

SUPREME COURT OF NOVA SCOTIA
Citation: *Archibald v. Rountree*, 2023 NSSC 323

Date: 20230904
Docket: PSA No. 117358
Registry: Halifax

Between:

Margaret Archibald

Applicant

v.

David Rountree (AKA Bradley West)

Respondent

Judge: The Honourable Justice Cindy G. Cormier

Heard: March 20, 21, 22, 23, 24, 31, 2023; April 6, 2023; and July 5, 2023, in Halifax, Nova Scotia

Final Written Submissions: September 29, 2023

Counsel: Margaret Archibald, self-represented
Meaghan Johnston for the Respondent

By the Court:

[1] David Gann Rountree (the father) is seeking in-person parenting time in the United States with the parties' children, G born in July 2014 and M born in April 2018 and his share of the equity in the home he shared with Margaret Anne Archibald (the mother) and their children. He is also seeking reimbursement for: his share of the value of furniture retained by the mother; money he alleges the mother took from his bank account and either distributed or kept without his permission; and his personal items, either retained or disposed of by the mother or her agent.

[2] The mother takes the position that there is ongoing risk with respect to the father having virtual contact with the children and significant risk with respect to the father having any in person unsupervised parenting time with the children, especially if the visits occur in the United States. With respect to property the mother claims: all the equity in the home the parties shared together with their children should be retained by her; she loaned money to the father which he ought to repay to her; she should not have to reimburse the father for furniture and/or personal items as he could have taken whatever he wanted from the home; and she followed the father's instructions with respect to withdrawing specific amounts from his bank account and distributing those amounts.

[3] The parties agree the mother shall have primary care of the children. The outstanding parenting issues include decision making and specified parenting time for the father, including virtual and in person parenting time.

The children's special needs

G

[4] G, the parties' eldest child was born early. Concerns have been raised about G suffering with symptoms of asthma and/or "lung issues" early in her life. More recently, or subsequent to the parties' separation, concerns have been raised about G experiencing anxiety and exhibiting emotional dysregulation.

[5] The father suggested and the mother denied that G was born prematurely or has been diagnosed with gastroesophageal reflux disease (GERD) as an infant. In response to the mother's denial the father stated:

...G was in and out of the hospital and losing weight for the first few months. She was also on a special diet just as M was. She had similar symptoms as M who was diagnosed with GERD. After M was clinically diagnosed with GERD, (the mother) and I recognized that both children had identical symptoms.

[6] The mother registered G for counseling in or around January 2020, stating that counseling was originally arranged to help G who was "adjusting to the move and our separation." G first met with a social worker, Eva, at the IWK in or around January 24, 2020.

[7] The mother has stated that G was doing well in school, that she is quite smart, and that the school does not have any concerns about G's behaviour at School A.

[8] G had attended camp for four or five nights in the summer of 2022. G is involved in sailing and swimming at the yacht club for 2 to 4 weeks in the summer. She had been involved in soccer for one year. She is involved in Brownies (Sparks previously), a music program, and she skis at Martock quite a bit.

M

[9] M was born premature in April 2018. The parties agree M suffered from GERD and lung issues. M was hospitalized for approximately two and a half months following her birth.

[10] In or around 2018, M was diagnosed with hearing loss. In or around October 2019, M had bilateral cochlear implant surgery. Approximately a month after M's surgery, M's cochlear implants were inserted while both parties were present. In addition, the father has stated his belief that M reads lips with 80% accuracy. Since M's move to Halifax, Nova Scotia, she has been involved with the Nova Scotia Hearing Association, the Atlantic Provinces Special Education Authority (APSEA), and she is under the care of the Ear Nose and Throat (ENT) clinic at the IWK Hospital in Halifax, Nova Scotia.

[11] In September 2022, M was diagnosed with Type 1 diabetes.

[12] M has attended full-time day care at Alegra.

[13] M was scheduled to begin ski lessons, but was not involved in any other organized activities. M was scheduled to start school in September 2023.

The mother / children's travel history

[14] The mother explained she is entitled to four weeks of vacation from her work. When she travelled to Mexico without the children, the children stayed at their maternal grandmother and grandfather's house with an overnight caregiver, BH or AM.

[15] She further explained that while the children lived in Ontario they frequently travelled to Nova Scotia, suggesting every five to six weeks while she was on maternity leave. More recently, both G and M went on a trip to Martock in February 2023.

[16] She indicated that if the children were ordered to participate in in-person parenting time with the father in the US, the mother would bring a trained childcare person with her to supervise the children, either BH or AM, who work with the girls now and have experience dealing with children with symptoms such as M's, related to a diagnosis of diabetes and experience assisting with M's

cochlear implants. She stated she had not thought of what their hourly rate should be.

Relationships and care arrangements before separation

[17] On or about November 26, 2019, the mother took the children from the parties' home in Milton, Ontario, and they moved in with the mother's parents in Halifax, Nova Scotia. Up until the mother left Milton, Ontario for Halifax, Nova Scotia, the father was heavily involved in the children's care. He suggested that at times he "provided for their needs up to 70 to 75 percent" of the time.

[18] The father's work schedule was more flexible than the mother's schedule. At times, the mother worked longer hours and/or more traditional work hours than the father. The mother also travelled for her work. Aside from the period after M's premature birth, when the mother stayed overnight with M in hospital for two and a half months, the father was fully responsible for the children's care between 7:00 pm and 7:00 am daily.

[19] When available, the mother took the lead in arranging and taking the children to most of their daytime appointments and to their daily extracurricular activities. The mother suggested and the father denied that his involvement with the children was limited to the evenings. He stated that among other things he picked the children up from school perhaps 30 percent of the time, that he took

them to events and to the park, he attended some dance sessions and swimming sessions, and he often made meals. Both parties acknowledge the father took on much of the housework and house maintenance.

[20] In support of his claim that he was heavily involved in the children's care, the father referenced a text he purported to have received from the mother in or around August 2019:

...there is a text from meg just from the beginning of August 2019 ... just over 3 months before she left and a few days before she left to go visit her family and got sick. Before her mom and I argued. That shows how much she appreciated my hard work and effort and how she will soon get a job and contribute more and how she had not been fair or treating us like a family (but that was because I kept asking her to drink less wine and help more).

I'd say that's proof she hadn't been doing her part and felt guilty. She had been drinking so much that I had to keep on her about it to slow down and that's why she keeps saying she hasn't been fair or treating us like a family. Also she was upset with me for not making more money and I had a short dry spell over the summer with work and she hadn't worked in 3 out of the last 4 years. Actually almost 4 out of 5 years.

2 years mat leave with M. 1 with G and two miscarriages that took another 6-8 months off work plus 2 months before M was born she was off work. So financially she was losing money and not taking responsibility for not earning and I kept telling her that we should downgrade for now. And that's the part of her text ... the part about the timing.

[21] In his letter to the Court on February 14, 2020, the father referenced the following email:

No one is more hard working than you are. Once I get a job we can plan how we need things to be. I've been 100% unfair. And not treating us like a family.

I'm sorry. 100% sorry. As if you have control over timing. I've acted like an idiot and cruel.

I don't know how you've been as patient as you have been.

The mother has claimed she did not write the above noted email.

Family Violence

[22] Sections 18(6)(j), (6A), (7), and (8) of the *Parenting and Support Act* require that I take into consideration the impact of any family violence, abuse, or intimidation including the nature, timing, frequency, harm caused, steps taken by the person(s) causing the family violence, abuse or intimidation to prevent further family violence, abuse or intimidation, and all other matters I consider important.

[23] In her Statement of Contact Information and Circumstances filed with the Court on January 24, 2020, the mother claims the parties separated on October 22, 2019. In evidence submitted by the mother in December 2022 the mother stated:

Brad was and remains abusive. He was verbally abusive early on, as per my previously filed affidavits.

...

The mother claims she left Milton, Ontario with the children at the end of November 2019 due to the father's long standing emotional abuse and the escalation of that abuse.

[24] The mother went on to state in a supplementary affidavit:

I recall two instances in 2019, in one Brad kicked an exercise ball across the room at me and another time threw a remote control at my head, hitting the wall. The threatening emails continue regarding court proceedings.

August 2019 1st disagreement between the father and his mother-in-law

[25] The father suggested the “real problem” between the parties began in August 2019 when the mother was hospitalized while she and the parties’ children were visiting the mother’s family in Halifax, Nova Scotia.

[26] The mother explained that in August 2019 she was hospitalized with idiopathic pancreatitis and diabetic ketoacidosis, and she was “very ill and weak.” The father suggested the mother’s symptoms were being exacerbated by the mother’s regular routine of drinking alcohol/wine.

[27] Neither party called an expert to offer an expert medical opinion about the mother’s health. The parties have agreed the mother will be the children’s primary parent and I do not have sufficient evidence with which to draw any conclusions with respect to the mother’s health and/or her drinking habits or how either may or may not relate to the mother’s parenting ability.

[28] While the mother was hospitalized in Halifax, Nova Scotia, the children’s maternal grandmother suggested the children should be with their father in Milton, Ontario to allow her to focus on her daughter’s (the mother’s) health crisis. The

father and the maternal grandmother did not agree about the timing and the arrangements to be made for picking the children up from Halifax, Nova Scotia.

[29] Given the timing of the notice of the mother's illness, the father did not feel he could safely leave to immediately drive to Halifax, Nova Scotia from Milton, Ontario. As a rule, the father did not fly due to concerns about his personal identification documents.

[30] The father proposed to the maternal grandparents that he would reconsider driving to Halifax, Nova Scotia the next morning after he heard more about the mother's condition. The children's maternal grandfather was unwilling to wait for the father to decide whether to drive to Halifax, Nova Scotia to pick the children up. The maternal grandfather arranged for the children's maternal uncle to accompany the children on flights to Ontario to be returned to Milton, Ontario with their father. Upon the children's return to Milton, Ontario from Halifax, Nova Scotia with their maternal uncle, the father cared for the parties' children for approximately eight days, or until the mother's return.

[31] Both the mother and the children's maternal grandmother observed how, despite the mother being hospitalized and in an intensive care unit in Halifax, Nova Scotia, the father had asked the mother to coordinate and pay for the children's childcare and for some of their "cooked meals." The father claimed he was unable

to speak directly with the mother while she was in the Intensive Care Unit as she was medicated.

[32] Whether or not the father spoke directly to the mother or he spoke with the children's maternal grandparents, I accept that at the father's request or at his suggestion to someone, either the mother or the maternal grandparents on behalf of the mother sent the father "\$1000 for a nanny" and the mother or her parents arranged and paid for some meals to be delivered to the father and the children at the parties' home in Milton, Ontario while the mother was ill and she remained in Halifax, Nova Scotia.

[33] I also accept the father had somewhat of a "dry spell" with his work the summer of 2019 and that the parties had previously and regularly arranged for meals for the family through a local food preparation service. Given the children's early return to Milton, Ontario, from Halifax, Nova Scotia, and the father's work commitments and/or other commitments while the mother and children were expected to be away in Halifax, Nova Scotia that summer, I accept that the father may not have been in a financial position to take on children's expenses which were usually covered by the mother, including childcare or groceries or food purchases.

October 2019 2nd disagreement between the father and his mother-in-law

[34] The father acknowledged the mother asked him to move to Halifax, Nova Scotia at various times. He claimed he would not agree to move as he had an established business in or around Milton, Ontario, (although as noted above he acknowledged “he had a dry spell” in or around the summer of 2019) and he was also concerned about moving as he believed the mother’s parents were not very fond of him.

[35] In or around 2019, the mother obtained employment in Halifax, Nova Scotia. Her banking records show she once again began receiving income from her employer in or around October 2019. Most likely, the father did not know the mother had accepted employment based in Halifax, Nova Scotia.

[36] The mother stated that the parties separated on or about October 22, 2019. I find the parties “separated” in or around the same time but after the mother accepted and started a new position based in Halifax, Nova Scotia. Around that time, the children’s maternal grandmother visited the family in Milton, Ontario, and she either directly or indirectly broached the topic of the family, the father included, potentially moving to Halifax, Nova Scotia.

[37] During that conversation with the maternal grandmother the father became angry, he spoke in an aggressive tone, and he yelled at the children’s maternal grandmother while the mother and G were also present. The father did not

immediately respond to the mother's or to the grandmother's requests for him to calm down or stop speaking in an angry tone, and the mother took G to another room.

[38] The father acknowledges that in October 2019 he did get into a disagreement with the children's maternal grandmother and that subsequently in or around **"November 10, 2019"** he sent a four-page email to the children's maternal grandmother explaining all the reasons why "I burst and let it out," ending his letter to the children's maternal grandmother with:

Meg is willing to leave me over this though, which I find to be unbelievable and now wonder how her love could be true in my heart of hearts and need to do my own soul searching.

[39] The father knew the mother and/or her family were upset with him about the events in August 2019 and about his behaviour in October 2019. I find that in October 2019 the father did behave in an aggressive and an abusive manner toward the maternal grandmother while the mother and G were present and that the mother removed G from the situation.

[40] The mother claims she became afraid of the father, and she told Janet Ward about her fears. That she then told Ms. Ward about "years of emotional, financial, and verbal abuse inflicted on her by the father." She stated that Ms. Ward "helped" her leave the abusive relationship. The father has suggested that at the

end of November 2019, the mother did not leave their home in a rush because she was afraid of him. He claims the mother suggested she was afraid of him to legitimize her plan to relocate with the children to Halifax, Nova Scotia without his consent.

[41] In his evidence the father indicated he had received a text from the mother the “night before she left”:

This next one is from the night before she left. Where I thought she wasn't leaving for another week she told me, and we had just talked about it and she said she had work in MS (sic) the new (sic) week (*these typos appear to be corrected in the numerous subsequent versions of the father's email(s) to the mother / court*) and wanted to know if she should take the kids for a pre-xmas visit. And after her mom and I arguing twice over the last two months and my constant begging Meg to help me with her family ... I wrote I don't want her to let her family erode her love for me that it hurts. But not as much as it (sic) continuing by letting them bad mouth me as they had been. And you see the response I get... yet Anthony states she left suddenly. She planned it and she knew she was leaving.

In many cases of abuse, the victims' surreptitious behaviour or presentation before they leave is part of a plan to leave an abusive relationship in a safe manner.

[42] If I accept the mother's version of events regarding the alleged abuse, then I have not accepted the father's version and vice versa. It is also open to me to believe some but not all of either the mother's or the father's evidence regarding past or ongoing abuse.

[43] Based on the parties' own statements, they agree their relationship had deteriorated before the mother left with the children for Halifax, Nova Scotia in late November 2019. Based on my review of the evidence, the parties began to struggle in their relationship in or around April 2019, or after August 2019, but definitely by October 2019.

[44] Despite their differences and/or the problems in their relationship, the parties remained living together with the children until late November 2019. The mother and the father did not have an agreement to live separately with the children or for the mother to relocate with the children to Halifax, Nova Scotia. The mother in this case is not an unsophisticated party. The mother knew that without a viable reason which would be accepted by a court, she could not relocate from Milton, Ontario to Halifax, Nova Scotia with the children without first securing the father's consent or an order from the court.

[45] The mother may have feared the legal actions the father may take if she told him: she had secured employment in Halifax, Nova Scotia; she planned to relocate with the children to Halifax, Nova Scotia; she would not agree to a shared parenting relationship; and she would not agree to his terms regarding property division and/or child support. However, even if in addition to legal actions the father may take, the mother also feared the father's reaction. The mother did not

remain or return to the children's home in Milton, Ontario after the father was detained by the Canada Border Services Agency.

[46] On balance of probabilities, I conclude that the mother planned to move to Halifax, Nova Scotia with the children well before the parties' relationship began to deteriorate to any significant degree, such as it did in or around October 2019. Upon the mother arriving in Halifax, Nova Scotia with the children she arranged to have her lawyer from Ontario send a letter to the father stating she would not be returning to Milton, Ontario with their children. I conclude that before he received that letter, the father was unaware of the mother's imminent plans, and he did not consent to the mother's plan to relocate the children to Halifax, Nova Scotia.

[47] Subsequently, the father did not agree to the mother's terms for separation which were communicated to him in early December 2019, and the mother made an application to the Nova Scotia Supreme Court (Family Division) in January 2020. The mother relied on allegations of emotional abuse, allegations of surprise and fear at learning the father's identity, and also relied on the not so inadvertent report of the father to the Canada Border Services Agency which resulted in the father being detained and his inability to care for the children as "viable reasons" for circumventing the court's jurisdiction in Ontario and to establish a new home for the children in Halifax, Nova Scotia.

[48] About the mother's allegation of emotional abuse, the father stated in an email dated May 13, 2020:

... there is no evidence other than Megs word. No smoking gun. No real evidence that can prove mental abuse on (sic) the first place...and we only ever argued at the last month anyway. But it was just Meg ignoring me and not caring while I went to therapy and tried to get her to go took (sic)... she has no real proof, other than her stating so.

