

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

**Citation:** *G.S. v A.B.*, 2023 NSSC 228

**Date:** 20230718

**Docket:** *FTMCA-099472*

**Registry:** Truro

**Between:**

**G.S.**

Applicant

v

**A.B.**

Respondent

**Judge:** The Honourable Justice Theresa M Forgeron

**Heard:** March 6, 15, 16; April 26, 27; and May 3, 2023, in Halifax,  
Nova Scotia

**Decision** July 18, 2023

**Counsel:** GS, self-represented  
AB, self-represented

**By the Court:**

**Introduction**

[1] GS wants to be a loving and protective father to his 10-year-old daughter, GaS. He believes that he cannot fulfill that role unless his daughter is in his care 50% of the time. Under the current court order, the daughter lives in the primary care of the mother, AB, while the father is scheduled to have liberal, specified parenting time. The daughter, however, does not attend parenting time with the father.

[2] Further, under the current order, the father must pay the table amount of child support to the mother. The father has not complied, and child support arrears have accumulated. As a result, the Maintenance Enforcement Program is garnishing his wages.

[3] In response to these circumstances, the father applied for three forms of relief. First, he wants a shared parenting arrangement. Second, the father does not want to pay the table amount of child support to the mother, even if the mother has primary care. He also wants support arrears forgiven. Third, the father seeks compensatory parenting time.

[4] In advancing his position, the father frequently said that he had not been treated fairly by the courts. The father attributed past negative outcomes to systemic racism within the justice system – specifically, unconscious bias against black Nova Scotian males.

[5] In response, the mother says the relief sought by the father is inappropriate for five reasons. First, the father did not prove a material change in the circumstances. Second, the evidence overwhelmingly shows that the daughter has flourished in her care. Third, the daughter's estrangement is a direct result of the father's abusive conduct, and the mother can't force the daughter to go with her father. Fourth, there is no basis for an order terminating child support and forgiving arrears. Fifth, the mother challenges the father's claims about racism, noting that she is a biracial woman who also identifies as a black Nova Scotian.

[6] Further, the mother states that she is deeply concerned about the father's abusive conduct and communication. As a result, she seeks to eliminate some of the father's overnight parenting time. In addition, she seeks sole decision-making and a change in the location of the parenting exchanges.

[7] The contested trial unfolded over the course of a multi-day hearing where the parties represented themselves. Focus and court efficiencies were often lost, given the emotionally charged backdrop. The parties have an extensive litigation history. Since 2016, over 20 court orders have been issued to determine numerous parenting, support, and production matters.

[8] In this decision, I will resolve the outstanding issues in a holistic, child-centered fashion, based on the law and the evidence. Therapeutic counselling will play a key role. Fortuitously, both parties agreed to participate in counselling. The father prefers counselling that is culturally competent and delivered through the IWK. Therapeutic counselling will foster healthy communication and relationships.

### **Issues**

[9] In deciding the applications, I will answer the following six questions:

- What is the position of each of the parties on the parenting issues?
- Was a material change in circumstances proven?
- What is the cause of the daughter's strained relationship with the father?
- Is it in the daughter's best interests to vary the parenting provisions of the current order?
- Should an enforcement order be granted?
- Did the father prove that child support should be varied prospectively and retroactively?

### **Background Information**

[10] At the time of the daughter's birth in 2012, the parties were living together. Following a less than amicable separation, the parties appeared before the Truro Provincial and Family Courts.

#### *Criminal Convictions and Sentence*

[11] Criminal matters were determined in the Provincial Court. The father pled guilty to assaulting the mother and uttering threats to cause her death or bodily harm.

The father received a conditional discharge, with 12 months probation. The father successfully completed his sentence. He has no criminal record.

### *Interim Family Court Matters*

[12] Both parties applied to the Family Court because they were not able to resolve parenting and child support issues. The mother sought supervised parenting and child support. The father contested the mother's applications.

[13] In April 2016, the first interim order was issued which provided the father with supervised parenting time and required him to pay the table amount of child support. This order was later modified by other interim orders.

### *2017 Final Order*

[14] The parties reached agreement on the terms of a final parenting and support order. The July 2017 consent order provided the parties with eight pages of binding, specific and detailed parenting and maintenance provisions. Pivotal terms included:

- Placing the daughter in the mother's primary care.
- Directing joint consultation on decisions affecting the child's education, healthcare, out-of-province travel, activities, and childcare, subject to the mother having final decision-making if no consensus is reached after 48 hours.
- Authorizing both parents to schedule and attend non-emergency medical and dental appointments, provided the father uses the daughter's "normal service provider".
- Directing the use of a Parenting App for communication, including communication about medical and dental appointments, and details about emergency medical treatment.
- Confirming "Key Understanding" provisions mandating respectful, civil, and kindly communication, and guidelines about the use of social media.
- Confirming the father's parenting time schedule and parenting time exchanges. Parenting exchanges were required to be free of hostility or negative commentary.

- Confirming notice and details surrounding travel.
- Specifying the father's child support obligation based on the table amount.

### *Subsequent Interim Orders*

[15] The July 2017 order was subject to two subsequent interim orders. The December 2017 interim order included a prohibition against the use of negative, profane, or derogatory language. It also confirmed that to facilitate a safe exchange, the parenting transfers were to occur in a well-lit area as close as possible to the main entrance of the Truro RECC. Further, a psychological assessment was ordered, to be completed by Lisa Hayden.

[16] The second interim order, dated February 2018, replaced the December 2017 order. This order confirmed the prohibition against the use of negative, profane, or derogatory language, and the safe location for parenting exchanges. The order also changed the assessor to Ms. Lana MacLean, to ensure cultural competency.

### *2019 Consent Orders*

[17] On April 4, 2019, a consent variation order issued which confirmed the dates of the equal division of the 2019 summer vacation. On June 25, 2019, a consent variation order provided the father with an additional 2.5 hours every Wednesday from 4:00 to 6:30 pm during the school week. In addition, the father was directed to use the Parenting App for communication and to ensure that his communication was polite, respectful, business-like, and child focused.

### *2020 Consent Order*

[18] In August 2020, following a settlement conference, another consent order issued. This order provided the following salient points:

- Directing that the father's parenting time begin on Wednesdays and Fridays at the end of the school day or after the completion of choir, or at 2:00 pm when there was an in-service day scheduled.
- Extending the father's parenting time to include Monday overnight, if Monday was a holiday or in-service day.

- Confirming that the daughter was to have telephone contact with the other parent every second day during the summer, alternating weekly schedule.
- Confirming the summer, alternating weekly schedule, including the designation of the transfer location during the summer parenting exchanges.
- Clarifying special occasion parenting time.
- Confirming that neither party would “bring the matter back to Court within a year of the issuance of this order unless there is an unusual change in the circumstances of the parents and in any case, both parties recognize that it will be a requirement to show a change of circumstances to justify having the matter returned for litigation.”
- Confirming that the order did not address child support issues, but that any application to vary required proof of a change in circumstances.

### *Current Applications*

[19] On December 21, 2020, the father applied to vary the parenting and maintenance provisions of the last court order. In July 2021, the father perfected his application by filing the necessary documents. He also filed an amended variation application to clarify his request for shared parenting, a reduction in the amount of child support payable, and the forgiveness of support arrears.

[20] In the summer of 2021, after she was personally served, the mother responded to the application. She set out her position in her affidavit and preconference summary memo. The mother also filed financial information.

[21] From September 2021 to March 2023, the parties filed additional affidavits, financial information, pre-conference summaries, and other documents. In March 2022, the file was transferred from Truro to Halifax. In preparation for trial, other judges held pretrial conferences to identify the issues, confirm filing deadlines, and to address recusal requests.

