travel consent, or there to be *ad hoc* changes to the schedule or make up time.

[494] In regards to the father's travel, and in particular the mother's initial reference to Hague Convention countries, the father took great issue with this request. The father tendered a list of various religious places in Iraq, Saudi Arabia and Syria, which he described as "pilgrimage sites" and "very important places" that D. will not be able to go, were the Court to permit only travel to Hague Convention countries. He also tendered a list of various names of people and families living in the United Arab Emirates, Iran, Qatar and Saudi Arabia, whom he described as family members whom D. would not be able to meet, because these families live in countries that are not signatories to the Hague Convention.

[495] However the only evidence of any past trip that this family ever took to one of these locations, was the Iraq trip in 2015. The father did not provide any evidence of any historic travel,

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or a current plan to travel with the child to Saudi Arabia or Syria, to attend religious sites, or to the UAE, Iran, Qatar or Saudi Arabia to visit family members. Nor did he explain whether the family members who live in these places ever travel to Canada, for example so that D. could meet them here.

[496] In any event, it seems to me that the mother, by making reference to the Hague Convention, created an additional issue and missed the point. Except for at the outset of this proceeding, she has not really suggested that the father was a flight risk, necessitating the protection of a term about travel only to countries that are signatories to the Hague Convention. What I believe the mother was actually trying to achieve, was to have some say into whether the father should travelling with the child to a place like Iraq, like the father asked to do just this past summer.

[497] In regards to his summer of 2023 request to take the child to Iraq, the Court notes that the father did not raise this with the Court at the end of the May 2023 trial sittings. Rather he consented to the expansion of the mother's parenting time, and waited until the trial adjourned to ask her. The Court notes that although he could apparently afford to travel with the child, soon thereafter he would stop paying the $950.00 per month to the mother on alleged financial hardship grounds.

[498] The father also minimized the safety issues that the mother raised surrounding travel to Iraq, when the trial resumed. He was dismissive of Canada's Iraq travel advisory. He said that which was in effect at the time of this trial was "far less severe" than was the state of affairs in 2015, when the family went on the first pilgrimage to Iraq. He said that the advisory "provides guidance but leaves it up to the traveler".

[499] To be clear, what the travel advisory in effect at the time of the trial actually said was:

> "AVOID ALL TRAVEL" to Iraq, "due to a continued volatile, unpredictable and potentially dangerous security situation." For those in Iraq, Canada recommends departing by commercial means if it is safe to do so.

[500] It goes on to highlight threats of terrorism in Iraq, which include "car bombings, vehicle ambushes, drones, mortar and rocket attacks" that are said to occur weekly across the country. Further attacks are likely, the advisory says, particularly during religious or public holidays. Targets could include "places of worship".

[501] I am not prepared to make an advance travel order that would permit hypothetical travel of this kind. I also find there is a risk that the father will plan a trip, tell the child about it, and try to

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impose the decision as a *fait accompli* on the mother, as he did respecting his trip to Windsor in the summer of 2023. The mother is entitled to consider all of the information at the relevant time and make an informed decision about whether D. should travel, or not.

[502] And while I generally agree that the father, like the mother, should be able to travel to some of the other locations that he has proposed, like Virginia, in the United States (another place he asked the mother for permission to travel mid trial with incomplete information), or Windsor, Ontario (where he overheld the child during the summer of 2023), he is not entitled to do so secretly, or in a way that impacts the mother's parenting time. Yet he has already demonstrated the propensity to do just that, at least twice.

[503] Therefore, the father will be required to obtain the mother's travel consent. I find that she will be reasonable and measured in her responses. I will also add a term that the father is not to discuss any proposed travel with the child, until he discusses it with the mother, and obtains her reasonable consent, or a court order first.

S. Confidentiality

[504] I have identified the parties and the child with initials in this judgment. I have done so to respect the mother's dignity, given the allegations that have been made about her mental health and other arears of her life, and the evidence that I had to detail to address that. I am also concerned about having identifying information about this child, who has special needs, published in a Judgment in the public domain. I am concerned about the impact of the publication of identifying information on the child's relationships with his parents.

PART VII: ISSUES AND ANALYSIS RESPECTING THE FATHER'S REQUEST FOR A RESTRAINING ORDER OR A CONDUCT ORDER

[505] In his opening trial statement, the father asked the Court to impose prohibitions against either party from coming within 100 meters of each other's household without the other's written consent. In his closing submissions, the father wanted an order that would regulate the mother only. He broadened the geographic perimeter of the proposed restricted area.

[506] The father made various allegations. He testified about incidents that he said occurred at a gym and swimming pool, and at a soccer game. He re-affirmed during this trial, what he said to the mother previously, that he would not allow her to attend at his house to pick up the child. He accused her of supposedly "loitering", "connecting to the wifi" at his house, and he even

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insinuated that she was trying to break into his house from the outside, claiming that she had a key. Later still, the father claimed that the maternal grandfather pushed him at a religious event, something that was alleged for the first time on the thirteenth day of this trial.

[507] This Court may make a restraining Order pursuant to section 35 of the *Children's Law Reform Act* or section 46 of the *Family Law Act.* It may also make conduct Orders under these statutes, or as a term and condition in a parenting order pursuant to sections 16.1(4) and 16.1(5) of the *Divorce Act.* In *G.P. v. R.P., 2023 ONCJ 388,* Sherr J. cited other authorities, and summarized the legal principles that apply when a Court considers whether to grant a restraining Order. Sherr J.'s summary of the legal principles is fifteen-fold. I need not repeat these, but adopt and will apply his summary of the law.

[508] In short, just because the Court has jurisdiction to make a restraining order does not mean that it should. I find this is not even a 'borderline case'. I am satisfied that the mother has not engaged in the problematic conduct that the father has alleged. I do not find that the maternal grandfather pushed the father. I find these requests from the father are further examples of his problematic litigation conduct and his need to control the mother. Such an order would equally feed into his narrative, which includes his messages to the child, that the mother is a risk or a danger. For example, the regime that the father has imposed, that he can attend at the mother's house, while messaging to the child that it is dangerous for the mother to come to his house, must also stop.

[509] The Court should not grant a restraining order, just because the mother testified, for example, that she was not opposed to remaining distant from the father, and she did not want to come near him. The mother's evidence in this regard actually militates against granting a restraining Order: see *F.S. v. N.J. and T.S., 2024 ONCJ 199 ¶ 116(a).* In other words, I find that she will not behave in a problematic way around the father, rendering a restraining order unnecessary.

[510] Therefore, the father's request for either a restraining order, or a conduct order that would restrict communications, or the mother from attending at his house, is dismissed.

[511] That said, there will however be the ancillary terms in the parenting order to governing the parents' behaviour, to reduce the opportunity for conflict, in D.'s best interests, such as the terms about the child's exchanges and communication.

PART VIII: ISSUES AND ANALYSIS RESPECTING EQUALIZATION

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A. Equalization of Net Family Property

[512] The parties tendered two Statements of Agreed Facts respecting equalization. Both sides also submitted Net Family Property statements ("NFP statements") at the end of the trial. The areas in dispute were narrowed.

(1) Gold Jewelry, Art and Safety Deposit Box

[513] The mother testified that members of the father's family gave her some necklaces when the parties got married. They are housed in a safety deposit box at TD Bank. She estimated the gold jewelry to be $1,000.00.

[514] The father believes that the contents of the safety deposit box amount to $30,000.00. He also estimated the mother's "art collection" to be worth $2,000.00.

[515] The values that each side claimed were arbitrary. Neither side called any evidence to prove these values. The onus was on the mother here, but that does not mean that once she failed to prove these amounts, the Court will just accept the father's more inflated values. In the end this does not matter. Both sides agreed that there would be a date of marriage deduction for these items, and both placed the exact same values for these items on both the valuation date and the date of marriage. Regardless of which party's position is more accurate, placing the same value on the date of marriage and on the valuation date does not impact the equalization calculation. I intend to simply remove these items from the equalization calculation.

(2) The Mother's Bank Balances on the Date of Marriage and the Valuation Date

[516] The mother had a bank account at TD at the date of marriage. She estimated the balance in the account to be $200.00. She had minimal money on the valuation date. The mother opened new accounts after the date of separation, due to some fraud issue. The post-separation accounts listed on her financial statement sworn April 17, 2023 do not impact her net family property or the equalization calculation.