...

To clarify, the court does not require a "smoking gun" to find on balance of probabilities that there was past and/or there is ongoing emotional abuse by the father.

[49] I believe the father when he claims the parties' arguments started in or around a month before the mother left with the children, and I find the mother left because she wanted to leave and move to Halifax, Nova Scotia, and not because of any abuse or because she was afraid for herself or the children being emotionally, physically, or sexually abused. I find the mother was most likely afraid that without the father being detained and deported, she would not be able to obtain his consent or a court order allowing her to move to Halifax, Nova Scotia.

Stakes were high and the risks were real

[50] In early December 2019, the mother's lawyer in Ontario sent a letter to the father stating it was the mother's intention to relocate to Halifax, Nova Scotia with

the children and not to return to Milton, Ontario. The children's maternal grandfather sent the following email to the father:

Sign the paper and Meg (the mother) will not tell your friends. Nobody report you or speak ill of you, especially to G.

There is a list of the things you can take with you.

Sign the document. You have an hour to sign and PDF it back to me. If not, we will have no choice but to let your friends know. We want to keep our word and believe you will too.

Sign off 100 children to Meg. No right to home No rights to children. Marriage is not authentic. No rights to financial support.

[maternal grandfather]

[material in brackets added]

[51] The father responded by email dated on or about December 8, 2019, with a response dated by the father as December 6, 2019, in part as follows:

I have read your response today, December 6th, and although I do not agree with all of what is said I have agreed to the following terms.

I agree to give up all claims to the property that we moved into together at 485 Pringle Ave #20 Milton Ontario L9T8A9 and any proceeds from the sale of the house are to go to Meg Archibald only, or her proxy.

The money is for Meg since she will no longer have my financial support to help with our children and the bills.

I will continue to keep the utilities on, until [the maternal grandfather] let's me know he has put them in their name.

I agree that Meg (Margaret Archibald) has the right to make all choices regarding the kids schooling and day care and she can do so without having to ask me and she will not require my signature to accomplish these tasks. Should she need it for any reason... just email and ask.

As to our two daughters.

The lights of my life.

I agree to sign over the right for Meg to change their last name to Archibald. This will help them assimilate to the new life without me (their dad) being present on a daily basis for the time being. **I am however saying this with the assurances**

from [the maternal grandfather], that they agree to let me have visitations to my kids at some point when things have normalized.

Meg is a good mother and I have faith and trust that she will make them happy and healthy.

I will miss them so very very much everyday.

I am sorry for my part in this.

Although I did tell Meg, I feel this is in the best interest of the kids for the time being.

I have been assured in writing from [the maternal grandfather] that they will **keep all info about me to themselves.** To not tell any of our friends and any of her family members or report me to the authorities for any presumed reason nor allow their lawyers or investigators or anyone at anytime from anywhere, to pass on the info to anyone ever, for any reason.

To keep it a secret and confidential between us alone, as promised and confirmed in writing and to **allow me to get on with my life and live where I am** as stated in the email from [the maternal grandfather] himself.

Any failure to follow thru on this promise will be met with equal release of personal, private and damning information and items.

I am very sad about this outcome but agree to the terms stated above and **will hold all parties responsible to their commitments stated above as well.**

House goes to Meg.

Meg to be the domiciliary parent.

I do however reserve my right as a father to be the sole caregiver for my two daughter(s) G and M West (soon to be Archibald) should anything happen to Meg that she isn't able to care for them.

Furthermore, I wish to be informed of milestones and events that take place in their life's (sic) so that I can be aware and in the future, perhaps present for.

I love my daughter (sic) will (sic) all my heart.

Brad West

December 6th 2019 (my emphasis)

[material in brackets added]

[52] The father was prepared to step back from the children for a period and allow the mother to have primary care of the children. However, in part he stated he would only do so if: the mother and her family kept his identity a secret,

allowing him to continue to reside in Milton, Ontario; he could have contact with the children “when things normalized”; and he would not have to pay child support if he signed over all property to the mother.

Detention December 11, 2019 – April 3, 2020

[53] After the mother left for Nova Scotia with the children, the father left the parties’ home on Pringle Avenue in Milton, Ontario, and he travelled to a friend’s home in Victoria Harbor, Ontario. Subsequently, on December 11, 2019, the father was detained by the Canadian Border Services Agency (CBSA) and Toronto Police Fugitive Squad and placed in immigration detention in Etobicoke, Ontario. for approximately 120 days. On April 3, 2020, he was released without supervision. He was deported from Canada, and he returned to the United States in or around mid September 2020.

[54] The father has claimed the mother “used my immigration status as a tool to abuse my parenting rights, to lie and to threaten me, and to steal our property and children.” Despite the mother’s denials of having any knowledge of who may have reported the father to the Canada Border Services Agency, I find it is most likely that the children’s maternal grandfather is who reported the father to the Canada Border Services Agency, and it was Ms. Ward who reported the father to the police.

[55] The mother followed through on her threat, through her father and her friend, to report the father to the Canada Border Services Agency and the police which was an effective way of separating the father from their children. The mother knew or she should have known a report to the Canada Border Services Agency would result in serious consequences to the father and to his ability to continue his relationship with the children.

[56] While the mother was certainly legally entitled to report the father to the Canada Border Services Agency, I find it is understandable that the father would be hurt, angry and frustrated by the mother's choice. The mother's suggestion that the father's anger and frustration following her unilateral move with the children to Halifax, Nova Scotia, and more specifically following the report to the Canada Border Services Agency, is evidence of his past or ongoing emotionally abusive behaviour, is not persuasive.

[57] There is little or no evidence of any disputes or ongoing conflict between the parties or any serious concerns at all before April 2019 at the earliest. The father has been described generally as being very engaged and willing to share his opinions and to help out. During the last few months of the parties' relationship, the father was trying to salvage the relationship while the mother had already made

her decision to move on. The father stated he attended counseling and he tried to encourage the mother to attend with him.

[58] No doubt there were verbal exchanges between the parties during those last few months and no doubt the children, especially G, were exposed to some arguments between the parties. Given the physical presentation of both parties, with the father being a much larger man with a deep voice, and the mother a smaller woman with a much softer voice, and given the father was trying to save the relationship and was likely frustrated and hurt by the mother's lack of engagement in trying to save their relationship, it is not surprising that in the final months G and M would have sensed or been exposed to some of their father's frustration, anger, and or hurt and not necessarily any/or as many strong feelings from their mother.

[59] Strong feelings at the end of a relationship, often coming from one person more than another, is not surprising. My concern is that the conflict has continued — that the real inequality of the parties' positions in relation to their relationships with their children, and the father's perception that the mother "has all the power" in the relationship with the children, continues to fuel the conflict. Although I am not entirely surprised by the father's presentation under these circumstances, I do

find that on balance of probabilities his intense negative emotions have at times been felt by both G and M during their virtual time with him.

Private pictures

[60] The mother alleged and the father acknowledged he threatened to send private pictures of the mother to her workplace, to her family, and to her friends. I would describe the father's behaviour as emotionally abusive toward the mother. The father did not send the pictures, and he has stated that he regrets threatening to do so.

[61] Although the father did not carry through on his threat of "revenge porn" I find it was emotionally abusive for him to threaten to do so, and it would have been both immoral and illegal for him to have done so. I understand the Crown attorney responsible for responding to the mother's complaint in this matter suggested the father was going to be charged in Canada.

[62] When cross-examined, the mother stated that charges in relation to the father's threats to send private photos of her to her work were stayed. She denied any knowledge that if charges were laid in Canada, the father would not be deported. She denied wanting the father out of the country. She denied she would pursue criminal charges against the father if he returned to Canada to visit the children.

[63] In lieu of sending the pictures, I find the father is now “holding the parties accountable” through threats to use all legal means possible for what he believes was the mother’s and her families’ failure to keep his true identify a secret and the resulting consequences to him including his inability to exercise meaningful in-person contact time with his children. The mother has described the father’s repeated and frequent legal demands to see the children to be “threatening and abusive.”

[64] Although family courts have repeatedly found it is not in children’s best interest to be involved in ongoing conflict, including long term court involvement, the father has vowed to pursue every legal recourse. Both parties are legally entitled to pursue every legal recourse. However, the ongoing conflict has not helped G and M or their relationship with their father.

Disinformation and false allegations

[65] It is not acceptable for either party to respond to a perceived wrong or a threat to their position by engaging in a campaign of disinformation and false allegations. Based on the totality of the evidence available to me, I find that when it became clear to the mother that the complaint to the Canada Border Services Agency and her allegations of past and ongoing emotional abuse by the father

would not erase the father from the children's lives, she began insinuating and suggesting inappropriate touching by the father.

[66] Based on the content and timing of the reports from the mother, I reject the mother's nebulous inferences of inappropriate conduct by the father, which I find were often representative of her or her parents' own beliefs about modesty or nudity and/or her or her parents' beliefs about how a male parent should conduct themselves while assisting young children with their personal hygiene. The mother's allegations of "grooming" or alleged sexual touching by the father have not been proven on balance of probabilities, and both her allegations and commitment to her personal beliefs have likely led to much of the anxiety exhibited by G.

[67] Even if there was more specific information about past inappropriate touching or behaviour by the father, the suggestions of inappropriate touching are clouded or would be extremely unreliable due to the manner and circumstances surrounding the initial disclosures and follow up interactions. Given my review of this matter, the evidence is very suggestive of coaching and/or fabrication and the reliability is extremely low.

[68] Based on each person's individual view of appropriate modesty and sometimes based on ideas about gender roles, opinions will differ when

considering who should bathe a child, how they should bathe a child, and/or who should help with a child's bedtime routine, or how they should help. For instance, there can be a variety of opinions about whether a caregiver should lie down on the child's bed to read, what they should wear while doing so, and if they should sleep with a child.

[69] I find G's mother's and her family's opinions and their negativity toward the father has most likely influenced G's memories of the care provided by G's father. As a result, I find there is no **reliable** evidence the father behaved inappropriately while caring for the children and specifically during G's bath or bedtime routine.

[70] I am particularly concerned about how the mother initially shared very vague concerns/allegations about the father's relationship with G, and how those allegations then morphed into more serious allegations each time the mother was told by child protection services that there was insufficient information for an investigation and/or when the father appeared to be one step closer to being awarded in-person parenting time with the children and/or when Veith House parenting was going very well, for instance in the Spring of 2022.

[71] As noted above, in August 2019, the mother and the children's maternal grandparents did not hesitate to purchase plane tickets for the children to be returned to be cared for solely by the father for up to approximately eight days.

The children have not had in-person parenting time with their father since November 2019.

[72] The mother claims that G has made disclosures beginning in or around 2021. Based on the mother's narrow views of what touching is acceptable when a child is being bathed and her narrow views on what a parent can wear if lying in bed with a child or sleeping with a child, and based on interviewers impressions, and confirmation through expert testimony about the potential effects of parents discussing their narrow views with a child, it find it is more likely than not that the mother's discomfort was communicated to G, who then developed anxiety in relation to the care provided by her father prior to the parties' separation.

[73] If a parent, caregiver, or therapist has concerns about a child's disclosure of touching for a sexual purpose, it is important to not react in either a positive or negative way to the child's disclosure and not to question the child further. The caregiver should then relay all the information as accurately as possible to authorities who will provide them with further direction.

[74] In this matter, there is significant evidence that especially G can sense the intensity of emotions from her mother, her mother's family, and her father. There is no question the ongoing conflict and the differences of opinion between the

parties have had a negative impact on G and possibly on M. The question is what can be done about it?

The Issues at trial

1. Decision making responsibility for the children.
2. Parenting: both in-person and virtual parenting; the children's last name; and sharing of information.
3. Child Support: table amount; special or extraordinary expenses; question of RDSP's; and the parties' incomes for child support.
4. Property Division: division of equity in home, contents of home, compensation for the value of the father's personal belongings; return of money "held in trust" by mother for the father, and repayment of an alleged loan from the mother to the father.

Court involvement (Interim Relief)

[75] On January 24, 2020, the mother filed a Notice of Application and Notice of Motion for Interim Relief, seeking an interim order dealing with custody and parenting arrangements for the parties' two children pursuant to the *Parenting and Support Act*.

[76] On February 14, 2020, the father wrote to the Court seeking to have the matter “cancelled outright” arguing he had only learned about the mother’s court application on February 12, 2020, and that he continued to be detained in immigration detention in Etobicoke, Ontario, and he could not properly present his case. In the alternative, the father sought an adjournment. He suggested his legal “issues back home were temporary” and they would be resolved in three (3) to four (4) months when he would be “released,” and he could properly represent himself in Court.

[77] On February 27, 2020, the Nova Scotia Supreme Court (Family Division) proceeded with the matter on an interim without prejudice basis finding the children’s primary place of residence to be Halifax, Nova Scotia, and that the Nova Scotia Supreme Court (Family Division) had jurisdiction to hear the matter. The Court granted a Without Prejudice Interim Order awarding the mother interim sole custody of the parties’ two children, and the father virtual parenting time with both children. Due to Covid 19 related concerns, the parties’ next court date was adjourned to June 18, 2020.

[78] On June 18, 2020, this matter came before me for the first time. Although I granted the father’s request for an adjournment to allow him to arrange for legal counsel, the father wished to express his concerns about his court ordered virtual

parenting time. I expressed that as a general guideline, given the very young ages of the children, I would expect contact more than twice per week and perhaps three times per week. The father was directed to file an affidavit outlining his concerns regarding his virtual parenting time.

[79] On July 31, 2020, both parties appeared with legal counsel, and they consented to Orders for Production for the records held by the IWK Hospital and by the Department Community Services – Child Protection. In addition, the mother requested, and the father refused to consent to the production of records held by the Canada Border Services Agency. I suggested the father request the Canada Border Services Agency provide a letter to the Court regarding the father's status and that he ask them to comment about his future mobility or ability to travel to Canada for in-person parenting.

Settlement conference

[80] On November 24, 2021, the parties reached the following agreement through a judicial settlement conference:

1. On Sundays, the father's virtual parenting time would be supervised through Veith House (a supervised parenting program);

2. The father would continue to enjoy two other virtual (Facetime) parenting times throughout the week: 30 minutes on Wednesdays at 5:30 pm; and 30 minutes on Fridays at 7:00 pm; and
3. The father would enjoy additional virtual parenting time scheduled on: the father's birthday; the children's birthdays; Easter; Father's Day; and other special occasions including but not limited to Christmas.

Motion for Parental Capacity Assessment with Psychological component

[81] On January 4, 2022, the mother requested the father participate in a Parental Capacity Assessment with a psychological component. The father would only consent to the Order if both parties were required to participate. The father was opposed to an assessment of his circumstances only. He also suggested that ordering a Parental Capacity Assessment would unduly delay the matter and there was no evidence to support the necessity of an assessment.

[82] The mother's motion for the father to be ordered to participate in a Parental Capacity Assessment with Psychological component was scheduled to be heard on March 4, 2022. However, the matter was adjourned to allow the father's new legal counsel to become familiar with the file. On May 13, 2022, I denied the mother's motion.

Response to Application

[83] On June 17, 2022, the father filed his Response to the mother's Application, seeking relief pursuant to the *Parenting and Support Act* looking to address the following issues: custody and parenting arrangements; parenting time; other; costs; and **property division** pursuant to common law principles of unjust enrichment/constructive trust.

Allegations of inappropriate touching

[84] In June 2022, the mother reported to various authorities and persons involved with G that in the spring 2022, G had made a disclosure to the mother of inappropriate touching by the father (prior to November 2019) and of note is that the mother gave the telephone to G and told her to pretend she was talking to a therapist while she was recording the child's comments. This seriously raises an issue with respect to procedural reliability as there were inadequate procedural safeguards present at the time the child was reportedly directed by her mother to provide the statement.

[85] The father vehemently denied all suggestion of inappropriate touching or touching for a sexual purpose. The father highlighted that the mother's report of a disclosure from G came after the mother chose not to participate in a Parental Capacity Assessment with a psychological component and after the Court had

denied the mother's motion to grant an order for the father to participate in a Parental Capacity Assessment with a psychological component.

[86] On August 05, 2022, the mother filed an Amended Notice of Application pursuant to the *Parenting and Support Act*, seeking to address the issues of: custody and parenting arrangements, parenting time (primary care in excess of 60%); child support involving unmarried parents / finding of paternity; table amount of **child support** payable from June 1, 2022; and costs.

[87] As evidence that the mother's report of G's disclosure was unfounded, the father highlighted that on September 18, 2022 the mother wrote to the father stating:

We will consider your offer to settle outside of trial.

To be clear you are starting by asking for the girls when ever school is not in session and \$100,000 cdn as well as the ability to call them via Facetime at any time.

Is that an accurate description of your initial offer?

