

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** *S.B. v. V.M.*, 2023 NSSC 73

**Date:** 20230224  
**Docket:** 83544  
**Registry:** Sydney

**Between:**

S.B.

Applicant

v.

V.M. and M.M. (deceased)

Respondents

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice Pamela A. Marche

**Heard:** December 12, 14 and 22, 2022, in Sydney, Nova Scotia

**Final Written Submissions:** January 27, 2023

**Written Decision:** March 2, 2023

**Subject:** Grandparent Contact Time; Denial of Contact Time

**Summary:** Grandmother SB sought specified contact time with her two grandsons. The boys mother refused contact time contrary to a court order that provided the grandmother contact time every third weekend. The grandmother alleged the denial of contact time was wrongful and sought compensatory contact time as a remedy. The mother denied wrongful contact claiming a reasonable belief her boys would suffer emotional and psychological abuse if the contact time were to occur.

**Issues:**

- (1) What contact time arrangement is in the best interests of the children?
- (2) Has there been a denial of contact time? If so, was the denial of contact time wrongful?

(3) What is the appropriate remedy if there was a wrongful denial of contact time?

**Result:**

Contact time between the grandmother and her two grandsons was not in the grandsons' best interests given the high level of conflict between the parties. The grandmother demonstrated an inability to put the children's best interests ahead of the conflict and showed a lack of insight into her contribution to the conflict. Even though the contact time was ultimately found not to be in the boys' best interests, the mother's blatant disregard for the court order constituted a wrongful denial of contact time. In response to the wrongful denial of contact time, the mother was ordered to pay \$3,000 to the grandmother in trust for the boys.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***

---

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *S.B. v. V.M.*, 2023 NSSC 73

**Date:** 20230224  
**Docket:** 83544  
**Registry:** Sydney

**Between:**

S.B.

Applicant

v.

V.M. and M.M. (deceased)

Respondents

Judge: The Honourable Justice Pamela A. Marche  
Heard: December 12,14 and 2022, in Sydney, Nova Scotia  
Written Release: March 2, 2023  
Counsel: Theresa O’Leary, for the Applicant  
Alan Stanwick for the Respondent

## Overview

- [1] SB is seeking specified contact time with her two grandsons: M who is twelve and L who is 9. The boys' mother, VM, refuses to allow SB contact time, despite a court order that permits SB contact time every third weekend. SB claims she has been wrongfully denied contact time and is seeking compensatory contact time as a remedy. VM denies any wrongful conduct. She says she has a reasonable belief the boys will suffer emotional or psychological abuse if the contact time were to occur.
- [2] The Court must determine what contact arrangements between SB and her grandsons are in the boys' best interests. The Court must also determine whether there has been a wrongful denial of contact time and, if so, must decide upon an appropriate remedy.

## Background

- [3] SB and VM have a highly conflictual relationship and a history of litigation. The level of conflict between the parties eventually precipitated a child protection proceeding. SB's partner, TO, acts as a step-grandfather to the boys and is heavily involved in the family dynamic. VM's former partner, TR, was similarly embroiled. VM has re-partnered and TR is no longer involved. The boys' father, MM, named as a Respondent, is deceased.
- [4] In January 2014, the parties agreed to a consent order that granted SB reasonable access (now referred to as contact time) to the boys that included one overnight and one day, each week. In May 2018, SB filed a variation application seeking leave to apply for custody of the boys. She also filed an application claiming VM was in default of the January 2014 consent order. VM contested SB's applications.
- [5] In August 2018, Gregan, J. presided over a hearing dealing only with SB's access, deferring SB's claim for custody to a later date. The 2014 consent order was varied to allow SB specified access. Since SB's current claim is that VM has wrongfully denied contact time, contrary to the 2018 order, the relevant clauses, anonymized where necessary, are repeated here:

*THAT the Applicant, (SB), will be granted the following access:*

1. *Every third week commencing Friday, September 14, 2018. The access is to commence after school on Friday September 14th, 2018 at C\* Elementary School where the children, M and L will be picked up by the Applicant and to be returned to the said school on Monday morning at school starting time. (VM) shall advise teachers or administrators regarding the Applicants access and provide the necessary permission for the prescribed access to take place.*
2. *VM is not to be present at C\* District Elementary School when the kids are being picked up or dropped off by SB.*
3. *The children's school shall not be changed until further order of this court.*
4. *There shall be no contact between the parties in this Application.*
5. *The Applicant is to have no contact with the Respondents employers and is to have no contact with VM's current boyfriend, TR and not to attend at his place of employment.*
6. *That none of the parties to this proceeding shall discuss court matters with the children when the children are in their care.*
7. *That none of the parties to this proceeding shall make negative comments about the other party in front of the children.*
8. *That none of the parties to this proceeding shall make or use audio/video recordings of the children or the other parties.*
9. *That none of the parties to this proceeding shall make any postings on social media of the other party or the children.*