[517] The mother testified that she went to the bank several times to try to get statements for her old TD account on the date of marriage in 2015, and at the valuation date in 2020. The bank was unable to produce statements for this account.

[518] The father has not placed a value for the mother's bank account on the valuation date. He wrote "disputed" on his NFP statement. He also wrote "TBD" for the date of marriage, saying in

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a note that the mother "liquidated assets and closed accounts months leading to separation in preparation of leaving marriage to be with new partner". The father did not prove this. I have already addressed the father's argument about the other financial documents that she was able to get, when addressing their admissibility earlier.

[519] There is no serious suggestion that the mother had any amounts of significance in the bank on the date of marriage or the valuation date. The manner in which the mother has placed values gives her a small credit of $100.00 in the equalization calculation. While *de minimus,* she did not prove this entitlement to a small date of marriage deduction. I intend to remove her claim for a date of marriage deduction of $200.00.

(3) Property Tax Arrears on the Valuation Date

[520] Both parties' NFP statements make reference to two different amounts for property tax arrears allegedly owing by the father. The notes on the mother's NFP statement say that the father asserted amounts of $3,554.00 and $2,840.07 owing, but did not provide proof, or oral evidence. The father's NFP statement also had this note, and he did not include numbers for these debts in his column. Therefore, these are not in the Court's final calculation either.

(4) The Father's Canadian Tire Credit Card Debt on the Valuation Date

[521] The father asserts a debt of $795.07 on the date of separation. The mother asserts that the father has not proven this debt. The father says his proof is that he listed this debt on his financial statement in the trial record. That is not proof, in the sense of providing documentary support for it. This number shall be removed from the NFP statement and therefore the equalization calculation.

(5) Costs of Disposition Respecting the Father's Real Estate on the Valuation Date

[522] In addition to the Ajax property that the father acquired prior to the marriage, the father purchased three rental properties during the marriage, one of which he sold five months before the separation, to pay off some debt. I raised twice during the trial whether the parties had included contingent capital gains in their calculation of the "disposition costs" pertaining to the remaining rental properties. Neither side did. In particular, the father did not provide me with calculations for this, and it was his onus to do so. The parties have agreed on the other disposition costs. The other disposition costs are included in the Court's final calculation.

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(6) Whether the Father Owes Money to Members of His Family on the Date of Marriage and the Valuation Date, And Whether Someone Else Holds a Beneficial Interest the Ajax Property

[523] The father purchased the Ajax property in 2011. He was the sole titled owner on the date of marriage and the valuation date. As explained earlier, the parties moved into the Oshawa rental before the separation and were living there at the time of it. The Ajax property is therefore not a matrimonial home. The parties agreed that the father gets to deduct the equity he had in the Ajax property at the date of marriage. That date of marriage deduction is included in the Court's final calculation. But the father also asserts two and possibly three other claims in relation to funds that he says members of his family advanced him, related to the property

[524] First, the father asserts that he owed $15,000.00 to "family members" on the valuation date. On his NFP statement, he says they loaned him these funds "to meet expenses – roof replacement, heating and air conditioning repairs". Like respecting his Mastercard, he once again says the proof is the fact this is listed in his financial statement in the trial record. He did not provide other documentary proof.

[525] Second, the father asserts that his family members loaned him money for the downpayment of the Ajax property when he first bought it. The father's legal theory respecting these funds was not consistent throughout the trial. The exact amount of the alleged loan was not specified until the very end of the trial, either.

[526] I wondered, based on some of the questions advanced especially in cross-examination, whether the father was in fact asserting that a member of his family had some kind of beneficial ownership in the Ajax property, as opposed to him owing a loan. For example, Ms. Stangarone confronted the father about the fact that he had not asserted a beneficial ownership interest on his prior financial statements. While the father would not agree with this proposition, his earlier financial statements sworn November 5, 2020 and January 20, 2022, and his financial statement for trial sworn April 10, 2023 each explained that the father is the sole owner of the property, and his parents "loaned" him the down payment.

[527] Then, in his NFP statement that later accompanied his closing submissions, the father specified that his parents loaned him $89,126.00 in 2011, which he said was 17.68% of the

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purchase price. He therefore claimed not that a debt was owing, but he reduced the property's value on the date of marriage and the valuation date by 17.68%.[36]

[528] During cross-examination, the father tried to explain away the manner that he had completed his financial statements, saying that the "family law system seems to be built around the nuclear family". He also said that it wasn't clear to him how to fill out the form correctly.

[529] Although much of the following testimony about the Ajax property had more to do with the parties' conflict about their residential arrangements during the marriage, the mother did testify that the father had not ever discussed the circumstances surrounding his pre-marriage purchase of the Ajax home with him, nor his claim now made, that his parents loaned him funds, whereas the father by contrast testified that this was discussed. The father also testified that his parents were elderly, and that they had loaned him money towards the purchase of his house, with the expectation that he would allow them to live there.

[530] As the trial unfolded, the evidence did not even establish a loan for a downpayment, strictly speaking. Rather, the father would testify that his parents had sold their previous house and advanced him funds after the closing of his house, to pay off ancillary debts he already incurred, to fund his own downpayment. Specifically, he claimed that when he bought the property in 2011, he was required to show that he had $50,400 in the bank plus a further 1.5% of the purchase price, which was $504,000.00. He said he was required to pay off a debt that he then owed to TD of $7,042, and a further debt owing to Nissan of $24,124.00. The father testified that he took these funds from lines of credit and credit cards. He then paid this back from the sale proceeds of his parents' former home, which closed later.

[531] In the result, the Court is not allowing the father to claim a deduction for a debt to family of $15,000.00 on the valuation date. The father failed to prove it. In regards to whether the Court will treat the other tranche of funds as a loan, the father did not prove this either. On the father's own evidence, these funds were advanced over a decade ago. There was no loan documentation tendered, no repayment terms, and no monetary repayment. Again, the father said during this trial

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[36] The Court observes that he did not reduce the responsibility for the valuation date mortgage debt, or the disposition cost calculation by 17.68%, to account for his alleged reduced ownership interest.

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that in exchange for this money, his parents got to live in the house that he owned. He added that they would apparently undertake some kind of calculation on the percentage to give back to them were the house to ever be sold, without explaining how that would be done.

[532] It is problematic that the father did not call any members of his family to testify, such as his father, who I assume would have had pivotal information about these alleged transactions. It seems to me that the evidence, taken at its highest, was closer to a loan than any kind of beneficial interest, but part of the deal, according to the father himself, was that the parents were to be repaid by being allowed to live in the home. On that theory, they had already received some 13 or 14 years of repayment by the time of the trial. On that theory, it may very well be that the amount of any debt, had it been proven, was in fact higher on the date of marriage than on the valuation date, thus increasing the father's net family property and equalization payment. Or, if the funds advanced from the parents on the date of marriage would be the same as at the valuation date, then this does not impact the equalization payment. Or perhaps the funds were a gift, with no expectation of repayment.

[533] In the result, there are no debts to the father's family members on the date of marriage or the valuation date included in the Court's final calculation, nor is the father entitled to deduct a percentage of the equity on either date, either.

(7) Other Debts on the Date of Marriage

[534] Both sides' NFP statements make reference in a note to the father having listed debts of $16,303.99 on the date of marriage. But neither actually included this in the father's column on either NFP statement for the purposes of the equalization calculation. Therefore, these are not in the Court's final calculation, either.

B. Conclusions and Order Respecting the Equalization Payment

[535] A revised Net Family Property Statement based on these findings and conclusions is attached as **Schedule "A"** to this Judgment. The father shall pay an equalization payment of $124,542.43.

PART IX: PRE AND POSTJUDGMENT INTEREST

A. Prejudgment Interest

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[536] Both parties agree that the Court should award pre-judgment interest of 2% on the equalization payment, from the valuation date. Their calculations differ because they disagreed on the amount of the equalization payment. Their calculations also ran to a certain point in time, and need to be updated to cover the further period of time that this decision has been under reserve.

[537] I find that the father owes the mother an additional amount of $9,902.05 (ie. $124,542.43 x 2% divided by 365 days in a year x 1451 days (ie. number of days between June 1, 2020 and May 21, 2024).