[88] The father also highlighted that on September 21, 2022, while the investigation into the alleged inappropriate touching by the father was ongoing by police and/or child protection services, the mother responded to the father's offer with:

Brad,

We will consider your offer to settle outside of trial, as stated on the 18th (see below). Negotiations should start with finances, you asked for \$100,000 but also have offered to provide funds for the children for other things. Can you explain in detail what this means? Further, how fair is it that you have not paid anything for the past three years and wish to continue this while also collecting \$100k. Also you are threatening costs for multiple lawyers, this would come out of the \$100k obviously.

As for visitation times, frankly it is odd that you are first complaining that you have not seen them in 3 years when you know that for more than two years you have been incarcerated or behind a border that you cannot cross. Blaming this on them or anyone else doesn't sound like a good starting point for a fair and balanced discussion. **Secondly why would it be fair for them to be away for 100% of their non-school time? That is not a reasonable place to begin negotiations.**

If you are serious about negotiating please make another proposal. Something closer to 50% of their vacation time is a start.

But first, let's settle the finances. I am considering closing on this now with you but have questions as stated above. (my emphasis)

[89] And once again the father highlighted that while the investigation was ongoing into the mother's report of alleged inappropriate touching, on September 23, 2023, the mother wrote:

Usually the other parent is permitted to visit for some of these dates. In a normal divorce.

You aren't a victim when you claim you cannot see the kids on fathers' day, you are a victim of your past.

I would not be kind to say to you that sure you can have them for a weekend here and there or see them on fathers' day because you cannot do it. In most situations you would be allowed to.

Remember that, you claim that you could have seen the kids so often if only we cooperated but in fact you cannot come to Milton, Halifax or Canada. Be honest for once and claim some responsibility, it has nothing to do with what the kids or anyone else has done, your own actions have locked you away from where they were born. Start apologizing instead of threatening and blaming others for your situation.

You are negotiating with ultimatums, we have a counter offer prepared but every time I ask you to just clarify your offer you rant and threaten. The lawyers will have an offer soon.

Also, many of your holidays listed are not actually holidays. Use a better google search.

I agree with the father; the mother's emails do not suggest she is concerned about G's alleged disclosures, but suggests she is prepared to allow unsupervised contact.

Father's interim motion for 2022 Christmas Parenting time

[90] On November 29, 2022, the father filed an interim motion for in-person Christmas parenting time with the children in December 2022.

[91] On December 9, 2022, the mother's legal counsel filed a Notice Seeking to be Removed as Counsel of Record for the mother. The motion was granted on December 12, 2022.

[92] On December 21, 2022, the father's interim motion for Christmas parenting time was scheduled to be heard. The mother raised various concerns and the matter did not proceed on a contested basis. After some discussion, the parties reached various agreements pending further particulars to be discussed at a settlement conference scheduled in February 2023.

[93] The parties consented to the following Orders including:

- An Order for Production for the records held by the IWK Children's Hospital records for the parties' two children G and M (further to previous Order granted in August 2020);
- An Order for Production for the records held by School B, re: G;

- An Order for Production for the records held by the Department Community Services – Child Welfare, Halifax Office (further to previous Order granted in August 2020);
- An Order to allow the father access to third party information regarding the parties two children G and M;
- An Order for the mother to disclose certain financial information by January 9, 2023; and
- A further Veith House Order to allow for continued supervised virtual contact for the children and the father through Veith House.

[94] The parties agreed the father would be permitted to review updates to the children's medical records and to be in contact with the children's physicians and/or any other health providers to ensure the father had sufficient health information about the children to facilitate the preparation of a plan for the fathers' pending in-person contact with the children. The mother agreed she would provide the father's legal counsel with a complete list of the names and contact information for all the children's healthcare providers.

[95] The father agreed to pursue training with the children's health care teams or health care providers to obtain information and training to learn how to respond appropriately to the children's health needs. The parties agreed the father would need to become familiar with how to use and maintain an insulin pump, and to obtain general training with respect to responding to symptoms of diabetes.

[96] The parties consented to a new order being issued to allow Veith House staff to continue to supervise and facilitate the father's virtual parenting time with the children. In addition, the parties agreed to virtual access for Christmas Eve (12:00 noon) and Christmas Day (10:00 am).

[97] The parties agreed that in principal that they were prepared to arrange a trip for the children to have "day-time" in person supervised parenting time with the father in the United States. The parties discussed staying in a hotel near the Canada - United States border, on the United States side. The mother expressed a desire to have a person of her own choosing supervise the father's initial in person parenting time with the children.

[98] The father was asked to provide conclusive evidence (documentation) as proof that he was not permitted to legally enter Canada to exercise parenting time with the children. The parties agreed they would only contact each other about issues related to parenting the children.

Settlement Conference February 2023

[99] On February 16, 2023, the parties attended a settlement conference to solidify the particulars of a plan to allow the father in-person parenting time with the children in the United States. There was agreement that the parties may

consider inviting service providers to participate in the settlement conference. The parties did not reach a settlement.

[100] Unfortunately, the parties were unable to resolve the issue of the father's in-person parenting time at the settlement conference. Subsequently, the mother sought an adjournment of the final trial dates scheduled in March 2023. I found the prejudice to the father was too great and I denied the mother's request for an adjournment.

Preparation for trial

[101] The mother engaged new legal counsel in anticipation of trial and her new counsel requested an adjournment of the scheduled trial dates as he was not available to appear on the scheduled dates. I declined the mother's request to adjourn or to reschedule the matter.

There is no absolute right to counsel in civil cases and efforts to retain and instruct counsel must be exercised honestly and diligently and not for the purposes of delay.

The mother had notice of the trial dates since September 2022, she had legal counsel at that time who later withdrew as counsel of record in December 2022.

The matter had been ongoing since 2020, and she was put on notice that I was very unlikely to adjourn the matter. The mother ought to have known counsel she attempted to retain for trial was not available on those date and that the court was

unlikely / unwilling to adjourn due to the substantial ongoing prejudice to the father.

The parties' positions in December 2022 and at trial in 2023

[102] As noted, the matter was heard on March 20, 21, 22, 23, 24, and 31, 2023.

Further evidence was heard on April 6, 2023; and then further evidenced was heard on July 5, 2023 to address requests from both parties for the Court to consider new evidence.

The parties' positions in December 2022 and at trial in 2023

[103] The father asked the Court to address: decision making; parenting; child support; and property division.

[104] The mother suggested that although in December 2022, she had been prepared to develop an in-person, supervised visitation schedule for the father, that at the settlement conference in February 2023, they were unable to agree on the particulars of in person parenting time with the children in the United States.

[105] In her submissions following trial, the mother claimed her plan: “shifted post Karen Llewyn’s (sic) testimony and her recommendations” communicated at trial in March 2023.

Background

[106] The father acknowledged he had made a “mistake in Alabama 23 years ago.” His documents reflect that on April 16, 2003, the father was charged by the Tuscaloosa County Sheriff’s Office under the *Alabama Criminal Code* Section 13A-8-3 for Theft of Property in the first degree. Documents from the Canada Border Services Agency suggested the charges could be compared to charges being brought in Canada under the *Criminal Code of Canada* section 322(1): Theft Over \$5000.00.

[107] The father suggested charges were laid against him after he and his business partner, Mark Daggert, borrowed money. He acknowledged that instead of answering to the charges, he traveled to Canada under the assumed name of “Brad West,” and he stayed in Canada without authorization. The father highlighted that his “legal troubles had occurred 14 years before the parties’ first child, G, was born in 2014.” The father reported he is on probation and must pay restitution of \$200 per month. His total liability is \$180,000, including interest for the 17 years he was in Canada.

[108] The father acknowledged using several different names, including: “David Gann Patterson” the name he was given by his biological parents at birth; he began using his foster parents’ last name, “Rountree”, in high school and then he legally changed his last name to Rountree at the age of approximately 18; and that he

assumed his friends' name, "Brad West", when he entered Canada until his illegal status was revealed in or around December 2019. The father has stated that he now uses the name David Gann Rountree.

[109] The father provided documentation supporting his claims regarding his birth name and the court application changing his last name to David Gann Rountree. The father provided the court with a copy of the birth certificate of David Gann Patterson, a copy of a court order changing his name from David Gann Patterson to David Gann Rountree, and copies of what are purported to be his driver's licence and his social security number.

[110] The documents the father provided to the Court indicate he was born in Savannah Georgia to Ronald Bradford Patterson and Cheryl Anne Beierle (Patterson) on June 27, 1970, and that they gave him the name David Gann Patterson. Correspondence from Barbara Rountree (who testified at trial) and/or joint correspondence from Barbara Rountree and David Rountree support the father's statement that with the Rountree's blessing, on or about August 25, 1989, David Gann Patterson legally changed his name to David Gann Rountree.

[111] The father acknowledges he lived in a group home for a period until he was approximately 16 years-old and that Barbara Rountree and Dan Rountree agreed to take him into their home as a foster child. The father has stated that he now resides

at his foster sisters' home, and he is prepared to have his parenting time with the parties' children take place at his foster parents' home, Barbara and Dan Rountree, in their presence.

Knowledge of the father's identity

[112] The parties began their relationship sometime nearing the end of 2012 and they began to cohabitate in or around early 2013. The father suggested that after the mother became pregnant, the parties chose to cohabitate, first in the mother's home in Toronto and then after the mother had a miscarriage, the parties chose to buy a home together.

[113] The mother denied she knew about the father's real name, his past, or that she knew their "marriage" was not legal. In her affidavit filed January 24, 2020, the mother stated that the parties "exchanged vows" on April 11, 2018, in Oakville Ontario.

[114] The father stated that he told the mother about his past before their first child was born in July 2014, or he argued there is evidence to support the mother knew of his personal circumstances by November 1, 2016, or there is evidence the mother knew before they had a second child. He referenced emails from the mother to him about her desire to travel and his emails back to her citing his reluctance to do so because of his problem with identification papers.

[115] The father also claimed the mother knew their “marriage ceremony” was not legally binding. The father stated the parties only “pretended to get married” on April 11, 2018, but they were really sitting in their own living room in Milton, Ontario, on their new couch and later they went out to eat. He claimed that they did not go to Oakville, Ontario to be married in lieu of the Town Hall in Milton, Ontario, as it was not open for weddings on Wednesdays. He stated they signed the certificate with “fake witnesses” names.

[116] The father claimed they pretended to be married as family and friends would often ask why they were not married. Two days after the parties “exchanged vows” the mother had an emergency C-section with the parties’ second child, M. In any event, the parties agree they were never legally married.

[117] As further evidence that the mother knew of his “illegal status,” the father stated that the mother had: completed all her Ontario Child Tax Benefit legal forms as a single mother; completed her personal taxes as a single person; and completed a census stating that only she and their first child G were residing in the parties’ shared home. The father noted that the mother failed to file her T1 Tax and Benefit documents as directed by the Court in this proceeding, arguing that she failed to file them as she knew these would have provided evidence the mother knew about, and she tried to hide her “illegal immigrant common law husband.”

[118] The mother claimed she was not hiding anything, and she suggested that certain evidence, including an email(s) the father claimed he had received from before separation were fabricated by the father as he had access to all the mother's social media. She suggested the father must have sent her an email from her device and then deleted it from her device (see Exhibit D April 21, 2022, Affidavit).

[119] The father presented the Court with messages, cards, and or notes from the mother wherein the mother referred to the father as "Brad." She did not reference Bradley West's age (born in 1980) but rather she referenced the fathers' actual age (born in June 1970) on some of the cards or notes she had given to the father. Again, had the mother filed documentation as directed, it may have been of some assistance to the Court in determining who to believe.

[120] With respect to the father's birthdate, the mother did insert "February 16" in the corner of one card she gave to the father on his 41st birthday, and "February 2014" in the corner of another note wishing the father a happy 44th birthday. The father may have told the mother what his actual age was, but she sent birthday cards to the father marked "February" and not "June" when the father (David Rountree) was in fact born. After 2014/2016 other notes and cards from the mother to the father did not appear to be dated either February and/or June.

[121] I find it is more likely than not that the father did not initially share his actual birthday (day and month) or his actual legal name “David Rountree” with the mother. I find it is more likely than not that the father told the mother some information about his background including that his name real name was “David Patterson”, where he was from, and that he was an “orphan.” The name “David Patterson” would not have been associated with the father’s previous marriage or the father’s outstanding criminal charges in the United States.

[122] In cross-examination, the father admitted he had not told the mother or his mother and father-in-law that he was previously married, he had adult children, or about the details of his criminal charges. The issue of the father’s real identity and who knew about it when and what they did about it does go to the credibility of both parties.

[123] There is no question the father lied to many about his identity, and he fled his country of origin to avoid criminal charges. On the other hand, aside from the obvious crime of continuing to assume another person’s identity, there is no reliable evidence that the father was not otherwise a law abiding citizen, a very engaged father, and a loving husband until he “went through a bit of a dry spell,” had a falling out with his in-laws, and the mother obtained employment in Halifax, Nova Scotia where she had been wanting to move for some months or years.

Credibility

[124] In *L.M. v K.M.*, 2022 BCSC 689, the Court found:

Credibility and Reliability

[274] The credibility of the witnesses and the parties in particular is, as I have indicated, a critical issue in this case.

[275] Credibility or truthfulness and reliability or accuracy are related but distinct concepts. A truthful witness, for example, may be mistaken about what they recall.

[276] Credibility and reliability are not all or nothing concepts. The trier of fact **may believe some, all, or none of a witness's evidence and attach different weights to different part of their evidence**: *R. v. R. (D.)*, 1996 CanLII 207 (SCC), [1996] 2 S.C.R. 291, [1996] S.C.J. No. 8 at para. 93.

[277] The proper approach to assessing the truthfulness of any interested witness was articulated many years ago in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354, [1951] B.C.J. No. 152 (C.A.) at 357, with these words:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to **an examination of its consistency with the probabilities that surround the currently existing conditions**. In short, the real test of the truth of the story of a witness in such a case must be **its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions**.

[278] *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296 [*Stenner*], identified several factors that may be considered when assessing both credibility and reliability, which I summarize as follows: **the capacity and opportunity of the witness to observe the events at issue; the witness's ability to remember those events; the ability of the witness to resist being influenced by their interest in recalling those events; internal and external inconsistency in the witness's evidence, meaning did their testimony change between direct and cross-examination, between prior statements, their discovery evidence and their evidence at trial; whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence; whether their evidence seems unreasonable, improbable or unlikely, bearing in mind the probabilities affecting the case; and the witness's demeanour, meaning the way they presented while testifying**.

[279] Regarding the last factor, *Faryna* and other authorities have discussed the dangers of relying too heavily on the demeanour of a witness to determine their credibility, recognizing the risk of misinterpreting the testimony of the better actor

as truthful, and conversely, the poor presentation of an honest witness as deceptive (see: *R. v. Jeng*, 2004 BCCA 464 at para. 54; *R. v. Tyers*, 2015 BCCA 507 at para. 18).

[280] The law also prohibits unsupported stereotypical reasoning and speculation about human behaviour, from affecting the assessment of credibility. **It is now understood and well accepted that there is no typical victim or typical perpetrator or typical ways in which a victim or perpetrator will behave.**

[281] I also note the recognized need to assess the evidence of children somewhat differently based on their age at the time of the alleged events. In *R. v. B. (G.)*, 1990 CanLII 7308 (SCC), [1990] 2 S.C.R. 30, [1990] S.C.J. No. 58 at para. 56, Justice Wilson observed:

[56] ... While children may not be able to recount precise details and communicate the when and the where of an event with exactitude, **this does not mean that they have misconceived what happened to them and who did it.**

[282] Finally, I remind myself of the relationship between the civil burden of proof, on a balance of probabilities, and the assessment of credibility, as described in *F.H. v. McDougall*, 2008 SCC 53:

[49] In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine **whether it is more likely than not that an alleged event has occurred.**

...

[86] However, in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, **finding the evidence of one party credible may well be conclusive of the result because that evidence will mean explicitly or implicitly that the other party was not believed on the important issue** in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case. ...

Admitting and Assessing Hearsay Evidence

[283] I now turn to discuss the legal principles that govern the admission and assessment of M's sexual abuse disclosures, or hearsay statements. Primarily concerned with an inability to test out of court statements through cross-examination, the hearsay rule provides that out of court statements are presumptively inadmissible to prove the truth of what was said, subject to the traditional and principled exceptions: *R. v. Khelawon*, 2006 SCC 57. **The evidence of a child's disclosures of abuse may be admitted for their truth under the principled exception to the hearsay rule (*Khelawon* at para. 42). At common law, this exception requires that the evidence is both necessary and reliable.**

[284] Section 202 of the *FLA* provides that in a proceeding under the *Act*, **having regard to the best interests of a child, the Court may “admit hearsay evidence it considers reliable of a child who is absent”, indicating that the only criterion is reliability.** In any event, it is well accepted that the potential for significant harm or trauma to a child, particularly a young child, if required to testify about alleged abuse by a parent, is more than sufficient to establish necessity. In *R. v. F. (W.J.)*, 1999 CanLII 667 (SCC), [1999] 3 S.C.R. 569, [1992] 12 W.W.R. 587 (S.C.C.), the Supreme Court of Canada recognized that the reasons for the necessity may be diverse: “ranging from total testimonial incompetence to traumatic consequences to the witness testifying” (para. 36).