### *Identification of Outstanding Issues*

[22] The following outstanding issues were identified in the conference memorandum prepared on September 29, 2021, and further confirmed by conference memorandum dated May 31, 2022:

- The father sought Wednesday overnight parenting time during the school year. The mother objected.
- The father sought shared parenting time and that during a pandemic or global crisis, the parenting time be shared 50/50. The mother objected.
- The mother sought to eliminate the father's Sunday overnight parenting time. The father objected.
- The father sought to reduce the current child support payment based on an undue hardship claim and because of the summer shared parenting schedule. The mother objected.
- The father asked to suspend and eliminate child support arrears. The mother objected.
- The mother asked to change the parenting exchange location to the police station. The father objected.
- The mother asked to have sole decision-making. The father objected.
- The mother sought costs of \$500. The father objected.

[23] In August 2022, the daughter stopped attending parenting time with the father. As a result, the father sought an enforcement order. The mother objected.

### *Contested Hearing*

[24] In February 2023, I assumed carriage of the file. The Associate Chief Justice adjusted my docket to enable me to hear the matter as quickly as possible. The hearing was scheduled to begin on March 6, 2023. Unfortunately, not all documents had been exchanged. A short adjournment was therefore ordered.

[25] The contested hearing was held on March 15 and 16, 2023 and on April 26 and 27, 2023. In addition to the parties, the paternal grandmother and a representative from the Department of Community Services testified. The DCS representative attended under subpoena. On May 3, 2023, the parties provided their

oral submissions to augment their written briefs. After submissions were completed, I adjourned for decision.

[26] During the hearing, I rendered evidentiary rulings, which the father often found difficult to accept, such as the prohibition against leading opinion, irrelevant, and hearsay evidence. During such times, the father often communicated his displeasure with my rulings by dysregulating. To provide the father time to collect himself, brief adjournments were frequently ordered, which in turn extended the time required to finish the trial.

### **Analysis**

[27] **What is the position of each of the parties on the parenting issues?**

#### *Father's Position*

[28] The father states that it is in the daughter's best interests to be in his care 50% of the time. When presenting his case, the father concentrated on four main points. First, the father asked me to be alert to any unconscious biases that I may harbour against black men. He was adamant that unconscious biases negatively impacted judicial outcomes during prior court proceedings. The father asked me to consider the following:

- Black men are frequently criminalized in our society.
- Black men are often treated differently by the courts.
- Black men are assumed to be absent parents and uninterested in parenting their children.
- Black men are presumed to be violent with their partners.

[29] Second, the father reviewed the reasons that he says demonstrate why the daughter must spend 50% of her time with him, including:

- The mother is alienating the daughter from him, the paternal grandmother, his entire family, and his community of Preston. He said the mother previously spent over \$60,000 in legal fees while attempting to destroy his relationship with the daughter. He vowed that she would not succeed. From his perspective, the mother is solely responsible for the daughter not spending time with him and his family.



- The daughter needs to spend time with him, his family, and their community, so that she will learn about her paternal family – their resilience, strength, and kinship. His family and community have much love, wisdom, and positive history to impart.
- The daughter cannot be whole unless she is connected to his family. The daughter will not learn to be a proud, strong, black woman if she is disconnected from him, his family, and his community.
- The mother is not black. The mother was raised in a white household. The mother knows nothing about what it is like to be a black woman living in Nova Scotia. The mother is not teaching the daughter about her black culture.
- He needs to protect the daughter. He will encourage her to learn self-defence. As a black woman, the daughter needs to learn useful life skills by enrolling in activities that promote self-defence and safety.
- He will protect the daughter from the mother's boyfriends and from the maternal grandfather. He said that the mother's former boyfriend placed the daughter at risk of sexual abuse and that the maternal grandfather was inappropriate. He stated that the mother's former boyfriend was a drug addict who died from an overdose. The father stated that the mother's current boyfriend posted a photo of the daughter while using a sexually explicit hand gesture, which was encouraged in a group family Christmas picture. The mother's current boyfriend is ruining his daughter. The mother's boyfriend comes from an ignorant, low functioning, alcoholic, and drug addicted people. The father must protect the daughter from these types of men.
- He will ensure that the mother is unsuccessful in her attempts to have her boyfriends replace him as a father to the daughter. He vowed that she will never succeed in these efforts.
- A shared parenting arrangement will remove the mother's inappropriate and harmful control over him and the daughter.
- He lives a well-balanced lifestyle with an emphasis on healthy nutrition, exercise, and family and cultural engagement. His lifestyle contrasts with that which the daughter currently experiences. He said the daughter is

spending significant time with the mother's partner, who is a low functioning alcoholic and who lives in a community where systemic alcoholism and drug abuse are serious issues. The mother's former boyfriend was a drug addict who was sexually inappropriate with the daughter. The mother's father was and is inappropriate with the daughter.

[30] Third, the father said the mother is a horrible person and the worst mother, as indicated by the following examples which he believes are true:

- The mother does not meet the child's medical needs. For example, at least 50% of the time when the daughter was transferred to his care, she was sick, including with strep throat, scarlet fever, and nose bleeds. The father said he has not seen a child as ill as the daughter. Further, the mother is preventing the daughter from having two family doctors. The father stated that it is always best to have two family doctors.
- The mother neglected the daughter's dental care. The father said that he arranged dental care to ensure that all cavities were properly treated. The father complained that the mother will not allow the daughter to have two dentists.
- The mother does not meet the daughter's educational needs. The father said the daughter misses an inordinate amount of school, and the mother also forces the daughter to go to school when sick.
- The mother does not meet the daughter's social welfare needs. The mother does not enrol the daughter in appropriate activities, such as martial arts or piano. Instead, the mother enrolled the daughter in dance – a useless activity. The father believes that the daughter's wishes should not determine the selection of extracurricular activities.
- The mother does not meet the daughter's physical needs. The daughter's bedroom is like a prison cell or a closet. The mother's home is damp. The mother buys the daughter inappropriate clothes and swimwear.
- The mother does not meet the daughter's emotional needs. For example, the mother has kept the daughter from seeing him. The daughter is being traumatized by his absence, the mother's alienating conduct, and the daughter's disconnect from her black heritage. Thus, the daughter's mental health is jeopardized.

- The mother transfers her hatred of him to the daughter. She speaks negatively about him to the daughter.
- The mother's father and boyfriends were and are harmful to the daughter.

[31] Fourth, the father also disputes the abuse allegations which the mother made against him by noting that:

- He only pled guilty to the criminal charges because of his lawyer's advice and his concern about the systemic biases against black men which pervade the criminal justice system. He denied ever abusing or threatening the mother. He said that spitting was not a form of abuse. He likewise denied that his explicit emails, which include name-shaming, were abusive.
- He said the mother's abuse claims are laughable and a disgrace to every woman who has suffered actual abuse. He was previously employed with the New Start program. As such, he is keenly aware of the real violence that women face while in abusive relationships. He said the mother is a fake victim.
- Although acknowledging that he was, at times, emotional during the trial, the father said his behaviour was nonetheless appropriate because he was being denied parenting time, and because the mother was alienating the daughter from him. The father thus stands by the words he used to describe the mother. He said that he loves the daughter and must do all that is possible to protect her from harm.

[32] In summary, the father was adamant that the daughter be placed in his care 50% of the time. The father argued that a shared parenting arrangement was necessary to ensure that the daughter's best interests were met, and to minimize the harmful influences facing the daughter while in the mother's care. The father also repeatedly confirmed that he would never stop in his pursuit of justice. He stated that he has an endless amount of energy and that it was his right to make as many applications as he wants over the next ten years to achieve his goal.