- [6] Between November 2018 and June 2019, multiple pre-trial conferences were held to discuss trial readiness on the custody issue. In June 2019, however, the Minister of Community Services (the Minister) started a child protection proceeding thereby halting the private litigation between SB and VM.
- [7] As a result of the Minister's involvement, with the consent of both VM and SB, the boys were placed in the supervised care of VM and SB's access to the boys was arranged through the Minister. The Minister was concerned about how the children were being impacted by the conflict between SB and VM. In response, the parties agreed to participate in a psychological assessment of the custody and access issues and to complete a co-parenting course.
- [8] During the Minister's involvement, VM faced health challenges associated with a cancer diagnosis. The custody and access assessment report could not be completed prior to the Minister terminating involvement in November 2020. The Minister concluded the child protection proceeding with the understanding that the terms of the September 2018 order would continue and litigation of the outstanding parenting issues under the *Parenting and Support Act*, 2015, c. 44 (the *Act*) would recommence. A hearing was scheduled for April 2022.
- [9] In January 2022, SB (then unrepresented) filed another variation application seeking primary care and shared parenting time. She also filed an *ex parte* motion seeking the following relief: "*I have attached paperwork – The current order reflects time spent in Appolisis (sic) Valley and is not reflective of the current situation. The mother has gone against the order and is not willing to follow it.*" In documentation supporting her motion, SB claimed: "*I fear for my grandsons who are being mistreated and held like hostages by the mother and boyfriend. The children say they will be punished if I tell the Judge anything or CPS.*"
- [10] The Court determined that SB's motion would not be heard without notice to VM and would be addressed during the hearing scheduled for April 2022. In March 2022, SB requested an adjournment of the April dates so her newly appointed lawyer could prepare for hearing. The adjournment, though opposed by VM, was granted and the hearing was rescheduled to December 2022.
- [11] In June 2022, counsel for SB filed an interim motion for an order "*determining there has been a wrongful denial by the Respondent of contact time and interaction and an order directing make up time and enforcement of the Interim Order dated September 11, 2018*". In August 2022, to avoid the unnecessary multiplicity of court proceedings involving the same evidence, the Court

determined the interim motion would be heard together with the outstanding parenting issues already scheduled for hearing in December 2022.

[12] The hearing was held over several days in December 2022. The Court heard from SB, her common-law partner, TO, her sister, and her friend. The Court relied only on the affidavits that were entered as exhibits. Specifically, although SB had filed multiple documents, in various forms, with the court previously, the court relied on the affidavits of SB dated April 2019, June 2019, June 2022 and November 2022.

[13] SB called M and L's school principals to testify, and the boys' education records were tendered as exhibits. Michael Gillis, a case worker for the Minister, testified and notes from the Minister's case management system (ICM notes) from November 2020 to May 2022 were also entered as an exhibit. The parties agreed that records related to VM's medical treatment in January 2022 should be considered. SB also offered a series of photographs purporting to corroborate dates on which she claimed the boys had been in her care.

[14] Dr. Landry, who the parties agreed was qualified to give expert opinion on parental capacity assessments, testified. The Psychological Assessment of Custody and Access Report prepared by Dr. Landry was entered as an exhibit.

[15] VM did not attend court on the first day of hearing. She participated thereafter and was cross examined on her affidavit evidence.

[16] Counsel for SB clarified, at the outset of the proceeding, that SB was no longer seeking leave to apply for primary care of the children but was instead seeking a specified contact schedule as well as compensatory contact time.

## **Issues**

1. What contact time arrangement is in the best interests of the children?
2. Has there been a denial of contact time? If so, was the denial of contact time wrongful?
3. What is the appropriate remedy if there was a wrongful denial of contact time?

## **Position of the Parties**

*Position of SB*

- [17] SB argues that VM has wrongfully denied her contact time with her grandsons. SB says she is entitled by court order to contact time with the boys every third weekend and VM has not made the children available to her since February 2022 (apart for one instance when SB had limited contact time with M that was not authorized by VM). SB claims that VM further breached the 2018 order by changing where the boys are enrolled in school and not informing the schools about SB's right to contact time.
- [18] SB claims VM is not credible. She points to several inconsistencies in VM's testimony, including the recantation of a police statement and contrary reports made to both Dr. Landry and child protection workers, as demonstrative of the fact that VM will fabricate stories to try to discredit SB.
- [19] SB says she has a close and loving bond with her grandsons. SB argues that she was, and largely remains, the primary caregiver for the boys. She says VM deferred much of the childcare responsibilities to SB, and SB's partner TO, especially during the boys' early years when VM was married to the boys' biological father, MM, who was a serious drug addict.
- [20] SB says she provided VM with a home and a vehicle to help support VM and the boys while VM pursued a hairdressing trade. She says VM treated the home like a flop house and drove the car without proper insurance. SB argues VM made poor relationship choices. SB feels she did everything she could to help VM but, ultimately, she needed to put her grandchildren first because VM was not properly caring for the children. She described VM as using the children as pawns and means to a welfare check. SB describes VM as "kidnapping" the boys when VM relocated with the children to the Annapolis Valley.
- [21] After VM returned to Cape Breton from the Valley, SB claims that she spent significantly more time caring for the boys than was outlined in the 2018 order. SB says her common law partner, TO, has acted as the *de facto* grandfather to the boys. SB further claims that while she has had little to no direct communication with VM, TO is able to communicate with VM in relation to the children effectively and without issue.
- [22] SB relies on Dr. Landry's report as support for the finding that contact time between her and the boys is in the boys' best interest. She notes that Dr. Landry



referred to her as the “psychological parent” and recognized the strong and positive bond between her and her grandsons.

[23] SB has made many referrals to child protection. She has raised a multitude of parenting concerns about VM ranging from sexual promiscuity, drug use, mental health instability, financial irresponsibility, poor housekeeping, and neglect of child caring responsibilities. SB argues that she is only speaking the truth, out of concern for the children, when raising these concerns.