[285] The case law provides that **threshold reliability must be established before an out of court statement can be admitted for its truth, and if admitted, assessed for its ultimate reliability.** Although there is a distinction between **threshold reliability**, which concerns admissibility, and **ultimate reliability**, which concerns the degree to which the hearsay evidence is relied on or accepted, both must be assessed in accordance with the principles in *Khelawon* and *R. v. Bradshaw*, 2017 SCC 35 [*Bradshaw*]. Essentially, **all relevant factors must be considered, including the presence of supporting or contradicting evidence:** *Khelawon* at paras. 2 and 4.

[286] *Khelawon* and *Bradshaw* also discussed two types of reliability. The first, referred to in *Bradshaw* as **procedural reliability**, is established where there is no real concern about the truth or accuracy of the out of court statement because **adequate procedural safeguards were present at the time it was made: para. 31.** A statement made under oath or affirmation at a preliminary inquiry is an example. The second type of reliability, **substantive reliability, arises from the circumstances in which the statement came about or was made.** It may be established where there are “sufficient circumstantial or evidentiary guarantees that the statement is inherently trustworthy”, or the statement was made in circumstances where cross-examination would add little or be unlikely to change it: *Bradshaw* at para. 22 and *Khelawon* at para. 62.

[287] With respect to children’s hearsay statements, the indicators or factors to be considered in **assessing reliability** have been identified as including: **the timing of the statement; the demeanour of the child; their personality, intelligence and understanding; the child’s age, whether the statements were made spontaneously or in response to non-leading questions; the absence of a motive to fabricate on the part of the child; the absence of motive to fabricate or bias on the part of the person testifying to the child’s statement; the absence of suggestion, manipulation, coaching, or undue influence; and consistency over time:** *R. v. Khan*, 1990 CanLII 77 (SCC), [1990] 2 S.C.R. 531, 1990 CarswellOnt 108 at para. 30; *DAM v. DAT*, 2013 BCSC 259 at paras. 23-26; and *D.D.R. v. K.T.R.*, 2019 BCSC 1805 at para. 102.

Assessment of the Evidence

[288] I begin by observing that, although the parties attacked one another's credibility, and to a lesser extent that of some of their witnesses, they made limited submissions about how I ought to assess the credibility and reliability of any of the evidence. (my emphasis)

[125] The Court in *In L.M. v K.M.*, 2022 BCSC 689, also stated:

[268] Family violence, identified in s. 37(2)(g) and (h), is defined in s. 1 of the *FLA*. The **definition includes sexual abuse, attempts at sexual abuse, and for a child, direct or indirect exposure to family violence.**

[269] Section 38 requires the court to assess family violence, in this case alleged sexual abuse or attempts at sexual abuse, based on a range of considerations. Relevant here are the **nature and seriousness of the family violence, its frequency, whether the family violence was directed toward the child; the harm to the child's physical, psychological and emotional safety, security and well being as a result of the family violence; whether the child was exposed or directly harmed, and any steps taken by the person responsible to prevent further family violence from occurring.**

[270] Significantly, s. 37(3) provides that an **order is not in the best interests of a child unless it protects, to the greatest extent possible, their physical, psychological and emotional safety, security and wellbeing.**

[271] The parties dispute the burden of proof that applies to allegations of sexual abuse in family proceedings, with reference to on a number of authorities including *Leveque v. Leveque* (1983), 1983 CanLII 717 (BC CA), 54 B.C.L.R. 164, [1983] B.C.J. No. 2213 (C.A.). In *Leveque*, the Court of Appeal established a **real risk approach**:

[13] ... When the welfare of children is concerned, the question is not so much whether specific allegations of misconduct with a third party have been proven, but **whether on the whole of the evidence there arises a real risk to the children if access is given without protection against that risk.** The degree of risk can only be determined by carefully weighing all the evidence, and that must necessarily involve the credibility of the witnesses and the judge's assessment of the character of the parties....

[272] *Leveque* has continued to be followed since the enactment of the *FLA* (see for example *M.H. v. A.M.*, 2016 BCSC 1664; and *N.D.T. v. T.F.T.*, 2016 BCSC 134). In *N.D.T.*, a case that involved allegations of physical abuse and neglect, Justice Saunders also **interpreted the real risk approach as implicit in the best interests imperative** of s. 37(3):

[103] It has long been recognized, however, that in cases dealing with the well-being of children **a court is not obliged to reach a specific factual conclusions as to what has transpired while children have been in**

their parents' care, in making an order regarding parenting arrangements: see *Levesque* (sp.)... This principle is recognized implicitly in [s. 37(3)] of the *Family Law Act*, which provides only that the **best interests of a child be advanced through an order that protects a child's physical, psychological and emotional safety, security and well-being to the greatest possible extent.** This wording contemplates that evidence in family cases is often of a type that may be only suggestive of the truth, and that resists specific conclusions being drawn.

[273] *J.S. v. S.S.*, 2018 BCSC 355, determined that a two-stage analysis is required to assess “the impact” of the alleged sexual touching on the best interests of the child. **At the first stage, the court determines whether the sexual touching occurred on a balance of probabilities.** If it is not possible to make such a finding, then at the **second stage, the court determines whether there is a real risk that sexual touching has occurred or might occur in future** (para. 186).

Evidence

[126] The mother's concerns about the father have been the biggest barrier to the father's prospective in-person parenting time with the children after Covid 19 concerns were addressed:

1. The mother has suggested that due to the father's dishonesty about his identity (if not to her then to others) and because he fled the United States to Canada twenty years previously, he is not a good role model for their children, he continues to be a flight risk, and the children should not be sent to the United States for him to have in-person parenting time at his foster parents' home.
2. The mother suggested that G's anxiety is caused by the father's past and ongoing behaviour. She further suggested that G and or M are

afraid to visit their father for various reasons, including the father's intense personality and their previous exposure to past family violence perpetrated by the father. She claims the children do not trust their father due to inappropriate conversations he has had with the children and/or past behaviour the father has exhibited toward their mother or issues that have arose between G and M and their father during virtual parenting time.

3. The mother's suggestion the father was inappropriate with G: that G originally made a disclosure to her grandfather "that her father had often slept in her bed in his underwear under the covers, and the father's leg was heavy on her body and uncomfortable" or "his legs were wrapped around hers." Though the grandfather did not testify, G's therapist did discuss comments made by G in therapy about her father sleeping with her under her covers with his underwear on. G's therapist suggested there was an inconsistency with respect to what the father had stated to her about G suffering from GERD and about him sleeping with both G and M due to symptoms of GERD.
4. Subsequently, after being encouraged by her mother and asked by her therapist, and encouraged by her mother, G expressed other concerns

about her father including about him bathing her and about her father brushing her hair.

[127] Excluding the period when the mother stayed in hospital overnight with M for approximately two months after her birth, until November 2019 the father was responsible for both G's and M's bedtime routines and for responding to any of the children's needs (including special needs) between 7:00 am and 7:00 pm. The mother did not express any concerns about the father caring for the children before the parties started to argue shortly before they separated or while they continued to live in the same home while separated.

[128] I have considered G's therapist's concern about an apparent inconsistency with the father when she was speaking to him, with the father stating that both G and M had GERD but she later learned only M did. I am satisfied with the father's explanation that both he and the mother observed in retrospect that both G's and M's symptoms after their respective births were very similar and that M was eventually diagnosed with GERD.

[129] I find that G's alleged disclosure about the father falling asleep with her in his underwear under the covers, and that his leg was heavy on her was vague and does not constitute evidence of touching for a sexual purpose. It was G's maternal

grandfather who interpreted G's comment about her father as being of concern, yet he did not testify.

[130] I find the grandfather and family members most likely communicated their concern to G either at the time of G's comment or someone has communicated that concern to her since her comment was made. As has been communicated by Ms.

Rand:

I wouldn't say she is actively coaching the girls and I don't believe I said this. Getting a false narrative from children is incredibly easy, even without the intention of doing so. CFW Supervisor Ashley Vallee and I have talked about the fact that **(the mother) is fixated on the idea that G was sexually touched by her father when she wasn't, and her (the mother's) words and actions are having a significant impact on G.** During G's interviews, she talks about being bathed by her father with his bare hands. G says (something to the effect) my mom told me this was illegal. Her (G's) interviews were clear, **she was discussing regular bath time cleanings** and no sexual abuse was evident within her disclosure.

What is (or would be) concerning is the reports of emotional distress from G's doctor, who is seeking a specialist to potentially diagnose PTSD because she is so fearful of her father. So, what I explained to (the father) is that there is nothing to substantiate here, however, if there is evidence to suggest (the mother) is **continuing to expose G to this narrative that she was sexually assaulted by him,** we might have to investigate concerns of risk of emotional abuse / harm. (my emphasis)

[131] Besides the mother's comments about the father being overly interested in G's hair, in or around 2021 G then allegedly talked to her maternal grandfather about her father sleeping in her bed under the covers in his underwear. The grandfather reportedly found the father's choice to be wholly inappropriate although the grandfather did not testify about his beliefs or feelings. Further

questions appeared to have elicited a concern from G that on at least one occasion her father's leg ended up on her while he was asleep and it was heavy.

[132] Further information was reportedly relayed by G to her mother in or around the summer of 2022. The information related to the father bathing the child and cleaning the child's vagina and anus. Upon the child offering additional information to the mother about how the father bathed her, the mother suggested it was inappropriate, G was then formally interviewed. The interviewers found that G was consistent about her statement throughout the interview and that G did not elaborate or make any statement which suggested the father acted inappropriately or for a sexual purpose.

[133] I am not prepared to draw any conclusion suggesting the father had an unnatural interest in G's hair, or that he behaved inappropriately while he lay in bed with G or M during their nighttime routine or when the children slept with him or he fell asleep with them, or while the father was bathing the children. The preponderance of the evidence suggests that both the mother (once she started living with her parents again, but arguably not while she and the children were residing with the father) and her family have strongly held beliefs about modesty and gender roles related to caring for young children which have contributed to

them suggesting to the children that the father's past caregiving behaviour was wrong.

Witnesses

[134] The mother filed her witnesses' affidavits late. I allowed the mother to rely on the late filed affidavits of several witnesses and the father was permitted to respond by way of *viva voce* evidence.

Maternal grandmother of G and M

[135] G and M's maternal grandmother filed her affidavit late. With respect to the affidavit of the maternal grandmother – I did not consider comments made by her about Dr. Henry Mugga's involvement as he did not testify. In addition, I have not considered other comments made by her about other matters she did not have personal knowledge of and/or she was told by others and was intended to be entered for the truth of the statements.

[136] The maternal grandmother is retired from working as a registered nurse (RN). The children's maternal grandmother confirmed that the mother and the children have been living with her and her husband in Halifax, Nova Scotia, since November 2019. The grandparents have travelled with the children, including enjoying annual vacations with the children typically three (3) to five (5) nights travelling to Cape Breton several times, all over the south shore, going to beaches

in the summer and winter, and they have a sailboat and have gone day sailing with the girls.

[137] The maternal grandmother met the father in or around 2012. She stated he lied to her about some of his history, that he indicated to her he was in Canada on a work visa, he had never been married, he had no children, he had completed his degree, and he was an orphan.

[138] With respect to M's birth, the maternal grandmother acknowledged the father was often at the hospital, but she suggested the father was too involved. For instance, she objected to the father becoming involved in a conversation with the mother about breast feeding.

[139] She raised concerns about the father "raising his voice" with the registered nurse, the lactose consultants, and the physicians. None of the above noted persons testified and it was not clear what the circumstances were with respect to the father allegedly "raising his voice."

[140] Though she says she was uncomfortable with the father's presentation and how he was speaking with hospital staff or with the mother, the father filed patient reports dated April 13, 29, and 30, 2018 from the Milton District Hospital wherein Gayle Jansen, SW (social worker), stated in her conclusion:

...Father explained his concerns and identified he is worried. Both he and mom expressed satisfaction with plan of care proposed by Dr. El-Tobgy.

P: will check in with parents tomorrow about their worry.

[141] The maternal grandmother stated that she had observed it was the mother who took the children to their medical appointments and other outings such as taking G to ballet or skiing and that the father stayed home. The grandmother stated that it had not occurred to her that the father might be taking a break from attending appointments and other outings with the mother while the grandmother was visiting them in Milton, Ontario.

[142] She denied she was insistent about the mother moving with the children to Halifax, Nova Scotia. She stated that the mother was coming to Nova Scotia for a job, and she believed the father wanted to move to Nova Scotia as well.

[143] She stated it was the “case at the moment” that she and the father did not get along. She stated that they got along previously but “then didn’t after a couple of incidences.” I believe the incidences were those which occurred in August 2019 and in October 2019. She noted there were a few other situations: at G’s baby shower, and that there were “many issues after G was born.”

[144] The maternal grandmother’s version of the incident which occurred in October 2019, is quite different from the father’s. Specifically, she has stated she was having a discussion with the parties about their possible move to Nova Scotia

in 2020 as she understood the mother was being offered a new role and they were “looking at moving as a family.” The maternal grandmother claims that the father became “enraged at (her); he yelled at (her) in front of G, making accusations that didn’t warrant or hold any truth.” On the other hand, the father stated there was no argument that night.

[145] The father denied ever speaking with the maternal grandmother about a pending move to Halifax, Nova Scotia. He explained that the children’s maternal grandmother, often treated him in a condescending way, for instance asking him to clarify “what he brought to the table” in the relationship with the mother/her daughter and that she had a habit of calling him her “slave-in-law”. He stated he was tired of her doing it and he did raise some of his concerns with her and she responded by stating, “you think you’re a saint.” He claimed he was neither angry nor disrespectful to his mother-in-law when he spoke with her.

[146] The maternal grandmother stated that the mother asked the father to stop the discussion/argument, but he would not. Then the children’s maternal grandmother asked the father to stop, and he stated: “this is yelling” and “screamed in (her) face; it was so close, I could feel his saliva on my face.” She noted that the mother removed G from the situation/disagreement by taking G to another room.

[147] She said that following the disagreement/or argument in October 2019, when she was leaving the parties' home, she felt afraid for herself and for the mother. She stated that she took an Uber to the airport so the children would not be left alone with their father. She agreed that in October 2019 the father's anger was directed at her alone.

[148] The maternal grandmother stated that after the incident in October 2019, she and the mother communicated regularly by text, with the mother sending a check mark if she was ok. When asked if any text records were available, Ms. Archibald stated: "no, don't have the same telephone." I accept the mother was nervous about her plan to unilaterally leave with the children and relocate to Halifax, Nova Scotia without the father's consent or an order of the court.

[149] When the maternal grandmother was asked about any disagreements or concerns she had about the father prior to August 2019 and October 2019, she observed that the father appeared to not like it when the kids made noise, made a mess, or they did not go see him upon their return to the home. Although there may have been disagreements, and the mother may have had the intention to leave the father, there is no reliable evidence suggesting the father engaged in abusive or in any serious conflict before the isolated incident in dispute in October 2019.

[150] As noted previously, on or about November 10, 2019, the father sent his mother-in-law a detailed letter outlining some of his complaints about her behaviour and comments about or toward him. When the maternal grandmother was asked about the letter the father wrote to her in November 2019, she stated that she “agrees with very little of it” and that the father was “upset with her about a lot of little things.”

[151] I found the maternal grandmother to be a credible witness overall. Although I am concerned about how much the mother may or may not have told her parents about her choices and I am concerned about the maternal grandmother’s very real dislike of the father and / or her ability to see both sides of the issues and / or resist being influenced by her daughter’s and granddaughter’s interests, when she is recalling events. However, I did rely on her evidence that a dispute took place in October 2019 which made the mother, the maternal grandmother, and G uncomfortable.

Janet Ward

[152] The affidavit of Janet Ward was filed late, and certain portions of her affidavit were struck. Ms. Ward offered information about comments made by Tammy Fraser and other acquaintances of the parties and those persons did not testify. I have not considered those statements.

[153] In 2002, Ms. Ward and the mother became friends at their place of work, Smith's Medical. Ms. Ward stated that the mother "had always had a job that has required long hours and travel several weeks of the year." Ms. Ward stated that she spoke with the mother by telephone almost everyday and "they saw each other at work everyday."

[154] Ms. Ward recalled:

1. An incident from 2012 when the father had yelled at the mother regarding his access to the key to the home they were living in together at that time.
2. Following G's birth in 2014, Ms. Ward was visiting the parties' home and the father complained "inappropriately" that the mother did not participate in housework or cook.
3. In 2019, the mother told Ms. Ward that the father had continued yelling at her throughout the relationship, and she needed to get out.