#### *Mother's Position*

[33] The mother's submissions focused on three issues. First, the mother asked that the father's application for shared parenting be dismissed. She wants to maintain her

primary care status. The mother denied the father's allegations that she is incapable of meeting the daughter's needs. On the contrary, she said, the daughter is, in fact, flourishing in her care, as evidenced by the following:

- The daughter's report cards are exemplary, from both an academic and social perspective. The daughter excels in school.
- The daughter is a healthy and happy child. She rarely misses school, as confirmed by her report cards.
- Both she and the daughter identify as black Nova Scotians. The daughter is actively engaged in culturally appropriate activities. She is a strong, resilient young lady. She has many friends and enjoys various organized activities, including dance. Dance is the daughter's favourite activity. The daughter was/is involved in other organized activities, such as choir, swimming [level 9], the school cross country team, and badminton.
- The daughter's physical needs are being met. Her maternal home is a happy, healthy, and safe one. The daughter's bedroom is neither a prison cell, nor a closet, as confirmed by the photographs entered as exhibits. The daughter's clothing is age appropriate. There is nothing wrong with the daughter's clothing selection.
- The daughter's health and dental needs are being met. She has one family physician and one dentist. The daughter would not be served by having two primary care doctors and two dentists. Further, the father clandestinely took the daughter to his doctor and dentist without notifying the mother. Prescriptions were arranged and administered to the daughter without the mother's knowledge or the knowledge of the daughter's family doctor. The daughter's dental care was and is appropriate.
- The daughter enjoys a healthy and happy relationship with the maternal grandfather, and the mother's partner.
- The father's allegations about the maternal grandfather, her former boyfriend, and her current partner are scandalous, unfounded, and based purely on the father's vindictive and racist attitudes. He previously reported the same allegations to the police and child protection authorities, who dismissed his claims.

- The mother's former partner died from heart issues. He was a professional and celebrated black teacher. He was not a drug addict.
- The mother's current partner is neither an alcoholic, nor a drug addict. Her partner is a red seal carpenter. His siblings include two sea captains, a social worker, a teacher, a scholar, and an elected official. The mother objects to the father's characterization of her partner and his community.
- The mother ensures that the daughter's emotional health needs are met. She suggested counselling to the father. The father rejected her suggestion. She also arranged counselling for the daughter. The daughter is supported at home, school, and in the community.

[34] In respect to her second point, the mother seeks to eliminate the father's Sunday overnight parenting time. She wants the daughter to be in her care every Sunday evening before the start of the school week. She wants to protect the daughter from upset, like that which occurred during the summer of 2022.

[35] Third, the mother seeks sole decision-making because, in her view, the father does not prioritize the daughter's best interests. The father often dysregulates when upset. He acted unilaterally on health-related issues affecting the daughter. He also continues to call the mother vile, derogatory, and misogynistic names. The mother stated that consultation and joint decision-making are no longer viable.

[36] **Was a material change in the circumstances proven?**

[37] Section 37 of the *Parenting and Support Act*, RSNS 1989, c 160, states that I can vary the current court order if I find a material change in the circumstances.

[38] In *Barendregt v Grebliunas*, 2022 SCC 22, the Supreme Court of Canada reviewed the basic variation principles:

[76] In a variation proceeding, "[t]he court cannot retry the case, substituting its discretion for that of the original judge; it must assume the correctness of the decision": *Gordon*, at para. 11. The applicant bears the burden of proving that a child's best interests differ from those determined in the original decision because the circumstances on which that decision was based have materially changed since trial. ....

[39] In *Gordon v Goertz*, [1996] 2 SCR 27, the Supreme Court of Canada defined a material change as follows:

[12] What suffices to establish a material change in the circumstances of the child? Change alone is not enough; **the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way**: *Watson v. Watson* (1991), 35 R.F.L. (3d) 169 (B.C.S.C.). The question is **whether the previous order might have been different had the circumstances now existing prevailed earlier**: *MacCallum v. MacCallum* (1976), 30 R.F.L. 32 (P.E.I.S.C.). Moreover, the change should represent **a distinct departure from what the court could reasonably have anticipated in making the previous order**. "What the court is seeking to isolate are those factors which were not likely to occur at the time the proceedings took place": J. G. McLeod, *Child Custody Law and Practice* (1992), at p. 11-5.

[13] It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) **a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child** (2) **which materially affects the child**; and (3) **which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order**. [Emphasis added]

[40] I find that a material change in circumstances was proven for two reasons. First, the relationship between the daughter and father has significantly changed. The daughter no longer participates in parenting time with the father. Their relationship is seriously compromised. The current parenting schedule did not contemplate such a development. The lack of relationship impacts the daughter, as well as the parties' abilities to meet her needs.

[41] Second, the father failed to comply with the July 2019 consent variation order with respect to his communications with the mother. Clause 4 of the order states:

4. GS is to comply with paragraph 14 of the July 14, 2017 Consent Order such that communication between the parties shall be primarily by way of the online communication website "Our Family Wizard" and all times such communication shall be polite, respectful, business-like and child focused. ...

Paragraph 14 of the July 14, 2017 consent order mirrors this provision.

[42] The father's unapologetic use of derogatory, abusive, and misogynistic slurs in communications with the mother was confirmed in the exhibits and during his testimony. The father's unwillingness or inability to communicate politely and respectfully is a distinct departure from the provisions of the last court order. Further, the father maintained before the court that his word choices are

appropriate in the circumstances, and he made no commitment to change his approach going forward.

[43] Because a material change in circumstances was proven, I have the authority to examine the parenting provisions of the current order to determine if the daughter's best interests are being met. Before doing so, however, I must determine the cause of the strained relationship between the father and daughter.

**[44] What is the cause of the daughter's strained relationship with the father?**

[45] The father blames the mother for the state of his failed relationship with the daughter. He states that the mother engaged in alienating conduct, intent on destroying his daughter's love for him. He states that the mother is controlling the daughter and is negatively influencing her decisions. The mother denies the allegations and points to the father's parenting and communication deficits to explain the strained father-daughter relationship.

[46] I accept the mother's position and reject the father's claims. Where there is a dispute in the evidence, I accept the mother's evidence and reject the father's evidence<sup>i</sup>. I find that the father is primarily responsible for his deteriorating relationship with the daughter for four reasons – his need to control; his dysregulation and volatile temper; his failure to prioritize the daughter's needs; and his hatred of the mother. I will now explain my conclusions.

#### *Need to Control*

[47] The father believes that it is his right and obligation to control the daughter's time and activities while in his care. This belief posed little difficulty when the daughter was young. Not unexpectedly, as she matured, the daughter claimed greater autonomy. The father has not responded favourably to the daughter's quest for increasing autonomy. The father clings to his rigid need to control.

[48] These competing perspectives collided at the end of the 2022 summer vacation. In September, the daughter was scheduled to start middle school. The daughter was both excited and anxious about transitioning to a new school. The daughter and her friends were scheduled to attend a group tour of the middle school during the father's parenting time. The father initially agreed to take the daughter. On the morning of the planned tour, however, the father changed his mind. The daughter was upset with the father's decision.

[49] The father's lack of insight into the importance of the group tour is troubling. Rather than being grateful to participate in the daughter's milestone, the father viewed the group tour as an intrusion into his time – a time over which he intended to have sole control.

[50] Matters continued to unravel. Although the daughter was scheduled to be with the father on the first day of school, she wanted to be in her mother's care so that her braids would be perfect, and all would run smoothly. The father refused to switch weekends. The father also refused to allow the daughter to meet up with friends so they could walk into their new school together. Instead, the father said that since the first day of school fell on his parenting time, he would control what took place. The father's plan did not include the daughter's friends.

[51] These are but three examples of the father's rigid need to control all aspects of the daughter's life while she is in his care. The father is oblivious to the destructive nature of this parenting style, especially given the daughter's age and stage of development.

#### *Dysregulation and Volatile Temper*

[52] The father often dysregulates when he perceives that he is not in control, or when people, including the daughter, do not blindly adopt his narrative. I accept the mother's description of the father's dysregulation for two reasons. First, the mother was credible. Second, I observed the father dysregulate during the court proceeding when his narrative or control was challenged. When the father does not get his own way, his conduct becomes unacceptable.

[53] I provide two examples of the father's dysregulation while the daughter was present. First, on the Friday before school began, the mother took the daughter to the parenting exchange location at the appointed time. The father was not there. She and the daughter waited 35 minutes. The father neither called, nor sent a message on the Our Family Wizard App, to explain his absence.