B. Postjudgment Interest

[538] There shall be an order for postjudgment interest in the ordinary course in accordance with the *Courts of Justice Act.*

[539] Separately, the postjudgment interest rate in effect on March 17, 2022 when I ordered the father to pay costs of $2,600.00 was 2%. As the father has not paid these costs yet, to avoid any further calculation dispute, I find the father owes a further sum for postjudgment interest on these costs of $113.55 as of today's date (ie. $2,600.00 x 2% divided by 365 x 797 days between March 17, 2022 and May 21, 2024).

[540] Additional postjudgment interest at 2% shall continue to accrue until these costs are paid.

PART X: CHILD AND SPOUSAL SUPPORT

A. Overview of the Parties' Positions and the Court's Child and Spousal Support Analysis

[541] Both parties have provided the Court with calculations for child and spousal support back in time.

[542] The mother seeks spousal support retroactive to the date of separation. She also seeks prospective child and spousal support.

[543] The father's draft Order does not specify his date of retroactivity specifically, but he has written it as if it support should be calculated back to some point in 2020. For example, the father's draft seeks to impute various incomes to the mother of $20,000.00 in 2020, $30,000.00 in 2021, and $34,000.00 in 2022 for his calculation of retroactive child and spousal support. He proposes not to impute any income to the mother in 2023, saying that there has been "too much

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instability in the family [to expect the mother] to be working this year".[37] He also wrote the draft Order as if he paid support of $950.00 each month in 2020, to which he says he is entitled to a credit.

[544] His spousal support calculations use the mid-range of the *SSAGs* for all years beginning in 2020. He also asks for an order terminating spousal support should terminate at the end of 2023.

[545] I intend to calculate support retroactively to August 1, 2020. That is soon after the separation. Although the mother started this case on an urgent basis in June, she did not prepare an Application until September 7, 2020. August 1, 2020 is the first of the month after the mother's former counsel made a formal request for spousal support in written correspondence.

[546] In regards to retroactive child support, regardless of how it came to be, the father had the child in his primary care from the time of separation until now. Therefore, if the Court finds, either that the mother actually earned sufficient income in any of the past years since the separation, or that an income should be imputed at a level that provides for an amount under the applicable table, then the mother would owe child support to the father.

[547] As both parties' incomes are in issue, I must first determine both parties' incomes from 2020 to present. I will explain why I would not impute an income to the mother, and except for a small amount of $72.00 in 2021, I find that the mother does not owe retroactive child support to the father.

[548] Although the parties have agreed to use the father's Line 150 incomes for 2020 through 2022, I will also explain why the situations respecting the father's income in 2023, and his income going forward are different, and why I intend to impute $189,000.00 to the father for 2023. I will explain why I intend to impute $223,000.00 for 2024.

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[37] While that may at first blush appear to benefit the mother, the Court observes that 2023 is also the year that the father went on a flexible working arrangement. The father says his income in 2023 was $164,000.00 for 2023. Not only was this not proven, this figure happens to represent a $59,000.00 decrease from the amount the father conceded should be used for his 2022 income.

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[549] I will then deal with the mother's entitlement to spousal support. Spousal support will be calculated using the "custodial payor" formula, until now. I am of the view that spousal support should be paid at the high range on the *SSAGs* in the years that the "custodial payor" formula applies. Although the father had care of the child, this outcome still leaves him with the great majority of the parties' net disposable incomes in those years.

[550] In regards to prospective child support, the child is also no longer in the father's primary care. Section 9 of the *Federal Child Support Guidelines* (the "*Guidelines"*) will be engaged. But neither side provided the Court with the evidence of submissions to undertake a *Contino* analysis. The father did not even fill out the budget section on his financial statements. The mother's budget is extremely modest. The mother does not have any significant income, apart from spousal support. Therefore, I intend to order the father to pay full table child support commencing June 1, 2024.

[551] Finally in regards to prospective spousal support, the "custodial payor" formula is also no longer applicable as of June 1, 2024. Commencing June 1, 2024, the father shall continue to pay spousal support, but now in an amount that is closer to, but slightly under the mid-range, using the "With Child Support" Formula. This will give parties equal net disposable incomes in their shared parenting situation. I am not of the view that spousal support should terminate in December of 2023. I do find a review order to be appropriate.

B. The Determination of the Parties' Incomes

[552] Section 19(1)(a) of the *Guidelines* provides that the Court may impute an amount of income to a spouse that it considers "appropriate in the circumstances", including "(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse".

[553] In *Drygala v. Pauli, 2002 CanLii 41868,* the Ontario Court of Appeal considered whether to impute income to a payor who was pursuing education. The Court held that:

(a) One of the objectives of the *Guidelines* is to establish a fair amount of support for children to ensure that they benefit from the financial means of both parents after the separation;

(b) There is a duty to seek employment;

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(c) It is not necessary to find a specific intend to evade one's child support obligations before income can be imputed; there is no requirement of bad faith; and

(d) If income is to be imputed, there must be a rational basis for the figure selected. The Court must consider what is reasonable in the circumstances, including age, education, experience, skills, health , the availability of job opportunities, the number of hours that could be worked in light and the hourly rate that the parent could reasonably be expected to obtain.

[554] In *Tillmans v. Tillmans, 2014 ONSC 6773*, Pazaratz J. summarized a number of the principles from the case law interpreting section 19(1)(a) of the *Guidelines,* including those cited above. In addition, the cases he referred to provide that:

(a) The onus falls on the party requesting that income be imputed to provide an evidentiary basis upon which a quantum can be imputed. Se *Homsi, v. Zaya, 2009 ONCA 311* at ¶ 28;

(b) Once intentional underemployment is found, the payor must show that what he or she has been doing to earn an income is reasonable; and

(c) That party cannot engage in reckless behaviour which diminishes income earning capacity.

C. The Mother's Incomes

[555] The mother's DivorceMate calculations that she tendered with her closing submissions say that she is not earning any income. That is not entirely accurate, but it is close. Her Line 150 income was $6,475.00 in 2020, $12,141.00 in 2021, and $5,301.00 in 2022. The mother received social assistance in 2022. According to her T5007 for 2022, $4,763.00 of the 2022 amount was social assistance. The only income reported on her financial statement sworn April 17, 2023 is the $950.00 per month, yet she is not receiving that any more as of August of 2023.

[556] Based on the parties' Statement of Agreed Facts, and the findings I already made about the circumstances of this marriage, including the mother's lack of education, training, and work experience, I do not find it appropriate to impute an income to this mother. I find the father's positions about the incomes to be imputed to the mother in each year from 2020 to 2022 to be arbitrary. I also find his position that no income should be imputed to the mother for 2023 to be

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motivated by his position about his own decreased income. Going forward the mother will have more child care responsibilities.

D. Retroactive Child Support

[557] Except for 2021, the mother's low incomes do not result in her owing child support under the applicable table. Her income for 2021 results in the payment of child support, of $6.00 per month, for a total of $72.00.

E. The Father's Incomes

[558] The father's financial circumstances are entirely another matter. According to the documents in the Income Brief prepared by the mother's counsel for this trial, the father earned the following amounts between 2017 and 2022:

Year	Employment Income	Gross Rental Income	Net Rental Income	Other	Line 150 Income on Tax Return	Line 150 Income on Notice of Assessment or Reassessment
2017	$157,884.40	$33,361.50	($17,238.53)		$140,645.87	**$142,222.00**
2018	$160,088.67	$45,224.50	($2,335.94)		$157,752.73	**$159,329.00**
2019	$162,739.60	$47,260.20	($20,955.63)	$1,751 (RRSP)	$143,534.97	**$143,360.00**
2020	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	**$147,980.00**
2021	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	**$180,240.00**
2022	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	**$205,250.00**
2023	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	Breakdown Unclear	**$123,000.00 – per employment letter dated April 26, 2023**

[559] In the years before 2020, the father used real estate rental losses to reduce his employment income. Despite this, both sides agreed to use the father's Line 150 incomes as shown in the above chart, for 2020 through 2022.

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[560] During the closing submissions, the father conceded that his income for 2022 should be $223,000.00.[38] Although I believe the father has likely continued to use rental losses to reduce his employment income in the years that followed 2020, this was not explored at trial, nor were arguments made about whether some rental expenses should be added back to his income and grossed up for tax.