[24] In the months immediately preceding the denial of contact time, SB reported to child protection authorities that the boys were being “tortured” and “living lives of hell”. She claimed the boys were terrified to tell the truth in fear of being punished by their mother or by VM’s boyfriend, TR, who disciplined the boys by grabbing them and locking them in a cold, dark room in the basement. SB reported that VM paid the boys money to sleep on an air mattress with TR. She reported that VM was improperly medicating M and refusing to provide L with proper medical attention.

[25] SB claims it was her valid concerns about the well-being of the boys that prompted her many child protection referrals. She says her decision to seek medical emergency care for L, without notice to or permission from VM, was driven by a legitimate concern for L’s health. SB says she is motivated only by her love for her grandsons and not by any ill will towards VM.

[26] SB acknowledges that her relationship with VM is not positive but argues that a good relationship with her daughter is not a perquisite to contact time with her grandsons.

[27] SB argues she has met the onus of demonstrating that it is in the boys’ best interests to have contact time with her. SB is seeking a specified contact schedule that will place the boys in her care the first full week of every month, plus every Thursday night and every second weekend. Additionally, as a remedy to the wrongful denial of her contact time, SB is seeking 40 overnight visits and that her time with the boys be considered “parenting time” as opposed to “contact time” such that VM “does not control the time with the children when they are supposed to be with their grandmother.”

[28] Finally, SB seeks costs.

*Position of VM*

[29] VM concedes there has been a denial of contact time but argues that her actions were not wrongful and compensatory contact time should not be ordered. VM argues that SB has continually engaged in conduct that has undermined and interfered with her parental role such that the children have suffered both emotional and psychological abuse as per s. 40(3)(a) of the *Act*.

[30] VM describes her relationship with SB as hostile and toxic. She acknowledges that she has relied on SB and TO for childcare, housing, and transportation. She says this was particularly true when the boys were smaller, and she was a young mother struggling with a husband who had a serious drug addiction. VM vehemently denies, however, that these were altruistic supports from SB. VM claims SB made her pay, one way or another, for accepting SB's help. VM says she accepted SB's assistance, and the consequential intrusions upon her life, only so she could finish her studies and obtain the independence necessary to remove herself and her children from her mother's control.

[31] In recent years, VM faced health challenges associated with cancer. VM disputes that SB had care of the children as often as SB claims after the 2018 order, but VM acknowledges that she has needed, because of her illness, to call upon SB and TO for childcare and transportation more often than the court ordered every third weekend.

[32] VM accepts that her sons have a close and loving relationship with SB and TO. VM argues, however, that SB's legal claims are less about securing contact time with the boys and more about torturing her. VM claims SB uses the boys as pawns to hurt her. VM says SB enjoys the drama of litigation.

[33] VM argues SB's multiple referrals to child protection are unwarranted and a form of harassment. VM does not agree that L had a health concern that necessitated emergency treatment. She argues that TO taking L to an emergency room for medical assessment, without VM's knowledge or consent, constitutes a serious undermining of her parental authority. VM points to this event as an example of how SB and TO choose to exacerbate conflict instead of simply enjoying contact time with the boys.

[34] VM argues it is in the best interest of the children for their contact time with SB be at VM's discretion. VM claims she should be afforded parental deference in this regard given the circumstances.

## **Credibility**

[35] I have considered the law of credibility as summarized in **Baker-Warren v. Denault**, 2009 NSSC 59.

[36] VM was not a credible witness. She did not pretend to be. She admitted that she lied to the police in sworn statements regarding a property dispute involving SB. VM testified, unapologetically, that she would lie again to protect her children. For this reason, I give very little weight to evidence offered by VM in my analysis of the issues and rely primarily on the evidence of other witnesses in the determination of my findings.

**Issue One: What contact time arrangement is in the best interests of the children?**

*Best Interest Test*

[37] Section 18(5) of the *Act* says the paramount consideration in any parenting issue is the determination of what is the best interests of the child. Section 18(6) of the *Act* states the Court shall consider all relevant circumstances when determining the best interests of the child and provides a list of best interest factors. The list of best interest factors is non-exhaustive. The weight to be attached to any factor varies from case to case depending on the circumstances: **Foley v. Foley**, (1993) 124 NSR (2d) 198.

[38] In determining what is in the child's best interests, I must compare and balance the advantages and disadvantages of each proposed parenting scenario: **D.A.M. v. C.J.B.**, 2017 NSCA 91.

*Grandparent Contact Time*

[39] The onus is on the grandparent seeking contact time with a grandchild to prove that such contact is in the child's best interest. In addition to the factors outlined in s.18(6) of the *Act*, when assessing a request for contact time by a grandparent, the Court must also consider s. 18(6A) of the *Act*:

*(a) when appropriate, the willingness of each parent or guardian to facilitate contact time or interaction between the child and the grandparent; and*

*(b)The necessity of making an order to facilitate contact time or interaction between the child and grandparent.*

[40] Justice Jesudason, in **A.C. v. K.T. and G.C.**, 2017 NSSC 142, summarized the key principles of **Simmons v. Simmons**, 2016 NSCA 86, the leading case on grandparent contact time in Nova Scotia (para. 41):

1. *The paramount consideration is the best interests of the child.*

2. *A grandparent is not required to show that access to the child has been denied or restricted, but that access with the grandparent is in the child's best interests (para. 43).*

3. *There are two predominant approaches to grandparent access – the parental autonomy approach and the pro contact approach. The parental autonomy approach is based on the premise that parents have the right to make decisions with respect to with whom their child should associate and, absent a finding of parental unfitness, or harm flowing from the lack of access, courts should not interfere with parents' decisions. The pro contact approach is based on the premise that generally, contact between a child and his or her grandparent and should not be denied unless it can be shown to be harmful (para. 27).*

4. *There is nothing in the MCA or the case law of this province which requires a judge to prefer one approach over another. What approach to apply depends on the unique context and facts of a given case (para. 35-37).*

5. *Parental decisions and views are entitled to a level of deference. However, judicial deference to parental authority can be tempered by the court's willingness to recognize benefits that extended family can bring to a child. Again, the overarching test is whether or not access is in the child's best interests (paras. 41, 53 and 54).*

[41] I have also considered the case of **Spence v. Stillwell**, 2017 NSSC 152 as cited by counsel for SB.