[54] Because the daughter was getting hungry, the mother went to the drive-through of a nearby doughnut shop. While in the drive-through, the father finally arrived and telephoned the mother. He aggressively and angrily shouted at her. The daughter overheard his verbal attack.

[55] The mother immediately returned to the exchange location. The father got out of his car and started taking pictures of the mother and daughter. He demanded that



the daughter get out of the mother's car. The father was verbally aggressive with the mother and then the daughter. He told the daughter that her life depended on her getting out of the car; that her health was at risk if she didn't get out of the car; and that he was calling the RCMP, who would force her to get out of the car.

[56] The father called both the paternal grandmother and the RCMP. During his call to the paternal grandmother, the father heatedly said that he was done with the daughter and that the grandmother would never see the daughter again.

[57] The RCMP eventually arrived. The officers spoke privately with the daughter. The RCMP did not force the daughter to go with the father. They urged family counselling. At the time, the father was not open to attending counselling.

[58] After this exhausting confrontation, the daughter refused in-person contact with the father, although they did speak on the telephone. Sadly, the telephone contact was also a negative experience. The father continued to act inappropriately. During the phone calls, the mother heard the father call the daughter a traitor and a disgrace. He also stated that the daughter had mental health issues. In addition, the father made racist comments about the mother's boyfriend.

[59] The daughter was justifiably frightened by the father's presentation. When the father dysregulates, he is loud, hostile, aggressive, and demanding. He is unable to appreciate any other perspective. His focus is on himself. He lashes out at anyone who takes a contrary view, by name-calling and degrading the other person. The 10-year-old daughter is not capable of navigating the father's inappropriate conduct. The daughter should not be placed in such a position.

#### *Failure to Prioritize Daughter's Needs*

[60] By focusing on his own need to control and dominate, the father fails to prioritize the daughter's needs in two respects. First, the father fails to consider the daughter's developmentally changing needs. She is no longer a baby, a toddler, or a young child. She is a developing young woman who appropriately asserts her independence. The father must learn to adjust his parenting style to accommodate the daughter's stage of development.

[61] Second, the father does not recognize the daughter's fear in the face of his dysregulation and volatile temper. Despite the daughter's upset, the father did not provide her with reassurance and love. Rather, while in a rage, the father belittled and degraded the mother and then the daughter. The father did not apologize for his

conduct, nor has he assured the daughter that he will change. To the contrary, the father believes that his words and actions were appropriate.

### *Father's Hatred of the Mother*

[62] The final cause of the estranged relationship arises from the father's hatred of the mother. Hatred is a strong word, and one which I rarely use. I am unfortunately compelled to do so because the word accurately describes the deep-seated disdain, contempt, and resentment the father feels towards the mother.

[63] The father does little to mask his feelings. To the contrary, he is quite vocal. The father believes that it is his job to share his negative feelings about the mother, her boyfriends, and the maternal grandfather, in a misguided attempt to protect the daughter.

[64] Further, the daughter is intelligent and empathetic. She fully appreciates the father's feelings for the mother and her boyfriend. This poses challenges because the daughter loves the mother and likes the mother's boyfriend. The daughter does not want the father to treat the mother as he does. I infer that the daughter likely experiences internal conflict as a result.

[65] The father's negative feelings for the mother led him to make false allegations against the mother, and the men who were/are important in her life. None of these men acted inappropriately with the daughter. The daughter has a strong, loving, and healthy relationship with the maternal grandfather. The mother's boyfriends were not addicted to alcohol or drugs. The mother's first partner died from a heart condition, not from a drug overdose. He was a celebrated teacher. The mother's second partner has a very good relationship with the daughter. The father's racist slurs against the mother's boyfriend, his family, and his community are untrue and unacceptable. The father's racist beliefs also impact the baby who was recently born to the mother and her partner. The baby is the daughter's sister.

[66] The father cannot expect to have a healthy relationship with the daughter when he voices hatred towards the mother and the men who are dear to both the mother and the daughter.

### *Summary*

[67] The father's estranged relationship with the daughter arises primarily due to the father's beliefs and conduct. The father has a rigid need to control and has not

adjusted his parenting style to conform with the daughter's developmental stage. In addition, the father often dysregulates when his authority is challenged, becoming angry and verbally belittling anyone, including the daughter, who disagrees with his narrative. The daughter is justifiably afraid when the father dysregulates, and when he is unable to prioritize her needs. Further, the father does little to mask his hatred of the mother and the men who are important in her life. The daughter likely experiences internal conflict when the father speaks derogatorily about the mother, the paternal grandfather, and the mother's boyfriend.

[68] Contrary to what the father alleges, the mother is not the cause of the father's deteriorating relationship with the daughter. The mother did not engage in alienating conduct. The mother has acted protectively of the daughter. The mother correctly notes that, in the circumstances of this case, she cannot force the daughter to go with the father. The mother sought counselling for the daughter and is committed to seeking a therapeutic solution. The mother wants the daughter to have a healthy relationship with the father.

**[69] Is it in the daughter's best interests to vary the parenting provisions of the current order?**

[70] I must now examine the current order in light of the material changes in circumstances, and in the context of the best interests factors outlined in s. 18(6) of the *PSA*, to determine if the requested variations should be granted. When making my decision, I considered the factors addressed by the parties, while applying a balanced and comparative approach: *DAM v CJB*, 2017 NSCA 91.

#### *Physical Needs*

[71] Both parties have met and will continue to meet the daughter's physical needs. I reject the father's claim that the daughter's bedroom in the mother's home is a prison cell or closet. It is neither. The daughter's bedroom is cozy, clean, and safe. The daughter is happy in her home with the mother.

[72] In addition, I reject the father's claim that the daughter is unhealthy while in the mother's care. I do not accept the father's claim that the daughter is so often sick that it impacts her school attendance. The daughter's report cards prove otherwise. I do not accept that the mother ignored the daughter's dental health. The father's hatred of the mother clouds his judgement.

[73] Further, I reject the father's claim that it would be beneficial for the daughter to have two family doctors and two dentists. It is in the daughter's best interests to have one family doctor and one dentist, so that prescriptions, health care, and dental care can be properly managed.

### *Emotional and Psychological Needs*

[74] The mother meets the daughter's emotional and psychological needs in an exemplary way, although the 2022 Christmas photo with hand gesture, despite its context, was not appropriate. The mother ensures that the daughter is supported at home and at school. She also arranged for individual counselling. The mother acts protectively.

[75] In contrast, I am concerned about the father's ability to meet the daughter's emotional and psychological needs. As described previously, the father places his own need to control above his daughter's needs. The father makes derogatory and racist slurs. When dysregulated, the father lashes out and demeans the daughter to control her. The daughter is fearful of the father when he becomes aggressive and demeaning.

[76] The father must change his approach if he wants the daughter to be strong, resilient, confident, and proud. Children don't tend to develop into strong, resilient, and confident adults if their parent demeans and belittles them. Hopefully, counselling will make a difference. I will outline the specific counselling requirements later in my decision.

### *Educational Needs*

[77] I reject the father's claim that the daughter consistently misses school. The allegation is not true. The daughter's report cards confirm that she misses very little time. Further, her reports show excellent academic and social achievement. Examples of the positive feedback contained in her school reports include:

*From 2022-2023:* It has been a pleasure to get to know G this term. G has settled nicely into our grade 5 classroom. She is mature, responsible, respectful, and kind. She is a joy to have in class. G is willing to share her thoughts and ideas and contributes well to our class conversations.

*From 2021 – 2022:* There is peanut butter and jelly and then there is fun and G. G is one of the most comical, kind, and genuine souls that I have ever met. She really knows how to put a smile on the face of whom she is around. G was constantly found picking someone up, relieving them of any pressures or negative thoughts

that they may have had. She encouraged others when they did not know how to encourage themselves. She will be missed beyond words.

*From 2020 – 2021:* G chases ideas and concepts until she is confident they make sense to her. She adeptly explains her thought process and reasoning and carefully considers the explanations provided by other members of our community. She seeks opportunities to support the learning of others, helping to make our community stronger and more resilient. Thank you for sharing your kind spirit with us, G!