[155] Ms. Ward stated that after the mother left Milson, Ontario, she "started looking into the father's background" and she subsequently contacted the police with the information she learned. Ms. Ward referenced documents and texts purporting to prove certain facts. However, Ms. Ward did not file those documents

with the Court, and I am not willing to consider her comments with respect to those documents.

[156] The father provided *viva voce* evidence and he recalled meeting Janet Ward at the mother's 35th birthday party. He denied he had the mother's house keys after they had just begun dating or that he yelled at the mother. He did not recall making comments about the mother not doing any housework or recall Ms. Ward being at the hospital, and he denied yelling at the mother throughout their entire relationship.

[157] The father acknowledged repeatedly calling Ms. Ward when the mother left their home in November 2019, a week before he understood the mother would be travelling with the children for an alleged "pre-Christmas visit." He explained that when he arrived at the parties' home in Milton, Ontario, nobody was there, and the mother was not responding to him when in the past she had always responded. In addition to calling Ms. Ward multiple times, he called others trying to determine where the mother and the children had gone.

[158] The father claimed he did not leave any information related to "Bradley Michael West" and/or the father's life in Tuscaloosa Alabama to be found at the parties' home by Ms. Ward, claiming that the mother "knew everything" and therefore she "knew where to start looking." I did not place a tremendous amount

of weight on Ms. Ward's testimony when she was merely repeating what the mother had told her about discord throughout the parties' relationship.

Kari Layne Hollman

[159] Kari Layne Hollman's (formerly Rountree) affidavit was filed late. She indicated she has a Master of Counseling Education degree from the University of Alabama, and she works supporting children and teens with disabilities in counseling and identifying community resources to support them and their families in independent living.

[160] Ms. Hollman and the father were married in March 2000 (almost 20 years ago), in Tuscaloosa, Alabama, when she was a student at the University of Alabama. When she met the father, she had a three-year-old son named J, and the father had a son, C, from a previous relationship. C lived with his mother in Louisiana and the father had been paying C's mother child support. Ms. Hollman suggested that C was later adopted by his mother's boyfriend and the father stopped paying child support for C.

[161] Ms. Hollman claimed the father adopted her son, J, and in January 2002 she and the father welcomed a son, N, who was born six weeks early. Ms. Hollman claimed an incident took place at the Neonatal Intensive Care Unit (NICU). She claimed that the father arrived at the hospital at about 2:00 am "intoxicated and

violent” and “he started an argument with (Ms. Hollman) leading to him grabbing (her) by the throat and holding (her) up against the wall” and that throughout their relationship she found the father to be “controlling and possessive.”

[162] Ms. Hollman stated that she and the father separated around 2003 and they subsequently signed an “uncontested divorce agreement” and their divorce was finalized in February 2004. She claimed she was granted sole custody of J (whom the father had allegedly adopted) and N, and that the father was ordered to pay child support.

[163] Ms. Hollman stated that the father “has never paid a full month’s child support.” She alleged that when she requested assistance from the state’s Child Support Agency the father became angry, that he threatened her, and then the Agency was no longer able to locate him.

[164] Ms. Hollman stated that the father had “filed a motion to set aside our divorce in an effort to avoid paying child support for the children, for which we are currently awaiting trial.” She suggested that the father “aggressively called my family to the point that my father had to change his phone number after receiving threats from” the father. Ms. Hollman’s father did not testify.

[165] In response to Ms. Hollman's affidavit evidence and her testimony, the father indicated that when he left the United States for Canada, taking on Brad West's name, he did not change his life history. He claimed that he and Ms. Hollman separated in 2001 and not 2003 and that they were separated before N was born and he did not attend N's birth. He indicated that he was 30 years-old at that time and he made "many stupid mistakes" and that was one of them. He further indicated that he did not adopt J or call J's birth father to threaten him, he does not owe child support to Ms. Hollman, and he did not apply to "set aside the divorce."

[166] The father denied presenting as controlling and possessive during his marriage to Ms. Hollman, stating that he did not prevent Ms. Hollman from spending money without his permission but he did expect they would discuss purchases other than everyday purchases. He said he did not tell Ms. Hollman to stop sending cheques for C as she was never any part of sending any money for C.

[167] The father denied Ms. Hollman's suggestion that his foster parents' historical home smelled or smells of bats and rodents. He also denied frequenting casinos when Ms. Hollman was pregnant. He stated that the nearest casino was hours away and he had no money or time.

[168] Ms. Hollman advised that some weeks after her divorce (2004) from the father she was advised the father had married Alyson Ann Owens who was reportedly pregnant with the father's child. Ms. Hollman indicated that after she and the Agency could no longer locate the father, Jamie Burns had advised her he was unable to locate Alyson Ann Owens or their son CO. Neither Alyson Owens nor Jamie Burns testified.

[169] Ms. Hollman went on to comment about "case documentation" related to the fathers' business and to reference the father's business dealings with her father and Russ Bailey. No "case documentation" was submitted and neither her father nor Russ Bailey testified. I am unable to consider that information.

[170] I am concerned about Ms. Hollman's ability "to resist being influenced by 'her own' interest in recalling those events." I am concerned that although there would be "independent or undisputed" documentary evidence available to support Ms. Hollman's version of events if in fact she was telling the truth, she failed to file any supporting evidence.

[171] Due to my concerns about reliability, my determinations about the parties' relationship and their parenting histories with G and M, and due to how old Ms. Hollman's evidence is, I attribute little weight to her evidence.

Mike Gorski

[172] Mike Gorski testified as a family friend of the father's who has known the father for ten (10) years. He described the father as "very caring, and compassionate" and as always prepared to "give words of advice." He observed the father was "a very hands-on father with his children." He stated he spent considerable time with the mother and that she often spoke about how "hard-working the father was round the house" and how "he took on the evening and night shift responsibilities for the girls."

[173] I accept Mr. Gorski's testimony. He had the capacity and opportunity to observe the parties with their children and there is no reason to doubt his ability to remember the events. His testimony is consistent with much of the other evidence submitted in this proceeding but supports the father's narrative with respect to the father's demeanour.

[174] He did not know about the father's "secret identity," but he has managed to accept the father's past and move on in their relationship.

Adrian Trott

[175] Adrian Trott described the father as his best friend. He stated that he had not known about the father's past. He described his family as being very close to the

father, mother, and children. He explained that he saw them one or two times per week and sometimes travelled with them.

[176] He stated that when the mother moved to Nova Scotia with the parties' children, she had cut off all contact between the parties' children and his two daughters, TT and MT. He stated that TT and G are the same age and had been "best friends" when they all resided in Ontario.

[177] He indicated he was at the father's home and heard the mother's father speaking with the father on speakerphone and that the mother's father did state that if the father did not sign over the rights to the house and the parties' children, that the mother would tell the father's friends about his illegal status in Canada.

[178] Mr. Trott also had the capacity and opportunity to observe the parties with their children and I have no reason to doubt his ability to remember the events. His testimony is consistent with much of the evidence submitted in this proceeding and supports the father's narrative with respect to the father's demeanour.

[179] He also did not know about the father's "secret identity," but he has managed to accept the father's past and move on in their relationship.

Allison Leamon

[180] Ms. Leamon was a police officer in Ontario between December 2009 and January 2023. She met the father in the Spring of 2014 and was the parties' neighbour.

[181] Ms. Leamon observed that the father had an outgoing personality, and she was introduced to the mother at a party the father had planned for the mother's birthday. She stated she spent a significant amount of her free time first with the parties and then with the parties and G after G's birth.

[182] She observed their "families celebrated occasions together, birthdays, Christmas, christenings, as well as routinely getting together for meals both in our homes as well as at restaurants." She had observed the father often spoke affectionately about the mother, and he was often tidying the house.

[183] She observed the mother acknowledged the father took responsibility for a considerable amount of the household chores; and the father was responsible for G's bedtime routine "bath, stories, bedtime, as well as all of the night feedings and settlings." She stated that once the parties' second child, M, was born the mother spoke about M's feedings being difficult and about "how great the father was with her (M) doing all the night feedings after he finished bedtime routines with G."

[184] Ms. Leaman noted that when G was six (6) months old, the father encouraged the mother to go on a trip to Jamaica with Ms. Leaman's family while he remained at home and took care of G. Ms. Leaman stated that after M turned one (April 2019) the mother stopped answering Ms. Leaman's calls.

[185] She stated she had not seen the family since a short visit in August 2019, when the father and G stayed at a campsite with her family and the mother and M stopped by for a short visit. Ms. Leaman stated that "in the 6 years that I have known the father, I have never observed him to be angry or aggressive towards his family or anyone else."

[186] Ms. Leaman agreed she had received a telephone call from the mother in October 2019 and the mother suggested the father was exhibiting "erratic and escalating" behaviour. She recalled the mother stating that the parties were "talking about marriage counseling." Ms. Leaman stated that "it didn't seem like an entirely genuine telephone call at that time."

[187] Ms. Leaman questioned the tone in the mother's voice, the way she was speaking, noting it seemed out of character for the mother. Ms. Leaman described her tone as "disingenuous." Ms. Leaman reiterated that she had not heard from the mother in some months, and she stated that she did not recall ever being told by the mother that she was afraid of the father. She agreed with the mother that marriage

counseling was a good idea, and she told the mother that she needed to get off the telephone.

[188] Mike Gorski, Adrian Trott and Ms. Leamon did not know about the father's "secret identity", but all have managed to accept the father's past and to move on in their relationships with him. I accept they all had a significant amount of contact with the father, mother, and the parties' children. These witnesses presented a very positive picture of the father's interactions with them, with the mother, and with the parties' children.

Barbara Rountree

[189] The father's adoptive mother, Barbara Rountree is retired from her position as a professor at The University of Alabama and she is the director of The Capitol School (private PK-12th grade school). She noted it was her thirtieth (30th) year to lead the school as director. She and her husband, Dan Rountree, have been married for fifty-three (53) years and they live together in the college town of Tuscaloosa. Dan Rountree is an artist.

[190] Ms. Rountree stated that in 1986, at sixteen (16) years of age, the Alabama Department of Human Resources "assigned" the father to their home as a foster child. While the father's birthmother was still alive, he had been removed from

her home when he was three (3) years of age and he had been living at a group home in Brookwood for some years.

[191] While attending high school at Central High School, the father used their last name and he later appeared before Judge Hardy McCollum and had his name legally changed to Rountree. She advised that the father attended the University of Alabama and later Jacksonville State University, but he did not complete his degree.

[192] Ms. Rountree explained that the father was the second eldest child in their family and that he has an older brother, two younger brothers, and one sister, all between the ages of 32-53. She indicated that the father had been “chief babysitter” for the youngest and at the family gatherings for holidays.

[193] Ms. Rountree indicated that while the father was in Canada, she kept in touch with the father by email. She understood he was healthy, earning a living painting homes, and had two daughters. She explained that she did not speak to the children as she and the father felt the children were “too young to understand” the father’s circumstances and choices.

[194] Ms. Rountree stated that she and her husband have supported the father since his return to the United States, welcoming him to stay with them, paying his legal

bills, helping him to build his credit, and helping him pay for courses. She understood the father had completed his “Contractor’s License, Commercial Applications License, and Pesticide Purchasing License.”

Business records

Agreements regarding admission of evidence

[195] The parties agreed all Veith House reports could be collated and filed upon receipt.

Motion to introduce new evidence

[196] In May 2023, an expert witness who had testified at trial sent correspondence to the Court to advise there was relevant new evidence the Court may wish to consider. The expert witness was directed to communicate with either party about any concerns they may have or about any motion to have new evidence considered.

[197] The mother sent correspondence to the Court on May 1, 2023 and on May 29, 2023 regarding additional evidence she believed I should consider before rendering my decision in this matter. The mother sought:

1. to admit as evidence further correspondence from Dr. Killorn dated April 14, 2023;
2. to have me speak directly with the parties’ eldest child G; and

3. asked me to deny the father's request to include new evidence from Kaleigh Rand, representative of the Minister of Community Services – Child Protection.

[198] The father filed a Notice of Motion for Introduction of Evidence pursuant to Civil Procedure Rule 82.22 (2) (Family Proceeding) seeking the following:

1. to introduce evidence from a representative of the Minister of Community Services – Child Protection, Kaleigh Rand.
2. to call Dr. Erin Killorn MD, FRCPC as a witness if her letters dated April 14, 2023 and April 24, 2023 were admitted as new evidence.

[199] I granted the parties' motions to file information from Dr. Killorn MD, FRCPC and evidence from Kaleigh Rand, a representative of the Minister of Community Services – Child Protection. Further trial time was scheduled in July 2023 to allow the parties to cross examine the witnesses regarding the new evidence.

[200] I did not agree to speak with G directly as there are formal processes in place to allow G to have a voice, for instance through her interviews with police and child protection services, and subsequently police alone, and there were other

opportunities for her voice to be heard through her therapist, Ms. Llewellyn and through Dr. Killorn.

**Department Community Services – child protection
Ashlee Vallee**

[201] Ms. Vallee was the first representative for the Minister of Community Services to testify at trial on March 23, 2023. She was the intake child protection supervisor who oversaw the file. She was aware of the allegations of inappropriate touching by the father which were allegedly made by G. Ms. Vallee confirmed G was interviewed twice and the file was pending closure.

Business records of the Department Community Services – child protection

[202] I reviewed the business records kept by the Minister of Community Services – Child Protection, including referrals from the mother and her father, the children’s maternal grandfather about the father allegedly behaving inappropriately with G, or “grooming” her and/or allegedly touching G inappropriately.

[203] On March 31, 2020, just prior to the father being released from detention on April 3, 2020, the mother reported to child protection services, in part:

The father has an unusual obsession with their five-year-old daughter, he use to shower with her, and he slept in the same bed as her until r/s realized there was a pattern and told him he had to stop. **R’s reported her daughter has never said anything to her** but she did tell ([the maternal grandfather] – as revealed by the mother as [the maternal grandfather] did not testify) that her “daddy would wrap his legs round her at night.

[material in brackets added]

The mother noted that the information was reported to her by her father about a month previously (in February 2020).

[204] On May 21, 2020, the maternal grandfather reported to child protection services, in part:

A very disturbing event happened one evening when I was saying goodnight to G after they moved into our home. She looked at me and said “daddy gets into bed with me in his underwear at night”. **I was shocked. Obviously G knew that was wrong.** What would possess a grown man to get into bed with his daughter in his underwear. He would also shower with G in his underwear. **This is frightening behaviour on so many levels.**

The maternal grandfather’s interpretation of the father’s alleged behaviour is just that, his interpretation which appears to be based on strong beliefs about modesty and gender roles, without any indication or evidence the father had a sexual purpose or intent.

[205] Then on May 28, 2020, the maternal grandfather contacted child protection services again, providing more detail, he reported in part:

In December 2019 G had stated some concerns that he felt as though should be reported to the Agency. One night G stated to him “daddy gets into bed with me with his underwear on at night. He stated that the child did not state any other details at that time. Then about a month ago (**which would be April 2020 – however, on March 31 the mother stated that her father had shared the information with her in or around February 2020**) G stated to him “when daddy gets in bed with me at night he wraps his legs around me.”

[206] On May 28, 2020, the mother contacted child protection services and reported in part:

...he is obsessed with G and not M by the way he talks to her, about her, and sends gifts and overall G's hair. The child requested to cut her hair off because it is believed she is uncomfortable with the father's obsession with it. It was advised that he will spend a majority of the time conversing with the 5-year-old child virtually about her hair. When the father resided with the children, it was reported that he would shower with G while wearing underwear just to wash and then groom her hair. It was advised that the father had to be asked several times to stop sleeping in the same bed with G...

It was stated that it is believed he is grooming G by the relationship he is attempting to build with his child.

[207] The mother and or her parents did not raise any of these concerns about the father before sending G and M back to be cared for solely by him for several days and up to a week in August 2019. Concerns were only raised after the mother obtained new employment in Halifax Nova Scotia, the father refused to move with her and the children, the father argued with the mother's mother, and the mother relocated with the children from Milton, Ontario, to Halifax, Nova Scotia without the father's consent or an order of the court.

[208] The Minister of Community Services – Child Protection had determined, based on the above noted referrals, that none of the referral information met the criteria for investigation pursuant to section 22(2) of the *Children and Family Services Act*.

[209] On June 29, 2022, shortly after I denied the mother's motion for the father to be ordered to participate in a Parental Capacity Assessment with a psychological

component, the mother contacted child protection services and alleged G made the following disclosure to her about the father:

...that on June 13, 2022 in the late afternoon her daughter G disclosed that her father when washing her would touch her privates and it made her feel weird.

[210] The Minister determined the referral information was too vague to warrant a child sexual abuse investigation as the only information reported was that G's father would touch her privates while she was being bathed. However, the representative for the Minister of Community Services suggested to the mother that if additional information was reported to suggest the touching was being done in a sexual manner, the file would be reviewed at that time.