[42] In short, any decision about contact time between a grandparent and a grandchild must be grounded in the determination of what contact arrangement

is in the child's best interests. This assessment is formed from an analysis of the unique facts specific to each individual case and not governed by any presumption embedded within an ideology (i.e. pro-contact v. parental autonomy). The best interest test is paramount (s. 18(5) of the *Act*).

*Psychological Assessment of Custody and Access Report - History of Care, Emotional Attachment, and Child's Views and Preferences*

[43] In determining what contact time arrangement is in M and L's best interest, I will address the best interest factors that are most relevant to this situation. The Psychological Assessment of Custody and Access Report prepared by Dr. Landry is important because it offers an independent expert perspective on the nature of the family dynamic between SB and VM which provides important context to the best interest analysis.

[44] The referral to Dr. Landry was made during the time of the Minister's involvement but the report was not concluded until October 28, 2022, approximately two years after the Minister terminated the child protection proceeding. The Minister requested the assessment because of the high conflict custody dispute between SB and VM and their respective partners at the time.

[45] Dr. Landry interviewed and completed testing on SB, TO, VM and TR. He also interviewed both L and M. Dr. Landry reported that he saw each boy on three separate occasions, the last interview taking place in July 2021.

[46] Dr. Landry identified the interpersonal dynamic between SB and VM as complex and adversarial. He noted an extremely fragile system of communication between the parties who were noted as having a long history of conflict. Dr. Landry reported mutual allegations from both parties on a variety of issues, including claims of physical aggression. He recognized the narrative provided by both sides was significantly at odds and difficult to verify independently.

[47] Dr. Landry was aware of SB's concerns that the boys were being abused. Dr. Landry noted that neither boy reported any episode of abuse to him even though Dr. Landry purposefully provided opportunities for the boys to disclose any such information. In response to SB's concern that the boys might only disclose to her and TO, Dr. Landry allowed TO and SB to be present on one occasion while the boys were being interviewed, so the boys might be more comfortable to

disclose. Even with SB and TO attending, neither boy reported any abusive behaviour from VM or TR.

[48] Dr. Landry reported each boy had a close relationship and significant attachment to all caregivers. He reported that SB had been a “psychological parent” having spent a significant amount of time being the primary caregiver to the boys, particularly in their early years. Dr. Landry felt the boys had been through a lot and would likely need to continue to work on issues related to ongoing conflict, separation from caregivers and the death of their biological father.

[49] Dr. Landry reported that each boy wanted to spend more time with his grandparents. Dr. Landry opined the boys would benefit from continued contact with SB and that a predictable contact schedule would be advisable. However, Dr. Landry also felt a working mechanism needed to be put in place to reduce tension and conflict between the parties so that contact time between SB and the boys could be properly supported.

[50] Dr. Landry recommended the parties employ a third-party professional, trained in psychology or social work and well-versed in child development, who could “build a bridge” between the two families. This person could act as a neutral party to ensure rules and expectations are similar in both households. This person could also mediate any disagreements between the parties (and Dr. Landry recognized there was a very high likelihood of disagreements happening). This person could intervene when difficulties occurred to ensure neither party could act unilaterally in relation to the children.

[51] There are some limitations to Dr. Landry’s reporting that the Court recognizes. Dr. Landry acknowledged he was not provided with the child protection file when compiling his report and that having access to those materials might have better informed his assessment of the situation. Dr. Landry also agreed that he was not privy to events that occurred after August 2021, when the last assessment interviews were held. Dr. Landry further conceded that it might not be in the boys’ best interests to have continued contact with SB if SB continued to undermine VM’s parental role or if the conflict within the family remains unabated. Dr. Landry also acknowledged, however, the potential risk of emotional harm to the boys if SB and TO were removed from their lives.

[52] Having considered Dr. Landry’s report, I make several findings:

- SB has played a substantial role in caring for the boys and the boys have a significant attachment to SB and TO. I accept Dr. Landry's characterization of SB as the psychological parent when the boys were younger.
- Each boy expressed a desire to spend more time with SB and TO when the boys were interviewed in the summer of 2021. I heard no evidence that the views and preferences of the boys have changed since then other than VM's claim, in her affidavit evidence, that the boys have not expressed a desire to see their grandparents since February 2022. Having found VM to lack credibility, I put little weight in this assertion. I find it more likely than not that the boys want to spend time with SB.
- I do not accept SB's characterization that her contact time with the boys has transpired without issue and that TO has been able to effectively manage communication with VM. I accept Dr. Landry's characterizations of the family dynamic instead.
- I find that a mechanism to improve communication and manage conflict would have to be established between the parties to ensure contact time between SB and her grandsons occurs in a manner that is in the boys' best interests. I agree with Dr. Landry's report that a psychologist or social worker, trained in child development, might be able to coordinate and mediate the contact time such that the boys are protected from conflict. However, other than SB expressing a willingness to participate in counselling, I heard no evidence of any effort or ability to put Dr. Landry's recommendations in place. Further, I have no evidence that such a person is available to work with the family, nor who would pay them. Even with such a person in place, I am not satisfied that the parental conflict could be successfully managed to avoid a negative influence on the boys.