[78] The mother, as the primary caregiver and a teacher, has successfully managed the bulk of the child's educational needs. Both parties are educated professionals who can and will continue to contribute to the daughter's educational pursuits.

### *Social and Cultural Needs*

[79] I reject the father's claim that the daughter lacks appropriate social and cultural connections while in the mother's care. The father's claim that the mother is not black is both troubling and inaccurate. The mother and the daughter are biracial. The mother and the daughter both identify as black Nova Scotians. The mother is not less black because the father refuses to accept her identity.

[80] In addition, the mother ensures that the daughter is connected to her heritage and culture. The mother shares black history and culture with the daughter. Further, the mother and daughter have many friends and extended family who are black. The father's claims to the contrary are specifically rejected. The father's hatred of the mother continues to cloud his judgement.

[81] Additionally, I dismiss the father's claim that the mother fails to enroll the daughter in appropriate activities. The daughter is and was involved in many different activities, including dance, which is the daughter's favourite. The father insensitively dismissed this activity as being useless. The father is unable to accept or support the daughter's participation in the activity she most enjoys.

[82] I also find that the father has and will continue to ensure that the daughter is connected to her black heritage and culture. The father's plan to increase the daughter's understanding of the strength, wisdom, and resilience of his family and community is commendable. Such knowledge will contribute to the daughter's healthy sense of self.

[83] On the other hand, the father's desire to train the daughter in martial arts and piano does not align with the daughter's actual interests. Children often pursue

activities they enjoy. The father should support the daughter, even when she participates in an activity that he does not appreciate.

[84] In summary, both parties have met and will continue to meet the daughter's social and cultural needs.

#### *Security and Stability*

[85] I reject the father's claims that the daughter's safety and security are compromised while in the mother's care. Not unexpectedly, given his control issues, the father attacked all men who are or were important in the mother's life. His allegations are baseless. The daughter feels, and is, safe and secure in the mother's care.

[86] Further, the father must change his parenting style and learn to control his temper so that the daughter once again feels safe and secure while in his care.

#### *Willingness to Support Relationship with Other Parent*

[87] The parties have a difficult relationship. The father's hatred of the mother clouds his judgement and prevents him from assigning priority to the daughter. The mother correctly objects to the father's displays of anger, his racist comments, and his abusive language. These issues need to be resolved therapeutically so that the daughter can have healthy relationships with both of her parents.

#### *History of Child Care*

[88] Although both parents have been involved in the daughter's care since she was a baby, the mother has nonetheless been the daughter's primary care parent. The mother has been the parent who has primarily met the daughter's physical, health, educational, cultural, and social needs. The mother has done so in an appropriate fashion.

[89] In contrast, although the father has adequately met the daughter's physical, educational, and cultural needs, he has not met her emotional and psychological needs, as previously explained.

#### *Quality of Parent Child Relationship*

[90] The mother and daughter share a strong bond. The mother has excellent parenting skills, and the daughter has a strong connection with her. The daughter

feels loved and respected while with the mother. The mother's discipline and direction do not elicit fear or insecurity about safety.

[91] In contrast, although the daughter knows that the father loves her deeply, she feels neither respected nor secure when he loses control. The daughter's relationship with the father suffers because of the father's need to control and his volatile temper.

#### *Relationship with Extended Family*

[92] The daughter has positive relationships with her extended maternal and paternal family. These extended relationships are beneficial to the daughter's development and should be encouraged. The paternal grandmother clearly loves the daughter, but currently does not connect with her because the grandmother does not want to make the situation any worse. This is unfortunate.

[93] It would be helpful if the grandmother and other paternal relatives reached out to the daughter and spent time with her. Further, birthday and special occasion cards or gifts should be provided to the daughter directly, and not kept at the father's house.

#### *Communication*

[94] The father does not comply with the communication provisions of the court order. He does not speak in a polite, respectful, business-like, and child focused fashion. Instead, he uses abusive, misogynistic, and racist words. This is unacceptable.

#### *Impact of Violence*

[95] In the past, the father engaged in family violence. He pled guilty to criminal charges involving abuse against the mother. His conviction is proof of guilt. He cannot resile from these convictions. Further, spitting on the mother and harassing her is a form of abuse. Since the last court order, the father continues to speak abusively to and about the mother. In addition, when the daughter questioned the father's control of her life, the father acted abusively towards the daughter. This too is unacceptable.

#### *Compliance with Court Orders*

[96] The mother attempted to follow the court order. She brought the daughter to the parenting exchange location so that the daughter could be transferred into the father's care. The daughter refused to go with the father. The mother appropriately

did not force the daughter to go because of reasonable and justifiable safety concerns.

[97] For his part, the father did not follow various provisions of the court order. He does not communicate as required. He also surreptitiously made medical and dental appointments for the daughter in a manner contrary to the process stated in the court order.

### *Provisions of Variation Order*

[98] After analysing the current order in light of the material changes in circumstances, and in the context of the best interests factors outlined, I am now in a position to rule on the parties' variation requests. In so doing, I recognize that both parties love the daughter, and she loves them. I also find that the mother meets the daughter's physical, emotional, psychological, medical, dental, social, and cultural needs in an exemplary fashion. The daughter feels safe, secure, respected, and loved in the mother's care. Unfortunately, the father must make improvements to his parenting approach so that he can meet the daughter's emotional and developmental needs and ensure that the daughter feels safe, secure, and respected in his care.

#### *A. Therapeutic Counselling Provisions*

[99] Although the father-daughter relationship is fractured, it is in the daughter's best interests for the relationship to be repaired and strengthened. The parties are committed to participating in therapeutic counselling to ensure that the daughter has a healthy relationship with both parents.

[100] The variation order will require the father to engage with a therapist for the following stated purposes:

- To gain insight into how his past and current behavior contribute to his strained relationship with the daughter, including issues arising from his strong beliefs, rigidity, need to control, and temper.
- To gain insight into what constitutes violence and abuse, and how violence and abuse negatively impact the daughter.
- To become attuned to the daughter's needs and feelings, based on her temperament and stage of development.



- To gain skills to earn the daughter's trust, and to parent and support the daughter in a manner consistent with her emotional well-being.
- To gain skills to manage anger, frustrations, and fears in a healthy fashion.
- To gain skills to communicate effectively with the mother and other professionals, in a nonconflictual and respectful manner.
- To gain skills to effectively manage his own negative feelings, and his feelings towards the mother and the men in her life.

[101] The variation order will provide that the mother must engage with a therapist for the following stated purposes:

- To gain skills to communicate effectively with the father.
- To gain skills to support the daughter in her distress, and as she re-establishes a positive relationship with the father.
- To gain skills to effectively manage her negative feelings about the father.

[102] The daughter must also participate in therapy. Although the father wants the daughter to partake in an IWK program, the mother is best suited to select the daughter's therapist. The mother will balance several factors when selecting the daughter's therapist, including IWK wait times, the daughter's rapport with her current therapist, and the daughter's need for consistency. The purpose of the daughter's therapy is to provide a safe environment where the daughter can express her feelings, learn skills to cope with the parenting conflict, and to manage her relationship issues with the father.

[103] Family counselling will be beneficial when the family dynamic improves. Family counselling will occur if the following two conditions are met:

- The father's therapist confirms that the father is making sufficient progress to meaningfully participate in family therapy.
- The daughter's therapist confirms that it is appropriate for the daughter to participate in family counselling.

[104] To ensure completion of the desired outcomes, consent must be provided to enable all therapists to communicate with one another. Further, to ensure that the therapists have the necessary background information, the order will state that all therapists must be provided with a copy of this decision.

[105] It is essential that the parties make good faith efforts when engaging in therapy. The parties, especially the father, have much to accomplish. If the father is not willing to make the necessary changes, there is little likelihood that his relationship with the daughter will improve. The outcome is within the father's control.