[211] On July 8, 2022, the mother reported to child protection services that on June 29, 2022, she had only given limited information about G's disclosure "as she thought she would be able to share additional concerns when someone attended the home." She then stated she was calling to elaborate on G's alleged disclosure, stating G had actually said 2-3 weeks ago:

that when she would be in the bath or shower, her father would use his fingers to "clean her privates" and would actually put his fingers inside". R/s stated that she had additional information to share about this in that the father often presented as obsessed with G. She stated that the father would be focused on G's appearance and would take her out of school for hair appointments. When she was a baby, he would change her excessively through the night which she felt was odd. He would also get in the shower with G.

... that recently G disclosed that she **didn't like it when her father would get into bed with her without his pants and shirt on** (this is different from the

information previously shared). G stated that his leg would be heavy as he had it over her while not wearing pants. Prior to r/s leaving for Nova Scotia, the father was sleeping in a separate room and he would get G out of bed and bring her down to his room in the basement...

...additional comments recently made by G include her asking to not have a boy babysitter as she was worried about bath time as well as a comment about how her father said it was ok if boys see her naked. (my emphasis)

The Department of Community Services developed an investigation plan in response to the mother's new information.

[212] On August 3, 2022, a police Detective and Alex Nelson, an intake social worker interviewed G during a joint protocol interview. They reported G stated that:

... her father bathed her and when he bathed her he would use soap on his hands and rub it all over her body including her private parts. G made no other disclosures.

[213] When questioned the father stated he would sleep in the girls' beds when they were two (2) years old as any parent would do when they came to his bed in the middle of the night but nothing inappropriate had ever occurred. The matter was not pursued by child protection services.

[214] On September 22, 2022, the mother contacted child protection services stating she had been directed to call them again if her daughter made any additional disclosures. The mother stated:

G has been attending counseling through victim services and she had attended one of her sessions with her three weeks ago at her daughter's request. The mother reports that G shared during counseling and to her that her father "put his fingers in her privates when he bathed her" and "he put a bar of soap up her butt when he bathed her". The mother explained that G was interviewed by police once and she did not go into detail of her experiences as she was embarrassed therefore she only told officers that the father had touched her privates while bathing...

[215] On October 4, 2022, the mother reported having met with the pediatrician, "who was diagnosing G with PTSD" (the pediatrician has stated she is not qualified to diagnose anyone with PTSD). She stated that G had made further disclosures to her therapist about her father putting a bar of soap up her bum.

[216] On October 19, 2022, Kaleigh Rand contacted Dr. Killorn who confirmed G had stated to her:

that while her father was bathing her he was touching her and had inserted soap into her anus. G told her that she would tell her dad that it stung or hurt, he would say I would get use to it. Dr. Killorn voiced concerns about G having PTSD. **She stated she is not equipped to diagnose this and would be referring her on to a psychiatrist.** Dr. Killorn stated that one symptom she notes in G is that G reported that people with loud voices were reminding her of her dad...

...

She stated G had also reported other general details around bath time. Reporting her father would insist on brushing her hair until it (sic) dry...that G was open to talking about it and mom prompted G to start.

[217] On October 21, 2022, the police completed a second interview with G after the joint protocol interview had been completed previously in August 2022, they reported the following to child protection services:

...she only told him that her dad was washing her with the shower head and the bar of soap. He stated that he then directly asked about the bar of soap and if it was ever inserted into her anus and she stated no.

Kaleigh Rand July 2023

[218] Ms. Rand was called to provide additional evidence and she testified in July 2023. She advised that on June 5, 2023, the father was advised that the allegation of abuse (touching for a sexual purpose) was not substantiated by the Minister of Community Services – Child Protection, and the Minister would be closing the file. Further, Ms. Rand advised the father that if allegations of abuse continued to come forward from the mother, that the agency may look at the possibility of investigating ongoing risk of emotional harm caused by the mother.

[219] Ms. Rand stated that G was interviewed the previous summer and at that time mom had alluded to their being a need for child protection services to confirm the allegations before a trial went ahead in September 2022. Subsequently Ms. Rand learned there was no trial proceeding in September 2022.

[220] Ms. Rand explained they are concerned about G as they found her to be “very bright” and it was clear to them that G had been talking about her father bathing her and not about her father touching her for a sexual purpose. The agency had determined there is a risk the mother was sharing/creating unfounded fears with G.

[221] Ms. Rand reported that when the mother initially called the agency, she called with a concern that G had disclosed that her father had washed her with his bare hands. Then some time later the mother called the agency indicating G had disclosed that her father was putting soap up her bum, and her father made her go on all “fours” while he cleaned her. However, when the police interviewed G, she talked about her father wiping through her butt cheeks “like a credit card.”

[222] That on or about October 3, 2023, the mother stated G had made further disclosures, indicating to Dr. Killorn that her father inserted soap into her anus. G was interviewed on October 21, 2023, and when asked directly if her father had done so she stated “no.” Ms. Rand stated that the agency determined there was no indication the father had touched G for a sexual purpose.

Karen Llewellyn, MEd, CCC, NSRCT

[223] Karen Llewellyn, MEd, CCC, NSRCT, Kachina Health Associates, was qualified as an expert witness with respect to “trauma related work with people of all ages, including related to domestic violence.”

[224] Ms. Llewellyn first prepared a report dated November 2021, detailing her work with G starting in July 2020. At trial, Ms. Llewellyn clarified she first spoke with the mother during an intake session on July 7, 2020, and then again to set up a time before beginning sessions with G in or around September 2020. Counseling

sessions with G were virtual from G's home and were arranged through Victim Services. Ms. Llewellyn confirmed she "spoke with the father at length" on August 10, 2020, and at that time she was aware he was being or had been deported.

[225] Ms. Llewellyn acknowledged there were sometimes issues with connection and/or video during her virtual sessions with G. She agreed the quality of the video was not always great. Ms. Llewellyn observed G appeared comfortable and engaged on camera. She stated that typically sessions were an hour long, but that G might run off to get something to show her. Ms. Llewellyn offered that they did a lot of art therapy and G was "pretty involved."

Llewellyn November 2021 Report

[226] In her report dated November 2021 Ms. Llewellyn, MEd, CCC, NSRCT commented about her sessions with G, explaining she first met with G virtually beginning in the fall of 2020 and then on a weekly basis until December 2020, when sessions were cut back to a couple of times per month as G had entered the IWK Health Centre program for children with anxiety. Ms. Llewellyn resumed sessions with G virtually with one session in September 2021, two sessions in October 2021, and another session in November 2021.

[227] Ms. Llewellyn noted that the mother initially represented that she was worried about all the changes with G, and how G felt being separated from her father. That initially G stated she was missing her father. Ms. Llewellyn stated that when G was prompted to talk more about missing her father, G stated she missed their cuddles every night.

1. When asked to elaborate about their cuddles G stated that her father would cuddle with G under the covers. When asked, G specified that her father cuddled her under the covers while wearing his underwear and he would remain in her bed all night. There was no confirmation that the usual procedural safeguards were present when G made the statements she did.
2. Ms. Llewellyn reported that G stated that the only thing she worried about with respect to the cuddles with her father “was that his leg was very heavy”. G explained that her father would sleep with his leg draped over her and the weight of it would wake her up. G also claimed her father would only sleep with her and not M.

[228] Ms. Llewellyn noted that G’s statement about the father only sleeping with her did not correspond with what the father had stated to Ms. Llewellyn about sleeping with both girls all night because they had GERD. I have already commented about this issue, I have accepted the father’s explanation about the discrepancy with what he told Ms. Llewellyn.

Family violence

[229] Ms. Llewellyn stated that in addition, G had stated she remembered her father would often be on one level of their house while she would be playing on another and that sometimes when she was playing, she would forget to be quiet, or

she would laugh too loud or start singing and this would anger her dad and he would yell at her to be quiet. In and of itself, without any further context such as whether M was napping or whether it was bedtime and the father was trying to settle M or what was happening when the father called out to G, the comment about being directed not to play loudly is insufficient to determine that the father's request or behaviour was unduly harsh or abusive in any way.

[230] Ms. Llewellyn stated that G claimed that on many occasions her father yelled, and she was scared when he was angry. G recalled an incident when her parents fought, and she was directed to go to another level of their home. G expressed that she was frightened at that time. I find G was most likely recalling the incident in October 2019 when her father did behave in an inappropriate and abusive manner with G's maternal grandmother. I do not doubt that G remembered that incident and I believe she was present, and she was afraid.

[231] Ms. Llewellyn has stated that G has expressed concern that she would not know what to do if her father got angry while she was with him, and she would be scared. I am prepared to accept that based on the incident in October 2019, and other "arguments" the father acknowledged having with the mother during their last month(s), and due to the father's reactions when virtual parenting has not gone

as planned (which will be addressed later in this decision) G is likely worried about her father's anger.

[232] However, the Veith House visits allowed a slow reintroduction of the father, and the plan to start with in person visits slowly: the general plan to start first with short day time visits in a neutral location with a supervisor identified by the mother, then entertain the possibility of further relatively short day-time visits supervised by the father's foster parents, and the possibility of overnights in the future, were intended to reassure G and M. The parties appeared to agree in principal but were unable to reach agreement on the terms, including timing of the visits. Veith House reports indicate the father was attempting and succeeding in tempering his reactions and behaving in a child focused manner.

[233] I am uncertain what Ms. Llewellyn intended to imply when she quoted G as stating: "for five minutes in the morning I love him, but the rest of the time I don't know why he's my dad." Children often behave in an egocentric manner and will often do what they believe is easiest and most fun. The mother's role in reassuring the children and talking about how visits with the father will be fun is essential in addressing the children's anxiety. It is in G and M's best interest to be given an opportunity to mend their relationship with the father while any future risk is

adequately addressed through checks and balances including cooperation between the parties and adequate support and supervision being in place.

Telling G about his real identity

[234] Ms. Llewellyn noted that she had spoken to the father about telling G a little bit at a time about his real identity and his life before her. She had suggested to the father that the information might be “confusing or frightening” to a six-year-old.

[235] Ms. Llewellyn understood that during the next virtual call the father had scheduled with G, he “told G that basically everything G thought she knew about the father was not true” which Ms. Llewellyn felt was very confusing and distressing for G. She observed that G later stated to her that “he’s been tricking us.” On the other hand, the father has stated that the mother told G she would “never live with daddy again,” suggesting the risk was too significant.

[236] Given the father’s belief that the mother is attempting to alienate the children from him, it is somewhat understandable that the father was trying to “normalize” the situation as quickly as he could. Although I understand the father’s motivation and his frustration, I agree with Ms. Llewellyn’s assertion that the father has not always been able to follow direction and to approach the problem in a child centric manner.

Discussions about visits and court

[237] Ms. Llewellyn was advised that G stated her father told her she would be going to visit him “next summer.” Ms. Llewellyn advised that she understood that the father’s suggestion threw G “into a panic.” I find the mother’s reports of G’s reactions to her father are problematic as the evidence suggests the mother is mostly to blame for G’s anxiety in relation to the father exercising in-person parenting time with the children.

[238] Ms. Llewellyn stated that when she spoke with G, G stated “this is not happening (in relation to the visit to the US), we are never going there to visit him. If he wants to see us, he needs to come here.” Ms. Llewellyn further stated that G was “adamant” she “wouldn’t see him without her mother being there with her.” Based on the totality of the evidence, it appears that although G may truly feel that way, those feelings most likely stem or originate from the mother’s fears which are not based in any reliable evidence before me.

[239] I am not convinced the mother is not responsible for G taking the position that she will not see her father in the United States or without her mother present; or in the alternative, that the mother could not reassure G about travelling to the United States and seeing her father with another supervisor present.

[240] Ms. Llewellyn opined as follows:

I think the shock of finding out that her dad had been living a lie was too much for her to make sense of and ultimately this has further eroded her trust in him and what he tells her. G no longer feels she can believe what he tells her as **he has not been fundamentally honest with the family** about who he was and where he came from. (my emphasis)

Once again, the children's reintroduction to in-person time with the father was never intended to happen overnight and without supervision.

[241] To reassure the children, the intention was always to proceed with caution.

Reintroduction began with virtual parenting facilitated through the mother and then adjusted to virtual contact through Veith House. Veith House reports were generally very positive. Certainly, at times the father could have said or done something differently, but he was doing very well overall, and G demonstrated she was benefiting from her counseling and able to raise her concerns with her father.

Virtual contact

[242] Ms. Llewellyn commented as follows:

In counseling I determined early on that G needed support to develop healthy boundaries in her relationship with the father. She was very timid in the beginning, frightened to even imagine having her own voice around him. There were many things about the phone calls that were bothering her, like when he got angry and yelled, called her mother or grandparents names, and/or threatened family members. **These things were happening on a regular basis on the calls** when anything was brought up about the calls, you could watch her visibly shut down. G's confidence was very low and her **method of dealing with her parents arguing and her father's anger was to become very compliant and placate him**. Even though she was no longer living with him, she was

continuing this behaviour on the calls and this was further impacting her confidence and sense of resiliency. (my emphasis)

[243] Ms. Llewellyn's comments about the father getting angry and yelling on calls repeatedly is information I believe Ms. Llewellyn mostly received through the mother or through G, after the mother spoke with G about the issue and then the mother relayed the information to Ms. Llewellyn or G relayed the information to Ms. Llewellyn with the mother present. However, I understand Ms. Llewellyn has also listened to some of the father's video calls with the children and she had concerns about the father's tone and some of his comments, especially those he made early on. I agree the father can present with a forceful and angry tone. However, he must respond to the children's needs which will likely require him to use a less authoritarian tone and learn to use more of an authoritative tone with the children.

[244] Given the circumstances, it will be important for the father to continue to learn new skills and techniques to remain connected with the children despite the ongoing distrust between the parties. Compromise and discussion will be key, not continued litigation. The father must allow the children freedom to make what he feels are mistakes and the freedom to make those mistakes without judgment within certain parameters.

[245] Ms. Llewellyn offered the opinion that the father did not have the same relationship with M as he had with G, and that this appeared to bother G a lot. Ms. Llewellyn further observed that she had reviewed a tape of M's virtual birthday call with the father, when M first appeared alone. Ms. Llewellyn noted that although M appeared excited about the call, the father "noticed that G was not on the call, and this angered him" and then Ms. Llewellyn observed that G joined the call to placate the father.

[246] Ms. Llewellyn commented:

I thought the whole scene was very telling as to the dynamics in their relationship and the role that G plays in trying to keep her father from becoming angry. She has a very parentified position which is not appropriate for a child her age. On many occasions G has said things like; "doesn't he know he has two children".

Ms. Llewellyn suggested there have been "many times" that "Brad" asked to have M removed from a call because she was being too loud, or M was upset, and that G has had to take the call to another room and continue, "which upsets her as well."

[247] Referring to her initial report from November 2021, Ms. Llewellyn observed that G has stated that the father "doesn't he know he has two children." At that time, G was 6 years old. Ms. Llewellyn did not feel G had heard the comment from another adult, but observed G was really angry with her father after that birthday call (April 13, 2021).

[248] Ms. Llewellyn noted she had had “lots of discussions about fairness” with G. She indicated that G had observed she was always getting preferential treatment from her dad and that G expressed “lots of feelings” about her relationship with her father and M’s relationship with him, and the differences.

[249] Ms. Llewellyn has stated she was aware the mother has ended calls, and she has no issue with the calls being terminated if the call is going badly. Ms. Llewellyn acknowledged that as an alternative, at one point she had suggested a five-minute rule. That if G was upset, she could leave the room for five minutes and the father would have five minutes to regroup, to cool down, and then an opportunity to continue the call. The mother has stated that per my direction, she did not continue to end virtual calls with the father.

[250] Ms. Llewellyn reported that G wrote a letter to her father expressing her concerns about the calls. Ms. Llewellyn stated: “I was told that he didn’t believe that G wrote it, and G was upset.” Given the circumstances and the distrust between the parties, I do not find it extremely surprising that the father would be “upset” to receive such a letter purportedly from G.

[251] My understanding is the father did not have the benefit of advanced notice that G’s therapist had suggested she should draft such a letter and he did not have an opportunity to discuss the letter with the trained therapist who suggested or

supported G in doing so. Through my review of Veith House records, I conclude the father is either responding to Ms. Llewellyn's recommendations and/or also receiving advice from a therapist or someone with expertise and knowledge about children's development and he is trying to be more child centered with both G and M.

[252] When Ms. Llewellyn completed her first report, G had not yet started participating in supervised virtual parenting time through Veith House and the Veith House reports were not yet available for Ms. Llewellyn to review. I understand the Veith House reports were never provided to her to review.

[253] Based on my review of the written reports of Veith House, a service consented to by the parties in November 2021, which began in March 2022, the notes reflect the father is engaged and the father is interacting in a child centered manner with both children as best he can, given their ages. According to the Veith House notes, and **in response to the mother's inquiries** about whether the children appeared anxious, Veith House staff have indicated to the mother that the children did not present as anxious or reluctant to engage with their father or present as anxious after any of the calls.