[53] VM and SB disagree about how often the boys were in SB's care after the 2018 order was issued. VM admits SB had the boys more frequently than every third weekend but disagrees that SB had the children half the time or more. Each party submitted pictures purporting to prove their claims. I give very little weight to the photographic evidence. Also, I do not feel it necessary to count the days. What is important is the finding that the boys have a meaningful and significant bond with SB and TO and SB have played an important role in caring for the children. This fact is well borne out from Dr. Landry's report.

*Education and Social Development of M and L*

- [54] M is in grade 7. His principal says he is a lovely boy who is doing well in school. M has a learning disability that necessitated an individualized program in math. L is in grade 4. His principal describes him as a lovely boy too, one who works hard and is well liked by the other kids and teachers.
- [55] The children have missed a fair amount of school. SB contends VM has deliberately kept the children from attending school to avoid SB's efforts to exercise her contact time by picking the children up directly from the school. Both principals testified that student attendance rates generally have been low due to Covid-19 and neither was particularly concerned with the amount of school M and L have missed. That said, I find there were likely times when VM either kept the boys from school or took the boys out of school early to circumvent SB's contact time.
- [56] VM acknowledged she did not place SB on the authorized pick-up list at the boys' schools. SB pressed this issue directly with school administrators, insisting the 2018 order was valid and should be followed by the schools, who should release the children into her care after school every third Friday. Uncertain how to proceed under the circumstances, each school obtained a legal opinion that the 2018 order could not be followed because the order specifically referenced schools other than their own.
- [57] Both children attend schools in a community other than the catchment area in which they live but in the catchment area where VM runs her business. SB argues that the children's enrollment in a school outside the catchment area is indicative of VM's propensity to lie. VM says the children have established a support system of educators and friends within the schools in which they are enrolled. I find, based on the testimony of both principals, that each boy is settled in and doing well in school.
- [58] On June 17, 2022, SB managed to pick M up from school without authorization from VM. (L was not in school that day). School administrators notified VM, and the police attended at SB's residence for a "wellness check". M returned home several hours later. VM says M was upset over being disciplined at home and that is why he agreed to go with SB. VM describes this incident as SB kidnapping M.



[59] In September 2022, advised by each school that the boys were present, SB again attempted to retrieve M and L from their respective schools. SB acknowledges that she called the police to attend M's school to enforce the court order. M's principal testified she was interrupted from giving a presentation by someone who advised her that SB was at the school to pick up M. The principal found M at his locker and walked him past SB to her office. School administrators notified VM about what had transpired and VM attended at the school to retrieve M. The principal suggested she could mediate a conversation between VM and SB, but VM declined the offer and left with M through a side exit.

[60] I find that VM ought to have authorized SB to pick the boys up at school every third Friday, as per the 2018 order. However, I also find that SB inappropriately used the boys' schools as the arena in which to attempt enforce the order. Even knowing the position of the school board in terms of the order's enforceability, SB engaged the police to attend at the school. School should be a safe place for children where they can learn and grow. Any action or behaviour that brings stress, conflict, and police presence into a school is likely to be contrary to a child's best interest. I find that SB's decision to press the issue at M's school, with a police presence no less, was motivated not by the boys' best interests but instead by the ongoing conflict between SB and VM and her desire to "win."

#### *Health of M and L*

[61] M has been diagnosed with ADHD. As recorded in the ICM notes of the Minister, SB reported she does not agree that M has ADHD and attributed the diagnosis to VM directing M on what to say to Dr. Landry. SB also claimed that VM lied to get M's prescription for Ritalin and that M does not need medication. SB based this belief on the fact that M had stayed with her for long periods of time, without medication, without any displays of behavioural issues.

[62] I do not accept that Dr. Landry, or M's family physician, Dr. Poulos, can be easily fooled or tricked into a medical diagnosis or into prescribing medication. It is not reasonable that SB should believe this to be the case. I find it most likely that SB's intense conflict with VM has caused her to be suspicious of M's diagnosis and his need for medication. It is in M's best interest that any medical diagnosis be respected, and any treatment plan be followed. It is in M's best interest that he takes medication, as prescribed. I am concerned that SB's low trust for VM prevents her from properly coordinating with VM in terms of M's medical treatment.

[63] Likewise I do not accept that L's health condition necessitated emergency treatment while he was in the care of SB in January 2022. SB used vulgar hyperbole when describing L's medical condition to child protection authorities. However, the medical report from the attending emergency room physician does not reflect SB's perception of the situation. L was diagnosed with constipation.

[64] I find that SB's intense conflict with VM caused SB to exaggerate concerns for L's health. This is problematic. It is not in the boys' best interest to be in the care of someone who is so consumed by conflict that they cannot assess a medical concern in an objective fashion.

[65] Even if I accept that SB held a reasonable belief that L required urgent medical care, there is no excuse for SB not contacting VM immediately to advise her of the situation. To seek medical attention for L, to the exclusion of his mother VM, is a gross overstep by SB and TO. It is in L's best interest that any medical treatment be coordinated between his caregivers.

[66] I note the medical records reflect that TO brought L to the emergency room. In the medical report, TO is referred to as "Dad." TO testified that he did not say he was L's father and the staff at the hospital must have just assumed he was L's father. I find it more likely than not that TO presented in a manner that conveyed an authority to seek medical treatment for L that neither he nor SB properly has.