***B. Request for Shared Parenting and Overnight on Wednesdays***

[106] The father's request for shared parenting and additional overnights on Wednesdays is denied. The daughter has flourished in the mother's primary care, and the evidence does not suggest that she would flourish in her father's care 50% of the time. The evidence is to the contrary. It is in the daughter's best interests to continue in the mother's primary care.

***C. Request to Eliminate Sunday Overnight Parenting Time***

[107] It is in the daughter's best interests to eliminate the father's Sunday overnight parenting time. The father's need to control negatively impacts his ability to prioritize and meet the daughter's needs. The daughter should be in the mother's care during the school week, so that the daughter does not experience upset while at school.

[108] The variation order will therefore state that the father's parenting time will ordinarily conclude at 5 pm on Sunday evening. If Monday is a holiday or in-service day, however, his parenting time will be extended to 5 pm on Monday evening.

***D. Sole Decision-Making and Communication***

[109] Joint consultation and decision-making are not in the daughter's best interests for four reasons. First, the parties' relationship is defined by mistrust, disrespect, and poor communication, with minimal expectation of improvement: ***Roy v Roy***, [2006] OJ No 1872 (Ont CA) and ***Godfrey-Smith v Godfrey-Smith***, (1997), 165 NSR (2d) 245 (SC). Second, the father does not prioritize the daughter's needs. His decision-making is often clouded by his need to control and his hatred of the mother. Third, the father acted unilaterally and contrary to the court order when making medical and dental appointments for the daughter. Fourth, the father is not respectful, polite,

or child focused when communicating with the mother. He uses misogynistic and racist slurs. He dysregulates when he loses control.

[110] Given these circumstances, I grant the following variation provisions to the current order:

- The mother will have sole decision-making about all important matters impacting the daughter's health, education, social, cultural, and general welfare needs. The mother is not required to consult with the father before making decisions.
- The mother will have the sole authority to apply for the daughter's passport, and to permit her to travel internationally. The passport authority is authorized to issue a passport to the mother for the daughter without the father's consent or signature. The daughter is permitted to travel internationally without the father's consent, provided she has the mother's written consent.
- The mother will keep the father informed of all important decisions impacting the daughter's health, education, social, cultural, and general welfare by communicating through the Our Family Wizard App. If the father uses abusive, misogynistic, or racist slurs when communicating with the mother, then the mother is no longer required to inform the father about decisions impacting the daughter.
- Provided communication remains respectful, around the last day of each month, the mother will send the father a short summary of important details about the daughter's health, education, social, cultural, and general welfare. This will include particulars and updates arising from medical and dental appointments, schoolwork, and organized activities, together with any important social, cultural, and general welfare information. If the father uses abusive, misogynistic, or racist slurs when communicating with the mother, then the mother is no longer required to provide the father with the short summary.
- In the event of an emergency, the parent having the daughter in their care will contact the other by phone as soon as possible, to advise of the emergency details.

- The father will have access to all professionals involved in the daughter's care, including direct access to Power School, school records, medical records, and dental records, except that access to the daughter's therapy and counselling records is dependent on the professional opinion of the therapist or counsellor. The father will not have access to the daughter's therapy or counselling records if the therapist or counsellor deems the records confidential, in whole or in part, in the daughter's best interests, unless the father first obtains a court order authorizing the release of the records.

#### *E. Parenting Exchanges*

[111] The mother asked to change the parenting exchange location to the police station. The father objected. I am not going to vary the location of the parenting exchange, because location will not address the safety issue at the root of the request. To address this valid safety concern, and until he successfully completes the counselling objectives, the father will not attend the parenting exchanges. Instead, he must have another person, acceptable to the mother, attend in his place. The father will not be present for the parenting exchanges until he first obtains the court's permission.

#### *Summary*

[112] I grant the variation order because of the material changes in circumstances, and based on the daughter's best interests, viewed through the lens of the statutory best interests factors. It is hoped that counselling will help repair the father-daughter relationship so that the daughter feels safe, secure, loved, and respected while in the father's care.

#### **Should an enforcement order be granted?**

[113] The father seeks an enforcement order to include compensatory parenting time. He states that the mother must be held accountable for his inability to exercise his parenting time. In contrast, the mother denies the father's allegations and asks that his enforcement application be dismissed.

#### *Legislation and Law*

[114] Section 40 of the *PSA* provides me with the discretionary authority to issue the enforcement order the father seeks. In deciding his application, I applied the following legal principles.

*A. Purpose and Intent of Legislation*

[115] The *PSA* enforcement provisions were enacted because quasi-criminal contempt proceedings are not well-suited to resolve nuanced parenting disputes which focus on the child's best interests: *SB v VM*, 2023 NSSC 73, para 99, *per* Marche J; and *KR v JW*, 2016 BCSC 225, paras 31 and 56, *per* Betton J, in respect of similar provisions enacted in British Columbia.

[116] In addition, enforcement legislation is premised on the expectation that parties will comply with court-ordered parenting time, unless the order is successfully appealed or varied. Compliance is not optional: *KR v JW*, *supra* at para 57. "Failure to comply with court ordered parenting arrangements is a very serious matter": *SB v VM*, *supra*, para 100. Denial of parenting time contrary to a court order is *prima facie* wrongful: *SB v VM*, *supra*, para 87.

*B. Applicant's Burden*

[117] Under s. 40(1) of the *PSA*, an applicant may apply to the court to address the denial of parenting time. The applicant must prove, on a balance of probabilities, that they were denied parenting time contrary to a court order: *SB v VM*, *supra*, at para 87. Denial can be based on either a single, discrete event or the "more nuanced circumstances where [the] cumulative effect of a pattern of conduct, including words or actions, results in a loss of parenting time": *KR v JW*, *supra*, at para 65. Further, acquiescence does not necessarily absolve the respondent of a potential finding of wrongful denial, because the applicant may have had little practical choice in the circumstances: *KR v JW*, *supra*, at para 65.

*C. Respondent's Burden*

[118] Once the applicant proves a denial, the onus shifts to the respondent to prove, on a balance of probabilities, that the parenting time was not wrongfully denied: *SB v VM*, *supra*, at para 88.

*D. Determination of Wrongful Denial*

[119] The court must consider all relevant circumstances when determining whether a denial of parenting time was wrongful, including whether any of the non-

exhaustive circumstances outlined in s. 40(3) apply: *SB v VM, supra*, at paras 88 and 89. Section 40(3) ensures that reasonable denials are permitted, consistent with the best interests of the child being the only consideration.

[120] Additionally, s. 40(3) of the *PSA* operates as a defence to a s. 40(1) application; it does not displace the s. 37 variation process and cannot be used as a remedy or sanction for parental misconduct: *DJS v JMD*, 2014 BCSC 1143, at paras 27 and 29, *per* Power J.

[121] Section 40(3) (a) and (b), the family violence and impairment exemptions, are based on reasonable belief. Because reasonable belief is not defined, nor otherwise judicially interpreted, I adopt the comments of the Ontario Court of Appeal in *Ontario (Environment and Climate Change)*, 2018 ONCA 1030, in a decision concerning warrantless inspection powers under the *Environmental Protection Act*, R.S.O. 1990, c. E-19:

[54] Sometimes the "plain meaning" of a statutory term gets lost in the application of rules of interpretation. **The term "reasonable belief"**, while not commonly used in everyday conversation, **is not complicated**.

[55] A belief is a state of mind. It is an acceptance of the truth of something, without necessarily having personal knowledge of its truth. It can be contrasted with suspicion, which is based on supposition. **A belief suggests a higher level of certainty than suspicion, but something less than knowledge**.

[56] But the word "believes" in s. 156(1)(c) is qualified by "reasonable". **A reasonable belief is one that a reasonable person would hold, based on the existence of some objective evidence to support the belief**.