[561] Where the parties diverge is over the employment or imputed income for 2023 and 2024. According to the father's pay stub from his current employer dated January 2022, the father's annual income as a senior manager was $205,000.00. The mother has used his 2022 Line 150 income of $205,250.00 to calculate support in 2023 and going forward.[39]

[562] On his financial statement sworn April 10, 2023, the father deposed that his "yearly income is variable between $41,000 and $205,250".[40] According to a letter dated April 26, 2023, dated less than a month before this trial began, the father disclosed that he had begun working on a "regular part-time basis, with an annual salary of $123,000.00 per annum". By the end of the trial, the father took the position that his income was $164,000.00. The father anchored his position about his reduced income for 2023 on his mental health and his parenting responsibilities. He seemed to also be saying this will continue to occur into the future, until some not yet defined moment in time. During closing submissions, he said he intended to work on an 80% basis in 2024.

[563] There is no evidence before the Court at all that the father has ever earned as little as $41,000.00 during the marriage, or post-separation, as he claimed might be the case on his two financial statements of April 10, 2023 and January 20, 2022. Likewise, the suggestion from the letter dated April 26, 2023, were it to be accepted, that the father only earned, or was only capable

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[38] During closing submissions, the father said that he received a variable bonus, and the Canada Revenue Agency adjusted his income upwards.

[39] This was prior to the father's concession that his income in 2022 should actually be $223,000.00.

[40] In an earlier financial statement sworn January 20, 2022, that the father included in his Trial Record Update" binder, the father said the amount of the fluctuation would depend on "how much unpaid time I must take off from work to prepare for trial as a self-represented litigant and to care for my son's medical challenges".

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of earning $123,000.00, would also represent the lowest amount of money that the father has earned in several years. In the end, the father did not even maintain that he earned this little at the end of this trial.

[564] Nor do I find it reasonable for the father to work on an 80% basis in 2024, if that is in fact what the father's plan was, or if that is in fact what has happened after this trial ended in November of 2023.

F. The Father's Mental Health

[565] In *Davidson v. Patten, 2021 ONCJ 437*, Curtis J. held that a party resisting a claim for imputation of their income for medical reasons should provide a medical report setting out at least the following information:

(a) diagnosis

(b) prognosis;

(c) treatment plan (ie. is there one? what is it?)

(d) compliance with the treatment plan; and

(e) specific and detailed information connecting the medical condition to the inability to work (ie. this person cannot work at the pre-injury job; this person cannot work for three months; this person cannot work doing physical labour; this person cannot work forever).

[566] According to her Psychological Report of the father dated June 30, 2021, Dr. Walker-Kennedy did not find any clinical diagnoses for the father. However the father himself reported clinical issues in the areas of somatization, suspiciousness and mild depressive and anxiety symptoms. Like with the mother, she recommended that he continue in therapy, that he read literature about parenting post-separation, and that he take a parenting course. In short, this expert opinion evidence did not reveal the kind of evidence to justify the change to his working arrangement and to justify the corresponding decrease to his income.

[567] Despite the absence of a diagnosis from Dr. Walker-Kennedy, the father nevertheless put his own mental health in issue when it suited him. For example, when discussing the marriage, his current ability to work, or trial scheduling and document management during the trial, the

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father sometimes talked about the damage that the mother caused to his mental health, his current health, and the fact that he now takes medication that he previously was unable to tolerate.

[568] The father had Dr. Gihan write a letter to OCL Clinician Ms. McNee-Trinidad, dated July 7, 2021, stating that he had a history of generalized anxiety disorder and major depression disorder in 2016, triggered by stress at work. But at some point thereafter, the father stopped seeing Dr. Gihan for a time. The father then resumed seeing Dr. Gihan, just prior to the release of Dr. Walker-Kennedy's report. Now, Dr. Gihan apparently "assessed his mental health status", but wrote that "he does not have any symptoms or signs of anxiety, depression or any mental health issue as far as [Dr. Gihan knew]."[41]

[569] Later on, when blaming the mother again, the father testified that before his marriage, he did not have any mental health issues at all, but he said the marriage was extremely stressful and "full of lies". He called the mother "manipulative". He also cited as stressful, when the mother started to send the child back to his care in December of 2022.

[570] The father testified that Dr. Gihan has once again diagnosed him, this time with "moderate major depression" and he takes 60 mg of Cymbalta. The father produced a further letter from Dr. Gihan, now dated May 3, 2023, that now provides a diagnosis of "moderate Major Depression disease with moderate to severe Anxiety disorder". But quite apart from the fact that this conflicts with Dr. Walker-Kennedy's diagnosis, and even to some degree with what Dr. Gihan had reported about the father in the past, he nevertheless also wrote that the father was taking good care of his health, he was taking medication regularly, and was compliant and following up.

[571] This more recent letter from Dr. Gihan does not speak to the father's ability to work or to his stated need for reduced work responsibilities, important information as highlighted in *Davidson v. Patten*. Dr. Gihan was also not called to testify, nor was any therapist for the father.

[572] The father was cross-examined about these issues on September 22, 2023. When the father testified in re-examination on November 21, 2023, he told the Court that he had obtained an even

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[41] Dr. Walker-Kennedy found it unusual that the father would have this mental health assessment done like this, just before the release of her report.

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newer medical report. The Court did not allow the father to split his case in this fashion and call this evidence, after being cross-examined on his alleged inability to work full hours.

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G. The Father's Parenting Responsibilities

[573] I also do not accept that the father needed to go on a flexible working arrangement and consequently take a significant hit to his income, to discharge his parenting responsibilities. To the extent that 2023 was an anomalous year, because of the trial, the father no longer needs to be on this reduced working arrangement.

[574] The father lives with several family members who are part of his parenting plan. At other times during the trial the father emphasized the importance of these familial relationships for the child. In any event, as I have also already found and intend to order, this child is to be in school, every day. The child will also now be spending more time with his mother.

H. The Father's Failure to Complete His Financial Statements Properly

[575] I repeat that the father chose not to complete the budget portion of his financial statement. He provided various, not persuasive excuses for having not done this property. This has not only deprived the Court of the ability to undertake a *Contino* analysis, but I am unable to consider the father's lifestyle and how that might impact income, in the determination of his income. I draw an adverse inference from this.

I. Conclusions Respecting the Father's Incomes

[576] I find that the father is intentionally under-employed within the meaning of section 19(1)(a) of the *Guidelines.* With a small exception, I would not give effect to the father's position about reduced income for 2023, and certainly not beyond.

[577] This Court does not have proper documentary evidence about what the father was actually projected to earn in 2023. The Court could have just taken the mother's position and used his 2022 income.

[578] I will reluctantly not do so. The father's salary in 2022 was supposed to be $205,000.00, although he said during closing submissions that he received a bonus. I do not know if he received

another bonus in 2023. I will assume he did not, in view of the amount of time he was away on the flexible working arrangement and for this trial.

[579] While it may be debatable whether the father should get the benefit of any further reduced income for 2023 at all, I am also prepared to give him some small additional credit, not because I find his choice to go on a flexible working arrangement to be reasonable, but because the parties were in a 19-day trial in 2023. I recognize that more time than 19 days would have been spent preparing for trial, but I presume he would have been able to access vacation time for this too (had he not gone on a flexible working arrangement or taken a leave). While I do not accept his say so that he would only earn $164,000.00 in 2023, I will reduce the father's 2022 of $205,000.00 (without the bonus) income by 48/52 to determine his 2023 income. In the result, I impute an income of $189,000.00 (rounded) to the father for 2023.[42]

[580] I agree with the mother that the father has the capacity to work more as he did in the past. Income will be imputed to him at his conceded 2022 level of $223,000.00, commencing January 1, 2024. I do not find it to be appropriate to calculate support based on his earning only 80% of his prior income.

J. Spousal Support

[581] Pursuant to section 15.2(4) of the *Divorce Act*, in considering making a spousal support order, the Court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to the support of either spouse.