[67] I find that both SB and TO have demonstrated a significant lack of respect for VM's parental authority as it relates to healthcare for the boys. It is in the best interest of the boys that medical diagnoses are recognized, and health concerns are not exaggerated. Treatments plans, including the need for medication, must be respected by all caregivers and medical treatment must be coordinated through the primary caregiver, who is VM.

*Protection Concerns - Safety and Security of M and L*

[68] SB has made many referrals to the Minister about protection concerns she has for the boys while they are in VM's care. The ICM notes reference extensive child welfare involvement with the family with most referrals coming from SB. SB admitted she has called child protection multiple times since M was 9 months old but says her referrals have always been based on legitimate concerns.

[69] In October 2021, SB reported to child protection that VM pays M \$20 to sleep on an air mattress with TR. SB also reported that VM makes M take melatonin

and Ritalin every night and SB was concerned about what might be happening to M while he is sleeping with TR.

[70] In December 2021, SB called the Minister to follow up on her October 2021 referral, which was not originally accepted for investigation. SB did not agree that M has ADHD as assessed by Dr. Landry and attributed the diagnosis to VM coaching M on what to say. SB reiterated that VM was not properly attending to the children's medical needs. SB reported the boys were living a "life of hell" while in VM's care and they were being locked in a cold, dark room in the basement as a form of punishment.

[71] On January 4, 2022, SB reported to the Minister that L was having bowel accidents at school. She went on to say that L was suffering from anal leakage, had lost a lot of weight, had dark circles under his eyes, had pains in his stomach and could not sit on his bum. SB reported that VM was refusing to take L to see a doctor.

[72] On January 17, 2022, SB made an *ex parte* interim motion to the court claiming the children were being "tortured" and "threatened" by VM and TR. The motion was not accepted as urgent, but a bench referral was made to child protection, given the allegation of safety concerns.

[73] It is clear from the ICM notes that SB's referrals were ultimately accepted for investigation. An investigation plan was developed and executed. Child protection worker Gillis conducted a home visit, and he interviewed SB, TR as well as M and L. Mr. Gillis also spoke to the family physician, Dr. Poulos for collateral information regarding L's medical condition. Ultimately, in consultation with his supervisor, Mr. Gillis found all allegations made by SB to be unsubstantiated.

[74] Despite the investigation, SB testified that she believes child protection workers did not properly respond to her concerns. SB believes her referrals were "never looked into" and "nobody ever did anything about it." She testified that child protection workers were not impartial and that a child protection supervisor, Scott Clarke, plays hockey with TO and that Mr. Clarke and TO "do not get along on the ice." The ICM notes also reflect SB questioning whether TR was being protected because of his affiliation with his former employer, a not-for-profit group that offered programming to which child protection clients are often referred.

[75] I do not accept SB's characterization of the child protection investigation. I find that child protection workers took reasonable steps to investigate the referrals made by SB. Their findings, as reflected in the ICM notes, support the conclusion that the allegations were not substantiated. There is no evidence that child protection workers were biased or acting to protect anyone other than the children. I sincerely doubt child protection workers are predisposed against SB because of a hockey beef. Furthermore, given the extensive history of child protection involvement and the exceptionally high conflict between the parties, I find it appropriate for child protection workers to approach SB's credibility regarding protection referrals with caution.

[76] I find no safety or security concerns for the children while they are in VM's care. I do not believe the children are being tortured or abused or living lives of hell as characterized by SB. I feel comfortable relying on the investigative results of the Minister, which align with the Dr. Landry's account that the children reported no abuse to him, despite being prompted to do so, in making the finding that the boys are safe and secure while in VM's care.

*Willingness of Parent to Facilitate Contact Time*

[77] VM does not want SB to have contact time. VM does not agree that TO can facilitate the contact time without issue. VM testified that nothing ever goes smoothly with SB who she says continually harasses her. Given VM's credibility is suspect, I must examine the other available evidence to analyze this issue.

- In her affidavit of April 5, 2019, SB attached a series of pictures of the home where VM had "two little boys living." The pictures appear to depict a dirty and cluttered home. Also attached to that affidavit is an ugly text exchange between SB and VM in which it appears that SB is taking M to the dentist without VM's permission.
- In her affidavit of June 18, 2019, SB reported that VM has had many relationships since August 2017 and has been affiliated with many men. SB said she witnessed VM sending naked pictures of herself to these men. SB claimed TR asked VM to seek out other women for threesomes. SB attached screenshots of text messages purportedly from VM supporting this allegation. Since VM's sex life has no impact upon my assessment of what is in her boys' best interest (unless there is evidence that the boys are being negatively

impacted, which there is not), I find that SB included this information primarily to shame and humiliate VM.