[Emphasis added]

[122] After reviewing the jurisprudence, the Court of Appeal concluded:

[72] As the foregoing review suggests, the precise requirements necessary to meet a commonly used statutory standard are driven primarily by the context in which it is applied. However, some principles guiding the interpretation of "reasonable ground(s) to believe" can be distilled from the case law. **First, the use of the word "reasonable" to qualify the standard of belief suggests that there must be an objective basis for the belief**. Second, the requirements are informed by the degree of scrutiny to which the basis of belief is subjected. This, in turn, is informed by the circumstances in which the decision is made; the procedure involved; and the ultimate purpose of the decision resulting from the application of the standard. **Finally, "reasonable grounds to believe" has been interpreted in the regulatory context as requiring something more than mere suspicion, but**

**something less than proof on a balance of probabilities.**

[Emphasis added]

[123] Thus, the test under s. 40(3)(a) is an objective one - would a reasonable parent in the respondent's circumstances believe the child might suffer family violence, abuse, or intimidation if parenting time was exercised?

*E. Available Relief*

[124] If I find that parenting time was not wrongfully denied, I have the discretionary authority to grant or deny compensatory parenting time. I have no jurisdiction to grant any other type of relief. Further, my decision to grant compensatory parenting time must be based on the child's best interests: *ST v BL*, 2021 NSSC 58, para 42, *per* Marche J. An order for compensatory parenting time is not designed for the benefit of the deprived parent. Rather, the remedy is meant to restore parenting time that would otherwise have benefitted the child. The remedy is restorative not punitive: *ELA v AGDB*, 2021 BCSC 1150, para 32, *per* Schultes J.

[125] On the other hand, if I find that the parenting time was wrongfully denied, then under s. 40(5), I have the discretionary authority to issue various types of relief, including counselling or specialized programs; compensatory parenting time and reimbursement for costs; supervised parenting transfers and costs; supervised parenting time and costs; the scheduling of another appearance to consider the granting of an additional order; or the payment of a fine. In addition, I may refuse to impose any penalty because of the permissive language used in s. 40(5): *SB v VM*, *supra*, at para 90; and *KR v JW*, *supra*, at para 23.

*Decision on Three Part Enforcement Test*

[126] I will now address the three-part test outlined in s. 40 of the *PSA*. First, I find that the father successfully proved on a balance of probabilities that he was denied in-person parenting time, contrary to the schedule mandated in the court order. The first denial occurred in late August 2022, when the daughter refused to leave the mother's vehicle while attending at the parenting exchange location, even after RCMP involvement. The daughter continues to refuse to go with the father. The denial was proven even though the father did not physically attend at the transfer location each time the daughter refused to attend. Because of the daughter's refusal, the father had little practical choice in the circumstances. Denial is thus proven despite the father's acquiescence.

[127] Under the second step, I find that the mother proved, on a balance of probabilities, the s. 40(3)(a) defence. She proved that she held a reasonable belief that the daughter would suffer family violence, abuse, or intimidation if the parenting time was to be exercised.<sup>ii</sup> The mother's reasonable belief arises because of her own experience as a victim of the father's abuse and because the mother witnessed the father emotionally abusing the daughter.

[128] The mother's own experience as a victim of the father's abuse reasonably caused the mother to fear for the daughter. Notwithstanding his denials, the father abused the mother. When the parties separated, the father assaulted the mother by spitting on her. He also uttered threats. The father was convicted of this abuse. Further, the violence continued after separation when the father continued to harass, and emotionally and psychological abuse the mother. For example, the father made false child protection and criminal allegations against the men who play an important role in the mother's life. The father's volatile temper is exposed when he escalates and uses misogynistic and vulgar expletives to describe the mother in his written and in-person communication. The father casts negative racist slurs against the mother's boyfriend, which thereby directly impacts her baby. Given the mother's own experiences with the father's volatile presentation, together with his failure to apologize or commit to making substantive changes to mitigate his abusive conduct, it was reasonable for her to believe that the daughter would also suffer emotional and psychological abuse by the father.

[129] Second, and perhaps more importantly, the mother witnessed the father emotionally abusing the daughter. During the parenting exchange in August 2022, the father lashed out at the mother and the daughter. The daughter was exposed to the father's rage and volatile temper. His presentation was violent and escalating. The mother observed the daughter's fear. The mother correctly viewed the father's presentation as abusive.

[130] Unfortunately, the father's emotional abuse of the daughter was not a one-time aberration. The mother also overheard the father call the daughter a traitor and a disgrace during subsequent phone calls. The mother observed the father's demeanor and lack of insight throughout the hearing before me. The reasonableness of the mother's belief was confirmed by the father's own evidence and presentation.

[131] Because of the mother's reasonable belief, she has not forced the daughter to go with the father. Neither did the RCMP, on the first day of the refusal.



[132] Having found that the denial of the father's parenting time was not wrongful, I must now determine the remedy. I exercise my discretionary authority by dismissing the father's application in the circumstances of this case. Restorative parenting time for past denials is not in the daughter's best interests for the reasons previously reviewed.

**[133] Did the father prove that child support should be varied prospectively or retroactively?**

*Position of the Parties*

[134] The father states that he proved a material change in circumstances because he bought a house and cannot afford to maintain the home and travel to Truro for parenting exchanges, while also paying child support. He therefore seeks to reduce child support and eliminate child support arrears. In support of his position, the father filed an undue hardship claim and relied on the summer shared parenting schedule. The father asked me to consider the following:

- Since the last order, he purchased a home. He cannot afford the mortgage payments and his monthly expenses if he is required to pay child support, including the arrears.
- He has a right to a home. The daughter has the right to live in a home when she is in his care. The daughter is attached to the home. The daughter helped him select the home.
- He had to pay for home repairs (a new roof and heat pump) and buy furniture and household supplies. In addition, he pays for the daughter's needs when she is with him.
- He spends \$240 per month on gas traveling to Truro for the parenting exchanges. He also incurs increased vehicle repairs.
- During the summer months, March break, and Christmas, the daughter is scheduled to be in his care 50% of the time.

[135] The mother objects to the father's request. She states that the father can pay child support. She asked me to consider the following:

- The father is the author of his own financial difficulties. He did not voluntarily pay child support, so substantial arrears accumulated. The MEP garnishment includes an amount to cover the monthly payment and periodic payments to pay down the outstanding arrears.
- The father should have used his \$15,000 human rights award to pay out the outstanding child support arrears. If he had done so, the garnishment would only have to cover the table amount.
- The father should not have purchased his home if it was beyond his financial ability, given his pre-existing legal obligation to pay child support.
- The father has not taken appropriate steps to increase his income or reduce his expenses.
- The father did not produce sufficient evidence about his actual expenses.

#### *Decision on Undue Hardship*

[136] In *Reid v Faubert*, 2019 NSCA 42, Bourgeois JA reviewed the two-part process applicable to undue hardship claims:

[45] Applying s. 10 engages a two-step process. Firstly, a payor seeking to rely on the provision must establish that the payment of support as otherwise directed by the Guidelines (ss. 3 to 5, 8 or 9) would create an undue hardship as a result of one of the non-exhaustive factors in s. 10(2). Only if the court is satisfied that an undue hardship exists, does it proceed to the second step, namely, a consideration of whether the payor's household standard of living is lower than the recipient's (s. 10(3)).

[137] In describing the second stage of the undue hardship test, Bourgeois JA stated:

[49] The second step engages s. 10(3) which directs a court to consider the respective standards of living of the payor's and payee's households. If the payor enjoys a higher standard of living, then the claim of undue hardship must be denied. Section 10(4) indicates that a court "may" use the Comparison of Household Standards of Living Test in Schedule II. Although the permissive wording allows a court to use an alternative approach, the Schedule is most commonly used (*Stoddard v. Atwood*, 2001 NSCA 69 at para. 12).

[138] Bourgeois JA also reaffirmed the heavy burden on the parent who seeks an undue hardship finding, including proof of excessively hard living conditions arising

from the payment of the *Guideline* amount: para 47, quoting *Ellis v Ellis*, 1999 NSCA 31; or proof that the claimant's difficulty, suffering or pain will be excessive or disproportionate as a result of paying the *Guideline* amount: para 48, quoting *Barrie v Barrie*, [1998] AJ No 460 (QB); or proof that the hardship is "exceptional", "excessive" or "disproportionate" in all of the circumstances: para 48, quoting *Van Gool v Van Gool* (1998), 166 DLR (4th) 528 (BCCA). Further, Bourgeois JA confirmed that the claimant must lead cogent evidence to "establish why the table amount would cause undue hardship": para 48, quoting *Van Gool v Van Gool*, *supra*.