[254] It is apparent from the mother's inquiries that her expectation is that the children would present as anxious. In my view, if you are continually expecting a

child to be a certain way and asking them about it, you can create an expectation that is the way they should feel.

G's voice

[255] Ms. Llewellyn has reported that G “complained in session about the calls with her dad.” That “there have been a lot of them and sometimes they felt too long.” Ms. Llewellyn indicated that she worked with G “to help her develop a voice and some boundaries within her relationship with her father.”

[256] Ms. Llewellyn stated that:

I feel that if he geared the calls to the ages and needs of his daughters, it would make a huge difference to both children, to the quality of the calls and also to his relationship with his daughters. Often the calls are around supper time, but he doesn't like the girls to eat while they are talking to him, so if they are busy and there is no time to have a snack before the call, they just have to stay hungry. Hungry children can be cranky and that doesn't help the calls. G has asked to end the calls early at times if there is nothing to talk about or if she simply wants to go. He says that is fine, but when the time comes on a call that she asks to end it a little early, he won't let her. The mixed messages are difficult for her and also eroding her ability to trust what he tells her. She tells me sometimes she reads books with him, and that can be fun, but sometimes he doesn't want her to, so she's never sure. I feel like she's trying to find ways to entertain her father on the calls and sometimes she has a fair amount of anxiety leading up to them as a result. If the children had more input into the calls and were just allowed to be themselves, doing whatever they wanting(sic) to do during the calls, I feel that they would develop a healthier and more natural relationship with their father.

[257] Ms. Llewellyn noted that G had “come a long way since counseling began.”

She had “begun talking more freely about how she is feelings and what she wants to do.” Ms. Llewellyn stated that it was “very important that G develop a strong

voice and that she knows she should never go along with something that doesn't feel OK."

[258] The Veith House records clearly reflect G did develop a voice and that the father was responsive to G's requests to end calls or to do certain activities. The Veith House reports also suggest the father has attempted and/or had been successful at implementing many of Ms. Llewellyn's recommendations while having contact with the children through Veith House. When Karen Llewellyn MEd, CCC, NSRCT, testified at trial she acknowledged she had not been provided with copies of the parties' affidavits or a copy of the Veith House reports prior to preparing her reports or testifying at trial.

December 2022 Report

[259] Ms. Llewellyn MEd, CCC, NSRCT confirmed she had not seen G in the summer of 2022, then she had six (6) sessions with G after September 9, 2022, when G disclosed to Ms. Llewellyn about her previous disclosure(s) to her mother, the police, and child protection, and before Ms. Llewellyn prepared her report of December 19, 2022.

[260] Ms. Llewellyn, MEd, CCC, NSRCT filed a further report dated December 19, 2022. She offered the following recommendations:

That it would help G feel more comfortable **visiting their father at his foster parent's house if they had direct contact with her in advance of any visit**, and specifically if they visited Canada to spend time with the children, or started writing letters to them and / or sending them little things through the mail...

To increase G's level of comfort it would be best for the father to visit her in Canada first **or at a neutral location such as New England. Spending days with their father but sleeping in a hotel with their mother or another family member they have travelled with. That the father could arrange to take them to a park.**

The father should avoid talking about his belief that people are lying about or to him while in the presence of the children. (my emphasis)

[261] Ms. Llewellyn stated that the point of the report she had prepared dated December 19, 2022 was to address G's comfort with in-person visits. She recommended that if the father could not come to Canada to exercise in-person visitation with G and her sister that the families should meet somewhere in the United States. That the first visit should be limited to two (2) to three (3) nights in a neutral location.

[262] She recommended that G should attend for a period during the day with people she is comfortable with at a "fun park or somewhere they have activities" and the father would be there. Assuming the first visit went well, another visit would take place in the same or another location, the children, their support person, and the father could have lunch, then participate in a fun activity.

[263] On the third day there would be another visit, a meal, including the children, their support person, the father, and a family member of his whom the children

have met virtually. She observed that the adults might find the visit difficult, but it could be a positive thing for the children.

[264] Ms. Llewellyn suggested they possibly meet in Bangor for one (1) to six (6) days, and that the children be given enough time to see the father more than once but not so long that it becomes stressful. As noted above, a couple hours to do an activity where the children are with their support person and they are not required to sit and talk, and the father is there. Then if that visit was positive, the subsequent visits would progress in a similar manner as noted above.

[265] Ms. Llewellyn suggested G needed to be given some time and that G did not want to visit with her father. She further suggested that if a visit does take place it needs to be in a public place and supervised by people G is used to and “not just dad.” She also suggested that under normal circumstances G and M would have separate parenting time with their father.

[266] Ms. Llewellyn noted that if G started to feel anxious, G should be able to say “gotta go”, and the father should oblige. G has stated that her father has stated she can end a call, but then has said no. G has expressed that she does not understand, as her father had stated she could end the call.

[267] Ms. Llewellyn believed that **part of G's anxiety was stemming from the length of time since she had in-person contact with her father.** Ms. Llewellyn compared it to anxiety one might experience while waiting for an exam. She believed the length of time apart from G's father has adding to the anxiety around G's relationship with her father. (my emphasis)

[268] Ms. Llewellyn's recommendation was that the **in-person contact happen sooner rather than later.** She noted that time was already a factor, but she suggested G should have time and input and be given some choices. **G should be provided with choices of things she could do with her father.** Ms. Llewellyn did not suggest G should decide if she was going to see her father. (my emphasis)

G's disclosures

[269] Ms. Llewellyn stated that "whatever did happen in Ontario would come out." She stated that the father needed to make some changes, and specifically he needed to change how he was coming across by getting down to G's level so she felt supported and in control.

[270] When Karen Llewellyn MEd, CCC, NSRCT testified at trial she acknowledged she had not been provided with copies of the parties' affidavits or a copy of the Veith House reports prior to preparing her reports or testifying at trial.

[271] When asked about G's disclosure(s) she stated in part:

She did not meet with G "right away" after the alleged disclosure in Spring 2022, (actually June 13, 2022). G was interviewed by police first, and Ms. Llewellyn was off work due to a surgery between June 2022 and mid August 2022, and she saw G on September 9, 2022;

G disclosed to Ms. Llewellyn that her father: washed her genital area without a washcloth; he used his fingers to manipulate a bit; and in the bath he would get her to stand up and bend over and put a piece of soap in there.

[272] Ms. Llewellyn opined that:

It was not the type of thing a kid could make up...She (G) appeared disturbed by what she was remembering.

[273] Ms. Llewellyn noted that in subsequent sessions G stated: "maybe I'm done remembering anything" and then later "no I'm not there's more I'm just not ready yet." Ms. Llewellyn felt G's emotions were genuine. She believed something was "off about the touching" and she believed she should "honour G's truth" and support her. Ms. Llewellyn noted that G had also referred to "daddy / daughter" camping and stated she "cant talk about that."

[274] Ms. Llewellyn felt G had made some disclosures "which were very concerning" and Ms. Llewellyn stated that she did not feel the disclosures G had made were "properly investigated." Ms. Llewellyn had concerns about G being interviewed multiple times by the police. She observed that what G was remembering was not pleasant for her and that more details may come forward.

That as a result she would air on the side of caution with supervised parenting

time. (my emphasis)

[275] I have previously commented about G's disclosures, the timing of the disclosures, and my concerns about those disclosures. Ms. Llewellyn did not have the advantage of reviewing all the available evidence in relation to G's disclosures. In addition, I understand it is Ms. Llewellyn's job to respond to G's needs including her need to be heard and to listen G's feelings as presented by her regardless of why G may be presenting in that manner.

The father's tone during virtual sessions

[276] With full knowledge of the alleged disclosures, Ms. Llewellyn opined that G's anxiety was triggered by the virtual calls with her father. Ms. Llewellyn stated that she had spoken with the father in December of 2022, hoping he would ask what he could do to make the virtual calls better for the children. She indicated that he may not think he is angry, but he had come across as angry and that in the past he had called other family members names.

[277] Ms. Llewellyn acknowledged it had been some time since she had reviewed any recordings of the virtual calls between G and the father. She acknowledged that the father had provided copies of many calls and the mother had provided some as well. However, Ms. Llewellyn felt there was no point in listening to

further recordings because her point of reference is always G, who tells Ms. Llewellyn when she is concerned about a virtual call.

[278] I agree there is a need for the father to adjust his “tone.” I would also note that both parties’ approach to litigation has not been remotely conducive to resolving this matter in an amicable manner, which would be in the children’s best interests and would reduce anxiety for everyone. In particular, I find G’s anxiety is likely the result of the parties’ animosity and that her feelings of distrust are being heavily influenced by her mother and her mother’s extended family who have an extremely negative view of the father and the parties’ past circumstances.

[279] G’s calls with Ms. Llewellyn and her father are virtual, and they take place in the maternal grandparents’ home where G resides with her mother, her grandparents, and M. Given the mother’s and the grandparents’ strongly held beliefs about the father, there is no question they have a direct influence on G’s experience of both therapy and her contact with her father.

[280] Ms. Llewellyn observed that G was telling her how she was feeling about the virtual calls. That the father may feel he is not angry, he may not be yelling, but G is perceiving that he’s angry. She stated that she works with G’s stated perceptions and stated feelings about the virtual contact with her father. Assuming the father can address the issue of his “tone” when interacting with the children,

the mother and/or grandparents, I hope Ms. Llewellyn will be able to speak with G about what would make G feel more comfortable when planning in-person visits with the father.

[281] Ms. Llewellyn has stated that if a virtual call was ended by the mother or another person for no reason, she would have concerns about what was being told to the children afterwards. But she believed G would ask why the call had been terminated. Ms. Llewellyn believed it would not sit well with G if a call was ended prematurely and for no good reason and that G is concerned about right and wrong and fairness. She stated if G was asking for more calls, this should be supported by the mother, and that whatever the children wanted should be supported, within reason.

[282] On a go forward basis, it will be important for G to have Ms. Llewellyn and for M to have a professional therapist, who will be familiar with the circumstances of the parties' separation and who can help the children develop a voice. Where there is continued conflict with one parent having most of the control, as is the case here with the mother having complete control of the father's only means of communication with the children, there comes a risk that the mother will abuse that control.

[283] Ms. Llewellyn stated that her recommendations for virtual contact have always been:

1. Keep the contact child centered.
2. Do not complain about other family members **or the quality of the video.**
3. Keep **voices level and the tone even.** He needed to **be sensitive, quiet, and considerate.** (my emphasis)

Ms. Llewellyn's suggestions are appropriate.

[284] Based on my review of the Veith House notes, the father was attempting to follow, and the father was able to follow Ms. Llewellyn's recommendations for the most part. However, the father's tone and his ongoing complaints about video direction and quality are an area of particular concern for me.

[285] Ms. Llewellyn described G as an articulate and intelligent child who could pick up on the animosity between her parents and knew they did not get along.

Ms. Llewellyn believed G had heard her father call her maternal grandparents names and G had provided "loads of examples about exchanges that upset her". In addition, G had stated she did not want the virtual calls to go as long.

[286] Ms. Llewellyn did express concern that the last time she had spoken with the father in December 2022 – when they had spoken for an hour and a half, the father told Ms. Llewellyn she was biased and needed to do her job better and he suggested he does not yell or get angry. Ms. Llewellyn stated she would have expected the father would ask her about G’s mental health, anxiety, and how to repair their relationship, but the father expressed that he believed the reason G had anxiety was because she was abruptly taken away from him.

[287] Ms. Llewellyn opined that G’s anxiety developed over time because of the tension during the virtual calls, and that even if there was no yelling, G would have sensed the intensity of the emotions. I agree with Ms. Llewellyn.

[288] In discussing her therapy sessions with G, Ms. Llewellyn noted that the mother is normally present or sometimes a sitter is present. An adult is always present at the beginning of each session and G would be on a computer. Ms. Llewellyn explained she would “chat for three seconds” with the adult present and that person **may remind G to discuss something**, but the adult was not usually present (or perhaps visible) the entire session. Ms. Llewellyn did not believe anyone was in the room with G during her virtual sessions.

[289] When Ms. Llewellyn was asked about the quality of the virtual image, she advised that at times she could not see G as well, or they had a bad connection, or

the image would freeze and Ms. Llewellyn would need to call G back, but no more frequently at her house than anyone else's home. Ms. Llewellyn noted that on one occasion the babysitter was unable to facilitate the call. Ms. Llewellyn noted that she has had to give instructions to move the computer around and that sometimes G will play or turn device over. Ms. Llewellyn stated, "she's a kid."

[290] It would be ideal if Ms. Llewellyn could assist G with planning with her mother and her father for supervised in person contact with her father at a neutral location in the United States. Should Ms. Llewellyn agree to do so, she shall be provided with a copy of this decision to review in advance of her discussions with G or G's parents.

Dr. Erin Killorn MD, FRCPC, Penhorn Medical Clinic

[291] Dr. Erin Killorn MD, FRCPC is a pediatrician with a fellowship in emergency pediatrics. She indicated she had been practising exclusively in general referral-based pediatrics since 2007, and she is not qualified to diagnose a child with Post Traumatic Stress Disorder.

[292] G was referred to Dr. Killorn in late Spring 2022. Dr. Killorn was qualified as an expert witness in community-based pediatrics, including referrals for medical concerns and ongoing follow up of children with mental health concerns including anxiety and behavioural concerns.

[293] In Dr. Killorn's letter dated September 21, 2022, she stated in part that:

...it came to my attention that she had been subjected to early adverse childhood experiences / early childhood trauma. **Disclosure of the details of the trauma by G has only recently occurred, and has been ongoing over about the last six months.** G has been undergoing counseling over the last 2 to 3 years to support her in managing her anxiety and emotional regulation issues. However, now she needs to begin the long work of **processing this trauma**, and then slowly building up coping skills for managing emotions that can be difficult to control when she is triggered...

G's anxiety seems to be primarily triggered around visitations over video chat with her father, occurring in the timeframe leading up to visitations and continuing for a period of time after they are completed. During these time periods, G displays symptoms of significant emotional distress, including symptoms of posttraumatic stress – hypervigilance and increased anxiety/fear despite being in a known safe situation. I worry that continuing visitations at this point without setting more groundwork with therapy may hold G back in reaching her potential for processing and healing. (my emphasis)

In contrast, Ms. Llewellyn, the child's therapist, advocated giving G a voice primarily in relation to the length of the calls, not discontinuing virtual sessions or putting a halt to plans for in person sessions but rather ensuring the groundwork was in place and G was given options.

[294] In a subsequent letter dated December 13, 2022, Dr. Killorn repeated her concerns and she then added:

...

I feel that carrying through with something such as an emergency custody hearing (this was in relation to Christmas parenting time in December 2022, which did not happen), particularly with G having in person contact with her father for the first time since disclosure of the trauma, is likely to impact her significantly in terms of her mental health concerns. I feel that she **is in need of more time in therapy to set the groundwork for better coping skills to be able to deal with this type of situation without it causing her further trauma.** This has the potential to be a significant setback for her processing and healing from her trauma.

Arguably G has had some months since her alleged disclosure in the spring of 2022 to process her feelings and to discuss options for in person contact with her therapist.

[295] In contrast with Dr. Killorn, Ms. Llewellyn stated in part:

G's anxiety was stemming from the length of time since she had in-person contact with her father. Ms. Llewellyn compared it to anxiety one might experience while waiting for an exam. She believed the length of time apart from G's father has added to the anxiety around G's relationship with her father.

[296] And Ms. Llewellyn's recommendation was that the:

in-person contact happen sooner rather than later.

Ms. Llewellyn had observed that time without in-person contact was already a factor but in-person contact should not proceed before G had time and input and was given some choices. G should be provided with choices of things she could do with her father, not whether she would see her father with supports in place.

[297] Dr. Killorn first saw G in September 2022. She stated she saw G four (4) times. She confirmed she had only communicated with the mother and G and that M has also been at her office. Dr. Killorn had never communicated with the father. Due to the side-effects when taking medication, G was referred to Dr. Killorn for consideration of alternative explanations for G's anxiety before prescribing

medication. Dr. Killorn provided diagnosis only as G was “already connected” for ongoing therapy.

[298] Dr. Killorn stated that although she frequently deals with children who have suffered trauma, she is not an expert with respect to trauma. She recalled she met with the mother and G and that when discussing the father, G presented as distressed.

[299] Dr. Killorn recalled that an investigation into the concerns was ongoing during her first consultation with G and she had been advised of several concerns including: previous to November 2019, when G’s father was responsible for her bedtime routine, at bath time G was expected to remain naked with a towel around her “for prolonged periods of time” while the father “brushed her hair for prolonged periods of time”; and in addition G was distressed about her father “putting soap in her bum” and washing her without a washcloth. Dr. Killorn did not see G alone and the mother encouraged the child to speak with Dr. Killorn about the above noted issues.