- Also in her affidavit evidence, SB describes her relationship with VM as toxic. She said VM “uses her children as a pawn to achieve her wishes and wants” and that VM “has never put her children’s needs before her own”. SB claimed VM neglected her children for weeks on end and invited known criminals and drug dealers into her home late at night. SB claimed VM has never been the primary caregiver for the boys: “She has never provided or made the right choices for these children. They have been used as pawns in her life to attain the things she wants from anyone she can. I believe the only attachment she has to these children is a family allowance cheque she receives.”
- In her testimony, SB confirmed her relationship with VM remains toxic. SB claimed VM wasn’t a mother until 2018 and that she has always been the boys’ primary caregiver. SB testified that she had nothing positive to say about VM as a mother.
- SB denied that child protection workers were concerned about the high conflict between herself and VM. SB testified that protection concerns related only to VM. SB claims she begged child protection to become involved and she asked to be named as a party. I find this demonstrates an alarming lack of insight on SB’s behalf about the risk of emotional harm when children are exposed to conflict, and the role SB would need to play in improving the situation for the boys.
- SB does not agree that she is at all responsible for the escalation of conflict between her herself and VM. She testified that she was doing her duty and her behaviours have been appropriate. She was unable to concede, on any level, her role in contributing to the conflict.
- After VM discontinued the boys’ contact with SB, SB continued to make referrals to the Minister. In March 2022, she reported again that the children were being physically and emotionally abused. She claimed VM was not providing the boys with the necessities of life, that the children were scared and stressed and full of bruises. She claimed VM and TR threatened to kill the children. SB’s reports to child protection persisted even after she was advised that her concerns were investigated and found to be unsubstantiated.

- In July 2022, SB discovered VM was out of town and the boys were left in the care of TR. SB had the police attend at the residence to do a wellness check on the boys. SB reported to child protection that TR held the children inside the home as hostages.

[78] Based on the above noted, and my analysis of the entirety of the evidence, I find that SB has acted to undermine VM's parental authority. She has either grossly exaggerated or misinterpreted events related to the boys, in a manner intended to be detrimental to VM. I find that VM's unwillingness to facilitate contact time with SB is reasonable under the circumstances.

### *Summary and Conclusion of Issue One*

[79] I have found that SB acted as a primary caregiver and psychological parent to the boys. Until contact time was discontinued, even though the children were in VM's primary care, SB continued to play a significant role in the boys' lives. The boys are attached to SB and TO. The boys have indicated a desire to spend more time with SB and TO.

[80] However, I have also found there have been numerous instances when SB has demonstrated an inability or unwillingness to attend to the boys' best interests, being consumed, instead, by the conflict between her and her daughter. SB has demonstrated an alarming lack of insight about her role in the conflict dynamic. This causes me to doubt SB's ability to moderate her behaviour going forward. Without significant change it would be reasonable to predict ongoing child protection allegations, police involvement, and litigation, none of which is in the boys' best interests. They have been interviewed, removed from class, examined by physicians, and generally used as pawns in SB's war on VM's parenting rights.

[81] Dr. Landry recommended an intervention, somewhat akin to a high-level parent coordinator, as necessary to support contact time between SB and her grandsons. There being no evidence of a plan to implement this intervention, I cannot find that contact time for SB is in the boys' best interests. Even if such an intervention were possible, I would have serious reservations about contact time being in the boys' best interest given the significant level of complex conflict between the parties.

[82] While SB is no longer seeking primary care, the contact time she is proposing is akin to a shared custody arrangement. I am not satisfied that any amount of contact time between SB and the boys, let alone significant chunks of contact time, is in the boys' best interests. I find that even an order for supervised contact time would only serve to continue to ongoing disputes between the parties about the children.

[83] The focus of my analysis has been on the boys contact time with SB. I have little doubt that VM has contributed to the conflict which is complex and long standing. This decision, however, is not about who between SB and VM is most righteous. This decision reflects a very unfortunate set of circumstances under which the boys' best interests can best be protected by limiting SB's contact time to them.

[84] SB once sought custody of the children "so the torture can finally stop from VM's demands, lies and accusations." I agree that it is in the boys' best interests that the demands, lies and accusations end. I find there will be no peace for the boys, or anyone else, if SB is awarded continued contact time.

[85] However, in recognition of the bond that the boys do have with SB, and with the faint hope that circumstances could change in the future, I am prepared to grant SB contact time should VM determine, in her complete discretion, that such contact time is in the boys' best interests in the future. The length and details of such contact time, should VM decide to allow contact time, will be entirely within VM's sole discretion.

[86] An order will issue that SB will have contact time only at the discretion of VM. I direct that SB must seek leave of the court before making any further application involving M and L. SB must demonstrate completion of a high conflict parenting course as part of any such leave application.

**Issue Two: Has there been a denial of contact time? If so, was the denial of contact time wrongful?**

*Denial of Contact Time*

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

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

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

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

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

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

[89] The list of circumstances outlined in s. 40(3) is non-exhaustive. The Court must consider all relevant circumstances when assessing whether a denial of contact time was wrongful.

[90] Even if the Court is satisfied there has been a denial of contact time, the Court has the discretion not to impose a penalty. The language of s. 40(5) of the *Act* is permissive, not mandatory. The best interest of the child is the paramount consideration when determining issues related to denial of contact time (s. 18(5) of the *Act*).

[91] The Court may order compensatory contact time, even if the denial of contact time was not wrongful (s. 40(4) of the *Act*). If the Court determines that denial of contact was wrongful, in addition to compensatory contact time, the Court may also order a variety of additional remedies outlined in s. 40(5) of the *Act* including counselling, supervised contact time, costs or a fine.



[92] I will first explore the circumstances that precipitated the denial of contact time. The fall of 2021, saw SB making multiple child protection referrals regarding VM related to medical neglect, excessive discipline, and inappropriate sleeping arrangements. SB reported her grandchildren were being tortured and threatened by their mother. She claimed the children were being physically and mentally abused.

[93] SB's concerns about medical neglect culminated when, on January 22, 2022, TO took L to an emergency room for medical treatment without consulting VM. VM only became aware of the incident after the children were returned to her care. That was the last contact the children had with SB and TO (apart from one incident where SB removed M from school without VM's permission).