[139] I find that the father did not meet the heavy burden of proving either part of the two-stage test. First, the father did not prove circumstances of undue hardship for the following reasons:

- The father's mortgage payment does not fit within any of the non-exhaustive s. 10 (2) circumstances, nor does it fall within an analogous category.
- The mortgage was incurred well after separation. The father was aware of his child support obligation when he financed the purchase of a new home. The father should have found alternative accommodations that fit within his budget – a budget which should have prioritized his child support obligation.
- Any financial difficulties that the father may be experiencing are caused by his poor financial planning and his failure to prioritize his child support obligation.
- The father has other options reasonably available to offset any financial difficulties that he may be experiencing. The father won't explore other options because he abhors paying the mother child support. Other reasonably available options include taking a second or part-time job; seeking a higher paying job given his stated educational background and employment experience; seeking out a boarder; or selling the home to acquire a more modest residence.
- The father did not produce cogent evidence of his expenses. Instead, his evidence was filled with vague and conclusory comments. He was non-responsive during most of the mother's cross-examination. Details and proof of his actual expenses were not forthcoming.

- Although the father pays the transportation expenses associated with his parenting time, he does not pay any s. 7 activity expenses. All s. 7 activity expenses are paid exclusively by the mother.
- The father received an award of about \$15,000 from his human rights claim. He used none of that money to pay the child support arrears.
- The father earns a reasonable salary of about \$73,000 that should accommodate his child support obligation.

[140] Further, the father did not prove the second stage of the s. 10 undue hardship test. He produced no household standard of living test. The father lives alone. The daughter lives in the primary care of the mother. There are no other adults living with the mother. The mother is currently on maternity leave. A second child now lives with the mother. The father's child support is not used to support the second child.

[141] The father's undue hardship claim is dismissed.

#### *Decision on Reduction during Summer Shared Parenting Schedule*

[142] The father's request to suspend child support payments during the summer months because of the shared, summer parenting schedule fails for two reasons. First, s. 9 of the provincial *CSG* states that a shared parenting determination is calculated over the course of a year. It is not calculated over a two-month period. Section 9 states:

- 9 Where a parent exercises parenting time with a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account ....

[143] Thus, s. 9 of the *CSG* does not apply to this case because the parties and daughter operate under a primary care parenting model, with the father exercising parenting time for less than 40% of the time.

[144] Second, for the father's benefit, and although *obiter*, I find that the mother uses the summer child support to pay for the daughter's back to school expenses, as well as her ongoing expenses.

#### *Decision on Retroactive Child Support*

[145] The father’s request to retroactively terminate child support arrears is denied because he did not overcome the applicable presumption. In *Colucci v Colucci*, 2021 SCC 24, Martin, J described the circumstances under which the presumption will be rebutted:

[138] Accordingly, in this third category of cases, the payor must overcome a presumption against rescinding any part of the arrears. The presumption will only be rebutted where the payor parent establishes on a balance of probabilities that — even with a flexible payment plan — they cannot and will not ever be able to pay the arrears (*Earle*, at para. 26; *Corcios*, at para. 55; *Gray*, at para. 58). Present inability to pay does not, in itself, foreclose the prospect of future ability to pay, although it may justify a temporary suspension of arrears (*Haisman*, at para. 26). This presumption ensures rescission is a last resort available only where suspension or other creative payment options are inadequate to address the prejudice to the payor. It also encourages payors to keep up with their support obligations rather than allowing arrears to accumulate in the hopes that the courts will grant relief if the amount becomes sufficiently large. Arrears are a “valid debt that must be paid, similar to any other financial obligation”, regardless of whether the quantum is significant (*Bakht et al.*, at p. 550).

[146] In this case, the father did not prove that he cannot or will not ever be able, even with a flexible payment plan, to pay the arrears. To the contrary, the father has an annual employment salary of about \$73,000. He also collected about \$15,000 from a successful human rights complaint. Further, the father has a home and a pension.

[147] MEP is collecting the outstanding arrears through a garnishment based on a payment schedule. The father’s budget is no doubt tight, but the arrears accumulated because the father, although having the ability, chose not to pay child support as required. The father, and not the daughter, is responsible for his current circumstances.

### *Summary*

[148] The father’s application to pay less than the table amount and to rescind all child support arrears is denied. The father will pay to the mother, the primary care parent, the table amount of child support, which will continue to be subject to automatic recalculation. As of August 1, 2023, child support is calculated on the father’s 2022 employment income, less union dues, for an income for child support purposes of \$72,141. Thus, the table amount due is \$617 per month. Further, I direct MEP to collect any outstanding arrears at a rate of \$100 per month until the arrears are paid in full.

## **Conclusion**

[149] In this decision, I varied the parenting plan based on two material changes in circumstances - the daughter's refusal to attend parenting time with the father and the father's failure to communicate respectfully and in a child-focused fashion. The variations were granted to reflect the daughter's best interests, after examining legislative best interests factors, and determining the cause of the daughter's estranged relationship with the father.

[150] I found that the father–daughter relationship is strained because of the father's rigid need to control; his volatile temper and inability to process anger in a healthy fashion; his failure to prioritize the daughter; his hatred of the mother; and his inability to communicate in a respectful and child focused fashion. Hopefully, with professional assistance, the father will make necessary changes to his parenting style so that the daughter will once again have a respectful, safe, and healthy relationship with the father. In addition, the mother and daughter were also directed to engage in therapeutic counselling. Therapeutic counselling is necessary to heal and improve the relationship between the father and daughter.

[151] I also dismissed the father's enforcement application. Although I found that the father was denied parenting time, enforcement was not appropriate because the mother held a reasonable belief that the daughter would suffer family violence, abuse, or intimidation if the parenting time was to be exercised. Restorative parenting time was not in the daughter's best interests.

[152] In addition, I dismissed the father's application to prospectively reduce his child support obligation. The father did not prove undue hardship. The father did not have access to s. 9 of the *CSG* because the parenting plan placed the daughter in the mother's primary care. Over the course of the year, the father had the daughter in his care for less than 40% of the time.

[153] Further, I dismissed the father's application to retroactively terminate all child support arrears. The father did not prove that that he cannot or will not ever be able, even with a flexible payment plan, to pay the arrears.

[154] The father will, as of August 1, 2023, pay the table amount of child support at a rate of \$617 per month, together with a further \$100 per month towards the outstanding arrears. The child support order will continue to be subject to automatic recalculation.

[155] The current application is now concluded, other than determining the mother's request for costs. I am concerned, however, that my decision will not end the litigation because the father confirmed his intention to make multiple variation applications until he achieved his goals. Such a misuse of judicial resources is unacceptable. Variation applications are meant to be heard if there are material changes in circumstances. Variation applications should not be used to intimidate and harass. Therefore, the father must seek and obtain leave before the court will entertain future variation applications. The parties are also reminded that ongoing litigation is not in the daughter's best interests; it strains emotional and financial resources.

[156] The mother is to provide her written costs submissions by August 8, 2023. The father's written response is due August 31, 2023.

[157] The court will draft the variation order.

Forgeron, J.

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<sup>i</sup> When making credibility determinations, I applied the law reviewed in *Baker-Warren v Denault*, 2009 NSSC 59, as approved in *Gill v Hurst*, 2011 NSCA 100. In addition, I made inferences in keeping with the law stated in *Jacques Home Town Dry Cleaners v Nova Scotia (Attorney General)*, 2013 NSCA 4.

<sup>ii</sup> "Family violence, abuse or intimidation" is defined in s. 2 (da) of the *PSA*, which definition includes a non-exhaustive list of examples.