[582] Pursuant to section 15.2(6), my order should:

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[42] To be precise 48/52 of $205,000.00 is $189,230.77

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(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

(1) The Mother's Entitlement to Spousal Support Was Admitted

[583] The parties' Statement of Agreed Facts is largely dispositive of entitlement. Pursuant to it, the parties agree to the following facts relevant to spousal support:

(a) The mother cared for the child in part so the father could focus on his career;

(b) The father was able to grow his career as a result of the mother staying at home with the child;

(c) The mother supported the father's career endeavours;

(d) The mother was supportive of the father's career during the marriage;

(e) The father provided the mother with money and credit cards in order for her to meet her needs during the marriage;

(f) The mother was financially dependent on the father during the marriage;

(g) The mother wanted to return home [shortly after the separation] but the father refused;

(h) The father purchased three rental properties during the marriage;

(i) The mother is entitled to spousal support; and

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(j) The mother suffered an economic disadvantage as a result of the breakdown of the marriage.

[584] Based on the other evidence I heard, coupled with these admitted facts, I find that the mother has strong compensatory and needs' based spousal support claims.

(2) Quantum

[585] At ¶ 473 of *A.E. v. A.E., 2021 ONSC 8189,* Chappel J. provides much guidance about where a spousal support claim should fall on the *SSAGs* in terms of quantum and duration. During the years that the custodial payor formula applied, I am of the view that the high end of the *SSAGs* should be used. I find that because of the admitted strength of the mother's compensatory claim, the mother's high need for support, and her limited education, work experience and income and earning capacity. As the Court's DivorceMate calculations reveal, even at the high end of the *SSAGs*, the father is left with the great majority of the net disposable income.

[586] In regards to prospective support, after taking into account that the father now owes the mother child support in the amount of $1,825.00 per month commencing June 1, 2024, I find the father should pay spousal support of $5,817.00 per month. As it turns out, this is slightly below middle of the *SSAG* ranges; it leaves both parties with equal net disposable incomes: see also the commentary about "The shared custody formula" in the Revised User's Guide of the *SSAGs, April 2016, Chapter 8,* pages 34 and 35.

[587] In ordering this amount, I recognize that the father has housing expenses, whereas the mother does not, and the father said that he in the past paid for the child's therapy. However it is again here that the father failed to call really important evidence, when he did not bother to quantify his expenses in a budget, or provide supporting documentation in relation to those therapy expenses. And in relation to the therapy, there would have been some benefits coverage.

[588] I also note that in spite of having these kinds of expenses, the father was still able to acquire three rental properties over the course of the marriage, two of which he still has. He was, and is still able to use his rental losses to reduce his income and to save on income tax, while he builds equity in these properties.

[589] The mother testified that she wants to be able to get her own housing and get back on her feet. If she does, she will have future housing expenses of her own, too.

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(3) Spousal Support Review

[590] Both parties took polarized positions respecting duration, with the mother asking for indefinite spousal support and the father asking the Court to terminate it as of a few months ago. I do not find either approach to be appropriate.

[591] When the custodial payor formula applied, the *SSAGs* only provided for time limited support for a duration between 2.5 and 5 years from the date of separation, subject to variation and possibly review. In view of the change to the parenting arrangements being ordered, the *SSAG* calculations no longer call for time limited support: see also the Revised User's Guide of the *SSAGs, April 2016, Chapter 8,* pages 43 and 44. Rather the *SSAGs* now provide for an indefinite duration, subject to variation and possibly review, with a minimum duration of 2.5 years and a maximum duration of 5 years from the date of separation.

[592] I intend to order a review. I find there is a material uncertainty to be reviewed: see *Leskun v. Leskun, [2006] 1 S.C.R. 920* ¶ 37. The mother did not have a plan for her own housing, her retraining or further education, or to find employment, when she testified at the trial. The mother is a young woman.

[593] In saying this, I nevertheless find it important to reiterate here, that the kind of marriage that the father wanted was a traditional one. He also very clearly wanted to live with his parents in an extended family environment. That involved having this mother be a stay-at-home parent for their child. This mother was put into a place of financial dependency during the marriage. Her mental health suffered. The father prioritized living with his family over his spouse's needs and over her good mental health. The mother was left in a bad state after the breakdown of the marriage. For a time, she collected Ontario Works. The mother's past work in photography pre-dated the Covid-19 pandemic.

[594] The mother's precarious financial circumstances are very much a product of this marriage and its breakdown. The choices the parties together made, are going to have some long lasting consequences. The mother's precarious financial circumstances have been exacerbated by the father's post-separation conduct.

[595] In that regard, I would be remiss if I did not mention again, that the father has also demonstrated himself incapable of not just following this Court's Orders when it comes to parenting, but also this Court's monetary orders. These actions have also adversely impacted the mother's already limited financial circumstances.

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[596] Therefore, while I would order a review, I do not do so within 2.5 to 5 years of the separation. The mother will need more time to get on her feet, to find housing of her own, to retrain or to re-educate herself, and to find employment. I do not find it reasonable to conclude that she ought to have been doing that already, or that she can do that within the next year. Immediately after the separation, she had to work with therapists to overcome the effects of this marriage. She had to launch this lawsuit, respond to an onslaught of allegations the father made against her, and prove to this Court that she is fit to parent. To this I would add that while the mother does at some point need to turn her attention to retraining and figuring out what she will do for work, I also have to balance that against the parenting responsibilities that she will now be taking on.

[597] In conclusion I find that the review should occur when the child is ready to enter high school. That is in 6 years from now.

[598] Either party may seek to vary spousal support earlier if there is a material change in circumstances. The parties will be ordered to provide annual disclosure in accordance with the *Guidelines*.

K. Calculations

[599] In summary, except for 2021, no amounts of child support are owing from the mother to the father for the past on account of her negligible income. The Court's retroactive spousal support calculations use the custodial payor formula.

[600] I find the father owes the mother the sum of **$2,903.00** for the period between August 1, 2020 and December 31, 2023. This amount is the net of tax amount, at the high range of the *SSAGs*, using mid-point between the father's after tax cost support, and the mother's after tax benefit of support for each year. I have also credited the father with the net support of $950.00 per month that he paid, for the 35 months he paid between November 2020 through to August of 2023, and deducted the child support the mother owes him for 2021.

[601] For the first part of 2024, I find the father owes the mother a further lump sum of **$7,400.00** (ie. $1,480.00 per month for the five months between January 2024 and May 2024.) This is still calculated using the high range of the *SSAGs* and the custodial payor formula. However this amount is not net of tax because the parties have not filed their income taxes yet for 2024. Therefore, this amount shall be included in the mother's income for 2024 and shall be deducted by the father, pursuant to the *Income Tax Act*. I find that commencing June 1, 2024, the father

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shall pay child support to the mother for D. in the amount of $1,825.00 per month, and he shall continue to pay spousal support to the mother, in the amount of $5,817.00 per month. This calculation is based on the child being in a shared parenting arrangement, based on imputed income of $223,000.00 to the father, and based on the mother not having any income other than spousal support. The mother shall continue to include the monthly spousal support in her income and the father shall deduct it, pursuant to the *Income Tax Act.* Because no one provided me with any evidence about the cost of the child's therapy, I have not been able to factor that in when undertaking these calculations. The percentage of sharing for any future special or extraordinary expenses as it stands, is 69% father, and 31% mother. The father shall first make any benefits he has available to defray any future section 7 expenses, before the expense is apportioned.

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[602] The Court's DivorceMate calculations for the years 2020, 2021, 2022 and 2023 that it used to calculate these amounts are attached as **Schedule "B"** to this decision. Also attached are two DivorceMate calculations for 2024, since the parenting regime and the *SSAG* formula changed mid year. The first one for 2024 covers the first 5 months until now, and the second calculates prospective support starting in June. A chart of the Court's retroactive child and spousal support calculations based on those DivorceMate calculations is set out as **Schedule "C".**

PART XI: ORDER

[603] I make the following Orders:

Evidentiary Rulings

(a) Except for the enclosure letter from Mr. Stangarone's office dated May 9, 2023, and a letter from TD Bank dated April 18, 2023, which has already been struck, the balance of the financial documents at Tab 44 of the Mother's Supplementary Exhibit Brief, currently marked as Exhibit "B", shall now be marked as the next Exhibit, which I believe to be Exhibit 205. If I am mistaken the Registrar may instead mark these documents as the next numbered exhibit;

(b) On consent, the medical note of Dr. Khitab dated March 26, 2018, currently marked as Exhibit "E" shall now be marked as Exhibit 206, or as the next numbered exhibit as the case may be;