[94] VM conceded there has been a denial of contact time. She also agreed that she changed the schools in which the boys were enrolled, contrary to the 2018 court order. VM acknowledged that she may not have given the boy's schools a copy of the order. I find there has been a continuous denial of contact time since February 2022 contrary to the terms of the 2018 order that authorized SB to have contact time with the children every third weekend.

[95] VM argues the denial of contact time was not wrongful and compensatory contact time, therefore, should not be ordered. VM cites s. 40(3)(a) of the *Act* and claims she had a reasonable belief the children would suffer psychological and emotional abuse if the contact time was to be exercised.

[96] First, it is not necessary for the Court to determine a denial of contact time was wrongful before ordering compensatory contact time (s. 40(4) of the *Act*). SB may be awarded compensatory contact time, even if the denial of contact was not wrongful, but only if the contact time is in the best interests of the children.

[97] Second, the presence of high conflict does not automatically equate to a finding of abuse or a reasonable belief that abuse will occur. There must be evidence of a reasonable belief that abuse may occur to justify the breach of a court order. VM failed to show a connection between the high conflict between her and SB, which I have found to exist, and any reasonable belief that the boys will suffer abuse, if contact time with SB were to occur.

[98] VM does state in paragraphs 25 and 26 of her Affidavit of December 1, 2022, that she does verily believe that her "children sensed the conflict between myself and my mother" and that this conflict was "emotionally harmful to the children."

VM does not elaborate on the source of her beliefs. I have already found that VM has limited credibility. I find that VM offered insufficient evidence to demonstrate a reasonable belief that the children were at risk of abuse if contact time with SB were to occur.

[99] The intent of the Legislature, in the amendment of the *Act* to include the provisions outlined in s. 40, was to improve access enforcement through legislated methods more nuanced and better suited to family law situations than traditional contempt proceedings which are quasi-criminal in nature. If a finding of high conflict automatically equates to a finding of abuse, then the effect of 40(3)(a) would be to undermine, as opposed to improve, access compliance in high conflict families where stability is most needed.

[100] Third, a finding that contact time is not in a child's best interest does not necessarily equate to a finding that failure to abide by a court order is justified. Failure to comply with court ordered parenting arrangements is a very serious matter. One cannot simply point to a self-assessment of what is in a child's best interests as justification to ignore a court order. In fact, the need to ensure compliance with court ordered parenting arrangements is especially important in high conflict cases which are so often plagued with chronic litigation.

[101] When questioned about her compliance with the 2018 order, VM testified, without excuse or apology, that M and L were her children and that she was not going to abide by "some piece of paper". She put it simply: "Not happening." I find VM's disregard for the court order to be blatant and defiant.

[102] Court orders that provide for contact time must be respected. Compliance with court orders cannot be viewed as optional.

[103] I find the VM's continuous denial of SB's contact time since February 2022 to be without justification and to be wrongful. VM demonstrated a lack of respect for the court order and the court process. She refused to participate in the parts of the court process without reason or excuse, she admitted she would lie under oath if she felt it was necessary, and she diminished the court order to a simple piece of paper to which she did not feel bound. I find it more likely than not that VM's denial of contact time was motivated as much by her conflict with SB as her concern for her boy's best interests.

[104] I have considered all relevant circumstances. Even having found that it is not in the boys' best interest to have contact time with SB, I still find that VM's denial

of the contact time was wrongful. A finding of wrongful denial does not automatically mean that compensatory contact time must be ordered.

**Issue Three: What is the appropriate remedy if there was a wrongful denial of contact time?**

[105] I have considered the various remedies provided in s. 40(5). Having found that contact time with SB is not in the boys' best interest, I cannot order compensatory contact time as a remedy to VM's wrongful denial of contact time. As success was mixed, this is not an appropriate situation for costs as a remedy.

[106] However, VM's blatant disregard for the court order cannot be condoned. Section 40(5)(h) provides that the court may order, upon finding there has been a wrongful denial of contact time, the payment of no more than five thousand dollars to the applicant or to the applicant in trust for the child.

[107] To impress upon VM the seriousness of failing to respect a court order, and to deter similar behaviour going forward, I order VM to pay to the total sum of \$3,000 to SB, in trust for the benefit of M and L equally, payable to both boys once L turns nineteen years of age.

[108] I do not have access to the details of VM's financial situation other than her affidavit evidence that she is the owner of a successful hair salon. To mitigate for any potential hardship that might ultimately be felt by the boys as a result of this order, VM will pay the amount of \$100 per month, commencing the first day of April 2023, until the sum of \$3,000 is paid in full. I believe this to be a reasonable use of my discretion to order a remedy in response to VM's wrongful conduct.

[109] The payment of this fine will be considered child support for the purposes of enforcement by the Director of Maintenance Enforcement. The involvement and oversight of the Director of Maintenance Enforcement in the collection of this support will serve to mitigate the potential for ongoing conflict between SB and VM that may result from this aspect of my decision. This is clearly in the boys' best interests.

**Conclusion**

[110] SB will have no contact time with M or L unless it is determined by VM that such contact time is in the best interests of M and L.

[111] VM is found to have wrongfully denied SB contact time contrary to the Order of Justice Gregan dated September 11, 2018. In response to this wrongful denial of contact time, VM must pay the sum of \$3,000, payable in monthly installments of \$100, to SB in trust to for M and L.

[112] Counsel for VM will draft the order and file with the Court within 30 days of receipt of this decision.

Marche, J.