(c) The recordings marked as Exhibits “J”, “K”, “L” shall now be made Exhibits 207, 208 and 209 respectively (or the next numbered exhibits as the case may be), but the use to which they have been put is as described in this Judgment;

(d) The Court has ruled on the child’s hearsay statements, as set out above. Any statements of the child that the mother hit him or engaged in acts of physical abuse are not admitted for the truth of their contents;

(e) The text messages currently marked as Exhibit “D” are not admitted into evidence;

(f) The mother’s journal entries marked as Exhibits “F, “G”, “H” and “I” are not admitted into evidence;

(g) The mother’s journal entries marked as Exhibits “F, “G”, “H” and “I” shall be sealed and shall not form part of the public record. They may only be accessed by the mother or her counsel or the court and its employees. Any further order for access must be obtained by way of an Order a court of competent jurisdiction unsealing these records;

(h) At the conclusion of any appeal period (or unless there is an appeal and an appellate court orders otherwise), the father shall completely destroy any and all copies of the mother’s journals that he has in his possession, including Exhibits “F, “G”, “H” and “I”, as well as any others that he may have. He shall not retain copies;

Pursuant to the Divorce Act:

Decision-Making Responsibility Respecting Health

(i) Except as otherwise provided for herein, the mother shall consult with D.’s health care providers prior to making significant health care decisions;

(j) The mother may select her family doctor to be the child’s doctor. If that doctor is not willing or able to accept D. as a patient, then the mother may select another doctor for the child in her sole discretion;

(k) Except in the event of emergencies, the mother shall be responsible for scheduling and taking D. to any regular medical or dental appointments. The mother shall notify the father of the appointment. The father may attend provided he is respectful of the mother during the meeting and does not interfere with the mother’s parenting time or the

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child's health care. If the father does not attend, the mother shall give him information about the appointment in accordance with the "weekly update" provision in the communication protocol set out below;

(l) If D. needs emergency medical or dental care while with one party, then that party shall notify the other of the emergency immediately using the communication protocol set out below. The parent having the child may seek out emergency care regardless of the allocation of decision-making responsibility in this Order, but if the other parent is available and can arrive in time, he or she may attend;

(m) The mother shall ensure that D. continues to be monitored for his mental health and development;

(n) The child shall immediately be enrolled in therapy with Sarah Long of the Mindful Mental Health Clinic. The mother shall endeavour to schedule the child's therapy to occur on Wednesdays at 5 PM as had been previously put in place, to accord with the parenting schedule set out below. The frequency of the sessions shall be set by the mother in consultation with Ms. Long;

(o) Both parents are entitled to attend debriefing meetings with Ms. Long at the end of D.'s therapy sessions, on an alternating basis, or on a schedule that is otherwise set in consultation with Ms. Long, provided that both parents are equally entitled to participate. Unless Ms. Long recommends otherwise based on her schedule and the child's needs, the debriefing meetings shall occur on an alternating basis, with one parent meeting her after one session, and the other parent meeting her after the next session, and so on. This applies irrespective of the parenting schedule set out below, but ideally the therapy shall resume on Wednesday evenings, to accord with the parenting schedule that I am ordering. In the event that Ms. Long requires a joint session with the parents, both parents shall attend and shall treat each other respectfully;

(p) If Ms. Long is no longer willing to provide therapy for D., then the mother may choose another therapist for D. She shall enter into an agreement for therapy on similar terms as those set out in the preceding paragraph;

(q) Both parents shall follow the child's therapist's recommendations for him, including as to the frequency of the appointments and any other matter respecting his therapy;

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Decision-Making Responsibility Respecting Education

(r) Except as otherwise provided herein, the mother shall make significant educational decisions for D., in consultation with D.'s teachers and school administrators. This shall include the decision to enroll him in tutoring, if it is recommended;

(s) The child shall continue in his current school, namely N.P.S. When the time comes, the mother may select the child's high school;

(t) The mother shall be added as an emergency contact at the child's school;

(u) The mother shall immediately download and register for any Apps for parental communication with the school;

(v) Each parent may attend school for the purposes of dropping the child off, or picking him up, before or after his parenting time, as required by this Order;

(w) The mother shall attend meetings with school teachers or administrators as required by the teachers and administrators. The father may also attend provided he is respectful of the mother, does not interfere with the mother's parenting time and does not interfere with the mother's decision-making responsibility. If the father does not attend, then the mother shall provide him with information about the meeting in accordance with the "weekly update" provision in the communication protocol set out below;

(x) Both parents may each attend important events at the child's school, such as concerns and recitals, together. During these attendances, to the extent possible, the parents shall not interact with one another or the other's family members. If there is contact between the parties or the other's family members, it shall remain brief and cordial. The non-residential parent may speak briefly with D. at these school events, but shall not interrupt the residential parent's parenting time;

(y) If possible, the parents shall request separate parent-teacher interviews;

(z) The mother shall ensure that D.'s IEP is kept up to date with the school;

(aa) Both parents shall ensure that D. attends school regularly. D. shall not be kept home except in the event of an illness that prevents him from attending school;

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Decision-Making Responsibility Concerning Culture, Religion and Spirituality

(bb) D. shall be raised in the Muslim faith. He may attend community or religious events with his each of his parents when those events are scheduled by the parent who has parenting time with D., provided it is during that parent's respective parenting time;

(cc) For clarity, for so long as the parenting schedule in Phase One below applies, the father may take the child to his religious school on Saturday mornings each week. When Phase Two begins, the father may take D. when D. is in his care. The mother may decide whether she wishes to take D. on her time, or not;

Decision-Making Responsibility Concerning Extra-Curricular Activities

(dd) Both parents may enroll D. in activities or events to occur when he is in the care of that parent, but he or she shall not do so in such as fashion as to impact the other's parenting time, without the other parent's consent;

(ee) The enrolling parent shall be responsible to take D. to such activities or events on his or her time. Unless the other parent agrees, there is no obligation on the other parent to take D. on his or her parenting time;

Parental Attendance At Special Events and Occasions For D.

(ff) Both parents may attend any major performances, activities, school events, religious events, tournaments or games to show support for D. During these attendances, to the extent possible, the parents shall not interact with one another or the other's family members. If there is contact between the parties or the other's family members, it shall remain brief and cordial. The non-residential parent may speak briefly with D. at these major performances, activities, school events, religious events, tournaments or games, but shall not interrupt the residential parent's parenting time;

Residual Decision-Making Responsibility

(gg) The mother shall have sole decision-making responsibility for all other significant decisions about D.'s well-being, not otherwise addressed herein;

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(hh) The mother shall consult with the father prior to making such significant decisions;

(ii) "Consult" means that at least 30 days before she makes a significant decision, or as soon as possible if the decision must be made in less than 30 days' time, the mother shall provide the father with all relevant information about the decision she intends to make by way of a brief Our Family Wizard message. The father shall respond within 14 days or sooner if the decision must be made earlier. The father may send **one** response with his views. The mother shall consider the father's views. The mother shall then make the final decision;

(jj) This particular protocol for communication between the parties shall only concern the significant decision being contemplated. It is to be brief. The mother's obligation to take the father's views into account when making the decision does not mean that she is bound to follow his views or engage in any back and forth dialogue with him. The communication protocol set out below otherwise applies for other communications;

Day-today Decision-Making

(kk) The parent in whose care D. is residing according to the schedule set out below shall make day-today decisions affecting him;

Release of Information Pursuant to the Divorce Act

(ll) Both parents are entitled to request from the other parent, or from any other person who is likely to have such information, information about the child's well-being, including in respect of his health and education. Both are entitled to be given such information from those persons;

(mm) The father shall not provide to any service provider involved in D.'s care information that consists of his view of the mother's conduct before the marriage, the history of the relationship or the parties' conduct before or during it, or afterwards, allegations that the mother committed acts of physical discipline or abuse towards the child, and he shall not provide information about the mother's mental health, or make allegations of past drug use, to any such professional;

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(nn) A copy of this Judgment shall be provided to the child's therapist. In the mother's sole discretion, she may choose to provide a copy of this Judgment to any other service provider involved in D.'s care as she determines necessary;

Communication Protocol

(oo) Communications respecting significant decisions shall be dealt with as set out above in the paragraphs concerning the mother's residual decision-making responsibility;

(pp) The parents shall communicate pertaining to other issues related D. only using Our Family Wizard in accordance with the following protocol:

(1) The subject line shall include a few words about the contents of the message and whether a response is required. For example, a message about school picture day could say: "School Picture Day on _____- Response Not Required.";
(2) At the end of the residential parent's parenting time and once per week only, the other parent may send a brief message titled "Weekly Update". The weekly update shall summarize the status of any homework or other school issues that the other parent needs to know, any highlights or achievements in the child's week, and any health information that needs to be updated for the other parent. No response is required. The intent of this Weekly Update is to inform the other parent and not to engage in an unnecessary discussion or debate;
(3) Where a response is required, the parents shall endeavour to respond to the other within 24 hours. If it is not possible, the responding parent shall advise the other within 24 hours that they require more time to respond and shall provide a date when the response shall be received;
(4) The use of texts and emails shall be reserved for practical and logistical issues of immediacy, which should be rare. In the event of a genuine emergency, the parents may contact each other by telephone;

(qq) The residential parent shall ensure that D. can communicate with the non-

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residential parent at any time D. requests;

(rr) In written or verbal communications, the parties shall refrain absolutely from making any negative comments about each other, their extended family members, their partners or their friends in their communications with each other or in the presence of the child and shall make best efforts to not allow any other person to do so;

(ss) The parties shall at all times maintain civil and respectful communications which shall be brief, informative, friendly, but firm when necessary;

(tt) The parents shall refrain from providing unnecessary and/or repetitive directions and instructions to the other regarding the care of the child;

(uu) The parents shall not interfere in the other parent's parenting time unless there is an emergency or an urgent need to provide the other parent with information relevant to the child;

(vv) Each parent shall keep the other parent updated in a timely manner about all school and health issues and shall immediately report all significant emergencies such as trips to a walk-in clinic or the hospital, regardless of the outcome. Only significant emergencies require an immediate report to the other parent. Otherwise, the parent shall use the "Weekly Update" message to inform the other parent;

D.'s Documents

(ww) The mother shall be responsible for the child's passport, including retaining the child's passport when the child is not travelling, and renewing or replacing the child's passport as required;

(xx) The mother shall hold the child's identifying documentation including but not limited to his Social Insurance Number, Birth Certificate and Health Card. The father may have copies of the child's social insurance number, birth certificate and health card;

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(yy) The mother shall renew any of the child's documentation, including his passport, without requiring the consent or signature of the father;

(zz) If the mother provides an original document to the father for any purpose to have during his parenting time, or for travel, then the father shall promptly return it to her at the end of the visit;

Travel Terms

(aaa) The mother may travel with D. during her parenting time without requiring the travel consent of the father. At least 30 days before any such trip, or on shorter notice for trips booked within 30 days, the mother shall provide the father with a travel itinerary, details of where she shall be staying with D. while away, and contact information for D. while away;

(bbb) The father may travel with D. upon obtaining a written travel consent from the mother, not to be unreasonably withheld. At least 30 days before any such trip, or on shorter notice for trips booked within 30 days, the father shall provide the mother with a travel itinerary, details of where he shall be staying with D. while away, and contact information for D. while away. If the parties cannot agree, then the Court may decide the issue. The father shall not plan and discuss with the child any proposed trip, until he first obtains the mother's consent, or a court order;

Co-operative Parenting Course, Parental Education and Parent's Therapy

(ccc) Both parents shall enroll in the Co-operative Parenting Course offered through the John Howard Society of Durham. They shall each attend the program as soon as there is space available. They shall take the program separately;

(ddd) Both parents shall read at least one of the books recommended by Dr. Susan Walker-Kennedy in her psychological assessment reports of them, and both shall read the book entitled "Keys to Parenting Your Anxious Child" recommended by Dr. Sohail Khattak at paragraph 6 of his Report;

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(eee) Both parents shall continue to attend individual counselling in consultation with his and her therapists. He and she shall continue to attend for as long as recommended by his and her therapists. A copy of this Judgment shall be given to each party's therapist;

Other Parenting Terms Respecting Parental Conduct

(fff) Both parents shall follow the rules set out in the "Judges rules for separated parents" document that is attached as **Schedule "D"** to this Judgment. It shall also be attached as **Schedule "A"** to the Order to be prepared and entered;

Restraining Order

(ggg) The father's request for a Restraining Order is dismissed;

Parenting Time

Phase I: The Schedule from May 13, 2024 to June 27, 2024

(hhh) Commencing immediately until Friday, June 27, 2025, the child shall be in his mother's care each week from Sunday at 10 AM until the later of Wednesday after school, at 6 PM if the child is not in school due to an illness or a school closure, or after the child's therapy, if it occurs on Wednesday evenings;

(iii) Commencing immediately until Friday, June 27, 2025, the child shall be in his father's care from the later of Wednesdays after school, 6 PM if the child is not in school due to an illness or school closure, or after the child's therapy, if it occurs on Wednesday evenings. The child shall then reside with the father until Sundays at 10 AM;

(jjj) It is the Court's intention to order supervised exchanges, exchanges at the school or exchanges at therapy wherever possible, with the community location to be the last resort. Therefore, for clarity, parenting exchanges on Wednesday evenings shall occur

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as follows. The mother shall be responsible for D. during the day even if he is not in school due to an illness or a school closure, until the parenting exchange. The mother shall also be responsible for taking the child to see his therapist on Wednesdays after school.

(kkk) The father shall then pick the child up after the child's therapy, or at the child's school if the child is in school and there is no therapy, or at 6PM in a location in the community selected by the mother within the next 7 days if there is no school or therapy;

(lll) Exchanges on Sundays shall be supervised at the Durham Supervised Access Center. Both parents shall immediately complete any intakes to involve the Durham Supervised Access Center, and each shall pay his and her fees.

(mmm) Pending the involvement of the Durham Supervised Access Center, the exchange on Sundays shall take place at the community location selected by the mother. And if the Durham Supervised Access Center cannot accommodate this family, then the exchanges shall also take place in the community location selected by the mother;

Phase II: Schedule from June 27, 2025

(nnn) Commencing Friday June 27, 2025, the child shall reside with each parent pursuant to a 2 – 2 – 5 schedule as follows:

(1) With mother, from Monday after school or at 4 PM if the child is not in school due to a school closure or illness until the later of Wednesday after school, 6 PM if the child is not in school due to an illness or a school closure, or after the child's therapy if it occurs on Wednesday evenings;

(2) With father from the later of Wednesday after school, 6 PM if the child is not in school due to an illness or a school closure, or after the child's therapy if it occurs on Wednesday evenings, until Friday after school, or at 4 PM if the child is not in school due to a school closure or illness;

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(3) With each parent from Friday after school, or at 4 PM if the child is not in school due to a school closure or illness, until Monday return to school, or at 4 PM if the child is not in school due to a school closure or illness;

(4) Parenting exchanges on Mondays and Fridays occur at the child's school, or at the community location chosen by the mother if the child is not in school due to a school closure or illness. Parenting exchanges on Wednesdays shall continue to occur as set out above;

Other Terms Respecting Parenting Exchanges That Apply to All Parenting Schedules

(5) Regardless of the date, time or location of any parenting exchange, the parties shall strictly follow the protocol that Dr. Khattak recommended for D.'s exchanges. The protocol is set out at page 12 of Dr. Khattak's Report. The Order to be prepared and entered shall attach this one-page protocol as **Schedule "B"** to it;

Adjustment to Both Schedules to Accommodate Therapy

(6) In the event that therapy is not available on Wednesday evenings, I am prepared to make a minor modification (such as a change to the exchanges) to allow both parents to fully participate in the child's therapy, to include taking him to or picking him up from therapy, and to participate in the debriefing sessions;

The Parents' Attendance At Each Other's Homes

(7) There shall be no order made prohibiting either parent from attending at the other's home, such as in the event of emergencies. However this should not regularly be necessary, in view of the above order for exchanges;

Holiday Schedule Commencing Immediately

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(ooo) The regular parenting schedule shall continue during the summer, Christmas Break, D.'s Birthday, PA days and school holidays except as follows.

(ppp) If D. is not in the care of the father for Father's Day weekend, the father shall have care of D. on Father's Day from 10 AM to 6 PM. Amy exchanges on this day shall take place at the Durham Supervised Access Center, or if it is not being used or open, at the community location;

(qqq) If D. is not in the care of the mother for Mother's Day weekend, the mother shall have care of D. on Mother's Day from 10 AM to 6 PM. Exchanges shall occur in the same way as on Father's Day;

(rrr) The residential parent shall ensure that D. has one 20 minute phone or virtual call with the non-residential parent on D.'s birthday. The other parent may otherwise celebrate D.'s birthday with him at another time near the birthday when he or she has regular parenting time.

(sss) The parties may each have two, non consecutive weeks of parenting time with D. in the summer months, one week in July and one week in August. The mother may choose her weeks first in odd numbered years by May 1. For 2024, giving the timing of the release of this Judgment, the mother may choose by June 15. The father may choose his weeks first in even numbered years by May 1.

Limited Information About this Judgment Only to be Provided to D.

(ttt)Except as set out below, neither parent shall discuss the outcome of this trial with the child.

(uuu) Neither parent shall discuss the contents of this Judgment with the child, nor shall he or she show the child this Judgment.

(vvv) The mother's counsel shall prepare a calendar setting out the regular parenting schedules and provide a copy of them to the father for his records. The mother shall

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be responsible for explaining to the child the new parenting schedule. Both parents are to display the calendar with the parenting schedule in their homes, where the child can see it.

Failure to Support the Mother's Relationship With the Child and Breaches of the Parenting Terms of this Order

(www) The father shall strictly comply with this Order. If the father fails to encourage and support the mother's relationship with the child, or otherwise breaches the parenting terms of this Order in any way, that shall constitute a material change in circumstances entitling the mother to commence a Motion to Change to seek a different parenting Order, including a different schedule;

Pursuant to the Family Law Act:

Equalization Payment

(xxx) The father shall pay to the mother an equalization payment in the amount of $124,542.43;

Pursuant to the Divorce Act, the Federal Child Support Guidelines and the Income Tax Act:

Retroactive Child and Spousal Support

(yyy) In full and final satisfaction of the father's claims for retroactive child support from the mother, and in full and final satisfaction of the mother's claims for retroactive spousal support from the father, covering the period up to and including December 31, 2023, the father shall pay to the mother a lump sum of $2,903.00. This amount is a lump sum net of tax amount;

(zzz) Commencing January 1, 2024 and on the first of each month thereafter, with the last payment being on May 1, 2024, the father shall pay spousal support to the mother in the amount of $1,480.00 per month. The father therefore owes the mother a further

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amount of $7,400.00 (ie. $1,480.00 per month x 5 months). This amount shall be deducted from the father's 2024 income and included in the mother's 2024 income pursuant to the *Income Tax Act*;

(aaaa) Commencing June 1, 2024, and on the first of each month thereafter, the father shall pay child support to the mother for D. in the amount of $1,835.00 per month. This Order is pursuant to section 9 of the *Federal Child Support Guidelines* and is based on the factors set out in this Judgment, including the father's imputed income of $223,000.00 per annum and the mother's annual income solely consisting of spousal support at this time;

(bbbb) Commencing June 1, 2024, and on the first of each month thereafter, the father shall pay spousal support to the mother in the amount of $5,817.00 per month;

(cccc) The parties shall share D.'s special or extraordinary expenses on a 69% (father) – 31% (mother) basis;

(dddd) The father shall make any extended health and dental benefits he has available for the child available to defray the cost of any uninsured health, dental or therapy expenses incurred by either parent, before apportionment on a 69-31% basis;

(eeee) On or after June 1, 2030, either party may seek to review spousal support, with a view to reviewing the mother's need for a new residence and whether that has been addressed, her need to upgrade her skills or retrain, and her efforts to seek employment. For the purposes of the review, the mother shall disclose any education or retraining that she has taken, and any work, paid or otherwise, that she has done;

(ffff) The parties shall otherwise exchange the disclosure required by the *Federal Child Support Guidelines* annually each year, by June 1;

(gggg) Child and spousal support are otherwise variable in accordance with the applicable

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legislation and the legal tests that apply based on material or other changes in circumstances;

(hhhh) A support deduction Order shall issue;

(iiii) The final Order to be entered shall contain the usual clause for the payment of support through the Family Responsibility Office;

Pursuant to the Courts of Justice Act:

Prejudgment Interest

(jjjj) The father shall pay to the mother prejudgment interest on the equalization payment in the amount of $9,902.05

Prior Costs Order and Postjudgment Interest

(kkkk) The costs Order of Finlayson J. dated March 17, 2022 in the amount of $2,600.00 remains due and payable. As of May 21, 2024, the father owes the further sum of $113.55 on account of postjudgment interest pertaining to these costs. Additional postjudgment interest at 2%, which was the applicable postjudgment interest rate in effect at the date of that costs Order, shall continue to accrue until these costs are paid.
Postjudgment Interest

(llll) The final Order to be entered shall provide for postjudgment interest at the prevailing rate of 7%. That does not apply to the costs Order of Finlayson J. dated March 17, 2022 for which there is already different postjudgment interest accruing;

Confidentiality

(mmmm) This Court has endeavoured not to include identifying information about this family. The Court has in this Judgment identified the parties and the child with initials.

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Pursuant to the Courts of Justice Act and the Family Law Rules:

Costs and Limited Additional Submissions

(nnnn) If the parties cannot agree on costs, the mother may file costs submissions in writing by June 21, 2024. Her costs submissions shall be no more than 5 pages in length, double spaced, and she may include a Bill of Costs, and any Offers to Settle. Her submissions may refer to case law with citations, but she does not need to include the cases in a Book of Authorities;

(oooo) If the parties cannot agree, then at the same time, the mother may file a separate, two page submission, by way of a sworn affidavit, setting out any relevant information about religious holidays, their significance, when they fall, and how they should be divided. Her affidavit should also consider how any additional Order this Court may make impacts D.'s best interests and any other terms ordered by this Court;

(pppp) In addition, if there needs to be a minor adjustment, should the therapy not occur on Wednesdays, the mother may explain the problem and make a proposal. In that case, the affidavit provided for above may be an additional page (3 pages, double spaced in total);

(qqqq) The father may file his costs and other material about the religious holidays and to a minor adjustment if the therapy doesn't occur on Wednesdays, by July 22, 2024. The father's filings shall be subject to the same requirements about the material to be filed, its format, and length;

(rrrr) The mother may file a Reply, limited to two pages, by August 2, 2024. If her submission concerns the religious holidays or therapy, then it should be submitted in sworn form;

(ssss) Finally, as the Court has undertaken its own DivorceMate, retroactive support

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calculations, and interest calculations, if either party is of the view that the Court has made a mathematical or an inputting error, but not an error as to the findings of fact, or analysis or conclusions upon which the calculations and data inputs were based, then either may advise the Court of this when he or she files his or her main costs submissions;

(tttt) For clarity, it is the Court's intention to deal with these remaining issues in writing. The Court reserves the right to require an oral hearing or submissions, if the Court has additional questions;

Other

Continuation of the Preservation Order

(uuuu) The Court's preservation Orders of November 27, 2023, as amended on February 21, 2024 shall continue until after the Court disposes of costs of this trial, and after any financial amounts Ordered by this Court are paid in full, including costs of the trial if Ordered;

(vvvv) The parties may cooperate to lift the preservation Order for the purposes of enabling the father to pay any amounts owing to the mother, including but not limited to retroactive support, the costs Order of Finlayson J. dated March 17, 2022, postjudgment interests on those costs, the equalization payment and prejudgment interest. If necessary, an order may be obtained by way of 14B Motion directed to my attention;

(wwww) Once costs of this trial are adjudicated, once they are paid if ordered, and once the other amounts owing to the mother are paid in full, the preservation order may be discharged from title to any real estate;

Divorce

(xxxx) The parties did not call the evidence necessary for the Court to complete the

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divorce. The applicant mother may file a Form 36 Affidavit for Divorce and any other required documents, and the divorce may be sent to me in chambers at the same time as I address costs and the other matters in writing.

JUSTICE ALEX FINLAYSON

Released: May 21, 2024

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CITATION: S.S. v. R.A., 2024 ONSC 2870
COURT FILE NO.: FC-20-584-00

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

S.S.

Applicant Mother

– and –

R.A.

Respondent Father

REASONS FOR JUDGMENT

Justice Alex Finlayson

Released: May 21, 2024

2024 ONSC 2870 (CanLII)