[300] After the trial dates in March and April 2023, the mother contacted Dr. Killorn and she wrote a further letter to the Court. Dr. Killorn was recalled to the stand to give evidence with respect to her additional letter addressing contact the

father had with G after the initial trial dates. Her testimony is reproduced in part as follows:

THE COURT: Have you been able to look at the evidence that, and I'll use the word evidence, the information that Mr. Rountree wanted to present to you. Did you look at it?

DR. KILLORN: I did, yes.

THE COURT: And what –

DR. KILLORN: ...(inaudible, garbled signal)...

THE COURT: Okay and you've looked at it since you've written your letter?

DR. KILLORN: Yes. I was not provided with it prior to the letters. After the first phone call that I had with Mr. Rountree.

THE COURT: And what's your insight into that information that he provided you, if any? Do you have any comments?

DR. KILLORN: Yeah, I would say that it is, it's challenging since it means that much for him reviewing those, although I have reviewed them and ...(inaudible, garbled signal)... to review. The challenge there again is that, you know, we're looking at a very specific snapshot in time and ...(inaudible, garbled signal)... for like two minutes and the interactions between G and her dad in those short times don't necessarily reflect the level of her anxiety. Like, like, ...(inaudible, garbled signal)...

THE COURT: I'm really having trouble understanding what you're saying, Dr. Killorn. Are you using a head—

DR. KILLORN: Alright.

THE COURT: Are you using a headpiece?

DR. KILLORN: I'm not. Should I try to?

THE COURT: I don't know. It was better with you being closer.

DR. KILLORN: Okay. I can come closer.

THE COURT: That's good. Right now it's good. Why don't you try repeating what you said—

DR. KILLORN: Yes.

THE COURT: ...from that location.

DR. KILLORN: So, I, I received quite a number of phone call recordings, about 15, and they're of varying length. Some are only very short snippets of a

minute or a couple of minutes and it, it, I understand the reason that Mr. Rountree is wanting to provide them to show the interactions between him and his daughters. But, in terms of, you know, those, how those information or those, those interactions affect G's anxiety related to the calls, it's part that you can simply make the correlation because, again, her behaviour within that call can be, you know, put on for that very short period of time, and you know, she may have quite a lot of anxiety outside of that time. Those interactions that I did review were positive largely, in terms of the interaction ...(inaudible, garbled signal)...

THE COURT: Could her anxiety be related to just wanting to see her father in person?

DR. KILLORN: A, there, I mean, again, there's so many factors that can affect anxiety and that could be a factor and it is not what she's expressed to myself or that I understand she's expressed to Doctor Pell (Sp?).

THE COURT: What has she, why is she anxious over the telephone calls? What has she said?

DR. KILLORN: In, in discussion with me has really been only around the disclosures and not, not wanting to be on the phone.

THE COURT: Be specific. What disclosure?

DR. KILLORN: So the disclosure that we discussed at the prior trial around things that had happened when she was living in Ontario with her father—

THE COURT: And that is—

DR. KILLORN: ...such as the—

THE COURT: And that is specifically being washed with soap by her father with his hand?

DR. KILLORN: Yes.

THE COURT: Are there other things besides being washed with only soap with a hand that have been disclosed by her to make her anxious?

DR. KILLORN: She also describes the, needing to lie down and have, stay in her towel and have her hair brushed until it was dry and feeling uncomfortable with that situation, not being able to get dressed for some time after the bath.

THE COURT: Alright. Thank you. Any follow up questions?

MS. JOHNSTON: I do. Further to Ms. Archibald's questions about G's anxiety, can you confirm, previously you had testified at Court in March that G's anxiety was actually improving. Is that correct?

MR. ARCHIBALD: No (whispers).

[301] The mother's brother spoke up to or for the witness, attempting to direct the witness. I non-verbally responded to his comment to discourage his behaviour.

DR. KILLORN: That point after our, our visit in March, it seems to have been improving.

MS. JOHNSTON: Okay. And then, so, from that period in March until when you wrote the letter, you wrote that letter based on what Ms. Archibald had told you?

DR. KILLORN: Yes. And then again with ...(inaudible, garbled signal)... evidence conversationally.

MS. JOHNSTON: Okay. And regarding the disclosures that G had made, would it be of concern to you if G was being continuously told this by someone in the household?

DR. KILLORN: That would be concern, yes.

MS. JOHNSTON: And why would that be concerning?

DR. KILLORN: Because children, I mean, anyone, when, but especially children given that they are quite malleable, you know, if told something over and over again, then they incorporate that ...(inaudible, garbled signal)... you know false memories.

MS. JOHNSTON: So, if, if... child protection were to say that G said, told them in an interview that their mother had said that her father bathing her with her (sic) bare hands was illegal, would that impact G's anxiety?

DR. KILLORN: I, that could impact, yes, certainly. Depending on how she would have interpreted that, obviously ...(inaudible, garbled signal)...

MS. JOHNSTON: Okay, thank you.

THE COURT: Follow-up questions?

MS. ARCHIBALD: Yeah. I just have two for clarification. So, we talked about one disclosure, but there were in fact two, and I believe one that you called in child protective services. The second one was much more graphic. It wasn't about just being washed with soap.

DR. KILLORN: So, yes, so, the true description that she gave was about having soap put into her bum when she was in the bathtub and that was at the same time that she also discussed being, having to lie down after a bath and stay in her towel and he would hair brush, and that was the time I did call CPS for children's aid to report our discussion.

MS. ARCHIBALD: Okay. Thank you, that's all.

THE COURT: I'm a little bit, I just have a few more questions in relation specially. If a child says she was washed in her bum, it doesn't mean it went up her bum, she didn't say it went up her bum, did she?

MR. ARCHIBALD: Yeah.

[302] Once again, the mother's brother, Mr. Archibald interjected. At this point I directed the mother's brother to leave the courtroom.

THE COURT: Do not. Exit the courtroom. Exit. Really inappropriate under these circumstances, sir. Extremely. Your answer to the question.

DR. KILLORN: Um—

THE COURT: Did she describe it to you, did she say he opened my buttocks, what?

DR. KILLORN: She did not. She did not say that. She described feeling discomfort with the soap being pushed up her bum, those would be the words, and then she described her discomfort with the situation after the bath as I mentioned—

THE COURT: And—

DR. KILLORN: ...I would say that both of those, and you know, both of those and her description of them were enough that they made me concerned and feel the need to speak to children's aid.

THE COURT: Okay, but let's back it up. And then the other disclosure was that she had to lie down in a towel and have her hair brushed, yes?

DR. KILLORN: Have her hair brushed until it was dry for a long period of time. That's what, yeah, that's what she told.

THE COURT: Okay. Alright. So, that's the extent of what the disclosure was. I just want to make it clear. That's what Dr. Killorn has said—

DR. KILLORN: Yes.

THE COURT: ... that's what the child told her and I'm going to stop it there. I don't know that you can have a follow-up question to that. She doesn't have info, more information. Do you need any more questions asked about that? No. Dr. Killorn, thank you again. It's very difficult times when parents disagree and have concerns about their kids and feel for both sides of the equation. Little kids, I would say that at her age and that this was a, wasn't a recent event, obviously, it would have been three years previously, correct? Or at least that.

DR. KILLORN: ...(inaudible, garbled signal)...

THE COURT: Or some times previously. No, sir. None.

DR. KILLORN: ...(inaudible, garbled signal)...

THE COURT: Thank you. Your testimony is concluded as far as I'm concerned.

MS. JOHNSTON: Yes. I have no further questions.

DR. KILLORN: Thank you.

THE COURT: Alright. Thank you.

[303] Dr. Killorn, MD, FRCPC stated that she started drafting the letter dated April 14, 2023, either after a call from the mother who asked her to write a letter, or she may have offered to write the letter following a review of the contact the father had with G on or about April 2, 2023. Dr. Killorn did not document whether it was a request from the mother or whether she had felt it was necessary to write to the Court.

[304] In her affidavit June 29, 2023, the mother stated in part:

...I heard the father mention G's sleeping arrangements; he described to her what a trendall (sic) bed was. I do not hear that in the recording.

...

Then the mother stated:

I do find it odd that he focused on the sleeping arrangements, after not seeing his children for 3.5 years, and not fun activities he would do with them.

Review of the Audio of contact April 2, 2013

[305] I listened to the audio recording of the contact which occurred between G and Tessa and then between the father and G on April 2, 2023. I am satisfied the audio recording is a true representation of at least part and more likely almost the entire contact which occurred on April 2, 2023.

[306] I observed that G presented as somewhat constrained or hesitant when speaking with T. I understand the father was attempting to reassure G and to get her excited and more comfortable about visiting by suggesting she may have an opportunity to reunite with her old friend T. I understand that since November 2019, the mother had not encouraged G to have contact with T, despite the father's suggestion they should have contact.

[307] G did not respond as the father expected G would. G was non-responsive, as though at a loss for words, or at a loss as to how to respond to T, or she was worried about how to respond to T. For whatever reason, G appeared uncomfortable about T's suggestion that she was looking forward to seeing G again.

[308] With respect to the exchange between the father and G after G had spoken with T, the father may have been correct that G's apparent lack of attention to or her lack of response to T's comments about looking forward to seeing G, might suggest a lack of "empathy" by G toward T. However, his suggestion to G that she was being unkind to T was not very sensitive to G's situation and the feelings she may legitimately be experiencing.

[309] Although the father had reminded G about the upcoming contact with T while on a virtual meeting facilitated by Veith House, it should not have been

unexpected that G may be confused or have mixed feelings about her father reintroducing T after she had not had any or any significant contact with T since November 2019, or over three years. I observed after the father reprimanded G for what he believed was her lack of empathy or graciousness toward T, that G indicated to her father that she did respond to T's statements, when she had not. G was not given the opportunity or permission to express any ambivalence in a safe manner. The father's expectation was that G should be excited. Again, G must be given choices.

[310] The father was very aware that G's therapist had suggested initial short re-introductory visit(s) should be completed on neutral ground to allow the children time to adjust and to ideally develop some familiarity with who would be supervising any visit or stay in Alabama, either their own babysitter or they would become more familiar and comfortable with the father's supervisor, such as with Barbara Rountree, before planning a trip to Alabama. Under the circumstances, travelling to Alabama to see her father should never have been broached with G until after a decision was rendered and all parties had an opportunity to plan.

[311] On the other hand, as I have also mentioned, the mother should never have told the children or suggested to them in any way that they would never live with their father or visit him without her being present. Ideally, given G's presentation

with anxiety particularly about in-person visits, the parties should be coordinating the sharing of any information or choices about in-person parenting with him or others with G's therapist who could hopefully assist the parties.

[312] The father has suggested that the mother misrepresented the content of the discussion between he and G on April 2, 2023, and I agree. The mother suggested the father spent most of the time on April 2, 2023, talking to G about sleeping arrangements rather than the fun things they would do when the children visited.

[313] Although premature under the circumstances, the father's intention was for G to have an opportunity to speak with T so that she would become excited about the possibility of seeing T again. He was suggesting a fun thing that G could experience. In addition, contrary to the mother's suggestion, when the father was giving information to G about his foster parents' home, he did not focus on sleeping arrangements, it was G who asked about those. The father began by telling G she would have access to a swimming pool, the doll house/playhouse, and the tree house.

[314] G then interjected with a comment about the doll house being "boring," then she commented about the likelihood she would miss her best friend at home (C) and she would only have M with her and not her other family members. It was G

who then asked about the proposed sleeping arrangements. A question I find was unusual given what the father was discussing.

[315] The way G broached the topic of sleeping arrangements with her father raised a concern for me about whether the mother or another adult was present to prompt G to ask the question or had prompted G previously. Regardless, I find the father responded as well as he could in the circumstances.

[316] Although I am certain this is very frustrating for the father, it was always understood there would be first steps ie: meeting at a neutral place and no overnights initially and that all the details would be clear to everyone, especially the children before the process started, whether by agreement of the parties or by order of the Court. It was premature for the father to engage in discussions about G going to Alabama and seeing T, and G was confused and/or uncomfortable for that discussion.

[317] However, the mother's suggestion that the father "focused on the sleeping arrangements..." alluding to some nefarious purpose while the father was answering G's questions about visiting him in Alabama is a significant misrepresentation by the mother. It is of significant concern to me that the mother has continued to insinuate the father is behaving in an inappropriate manner.

[318] The mother stated that following the virtual call between the father and G, on April 2, 2023 she “contacted Dr. Killorn for four reasons”:

She is G’s pediatrician, referred to specifically for anxiety. G was having an extreme, debilitating level of anxiety;

G’s behavior had become completely unregulated for over a week, following the phone call with the father on April 2nd;

She began hitting M, unable to communicate without yelling, clenching her jaw and fists.

She was displaying high levels of anxiety. I witnessed this to be her peak level of anxiety since being diagnosed in 2021.

She did not display this deregulation (sic) to her father, she has said on several occasions that she is afraid of him.

The mother stated that “details from the call provided to me by G were relayed to Dr. Killorn.” Apparently, the mother did not think it would be helpful to listen to the recording and perhaps correct G if she had misinterpreted something her father said.

[319] As a follow up from her two previous letters dated September 21, 2022 and December 13, 2022, Dr. Killorn responded by sending a further letter on or about April 14, 2023, which states in part:

...G’s anxiety seems to be primarily triggered around visitations over video chat with her father, occurring in the timeframe leading up to visitations and continuing for a period of time after they are completed. During these time periods, G displays symptoms of significant emotional distress, including symptoms of posttraumatic stress – hypervigilance and increased anxiety/fear despite being in a known safe situation. I worry that continuing visitations at this point without setting more groundwork with therapy may hold G back in reaching her potential for processing and healing.

[320] The mother has expressed concern that the father has not specifically talked to G's therapist or doctor about how to further support G during his virtual time with her. That instead, the father has continued to stress the love he has for his children, to emphasize that he did not commit any inappropriate acts, and he has expressed concern about the time he has with his children and/or he has lost with the children. I agree with the mother that the father must start taking advantage of G's therapist as her support rather than continuing to focus on other issues.

[321] I agree with the mother that the father must start taking advantage of G's therapist and / or her doctor as her support rather than continuing to focus on other issues. If Dr. Killorn continues to be involved with G, and is willing to speak with the father, a copy of my decision should be provided to her for her review.

[322] The mother is also concerned that the father has suggested any anxiety experienced by G was created by the mother. That the father is adamant that there are no concerns related to his virtual contact with G. Again, I agree with the mother, the father must recognize that various professionals have alerted him that he sometimes presents as very frustrated and aggravated. Perhaps by seeking individual counseling the father may begin to recognize how his intense emotions may be perceived by children, especially young children and how they may wish to avoid his intense nature or any drama.

[323] Dr. Killorn agreed G's anxiety was likely being exacerbated by multiple factors at the same time. Although the father was not seeing any evidence of G's anxiety (debilitating anxiety), she was being advised (by the mother) that G's anxiety and stress were related to the virtual calls themselves.

[324] Dr. Killorn has suggested it is common for people with many different behaviors to be able to control those in one setting and then feel free to let them out in another setting. Although Dr. Killorn also acknowledged that many factors could affect a child's anxiety, there is no reason why the father should not gain more knowledge about how best to support G, whatever she is feeling.

Dr. Arati Mokashi, MD FRCPC Pediatric Endocrinologist

[325] Dr. Mokashi provided a letter indicating that M has a diagnosis of type 1 Diabetes, diagnosed in September of 2022, stating:

Management of this requires multiple daily insulin injections or insulin pump therapy. Management also entails regular adjustment of insulin doses for carbohydrate intake, blood glucose level, illness, activity and many other factors. This is a complex disorder that requires management with a multidisciplinary team and education of the caregivers by diabetes nurse educator, diabetes dietitian educator and physicians.

M's mother would have had at least two days of intensive diabetes education and regular phone follow up with the diabetes team in order to help manage her child. Recently M has also have (sic) been switched from multiple daily injections, insulin injections, to insulin pump therapy which requires another level of education, and **she was here for a full day on December 14** in order to receive this education. Following an insulin pump start M's glucose sensor and pump will need to be uploaded every two days and for at least the next two weeks and then still on a regular basis but likely less frequently. The downloads need to be

reviewed by the caregiver as well by the diabetes team if needed for help with further adjustment to the insulin pump settings. M requires a follow up with the diabetes team two weeks after starting on the insulin pump and then every three months thereafter. Whoever cares for M requires both diabetes education and education related to insulin pump therapy provided by a diabetes team experienced with managing diabetes in a child.

Education includes how to draw up and administer insulin, how to test blood glucose, how to count carbohydrates and an understanding of the effect of carbohydrate on blood glucose, how to manage high and low blood sugar, adjustment of insulin for illness and activity and now will also require training on insulin pump therapy.

[326] In his affidavit filed December 19, 2022, in support of Christmas parenting time with the children in the United States, the father stated in part that:

...M had pump day for her diabetes training on December 14th, and after the mother informed me of this last week I asked to be involved in the training to be prepared, yet she told me they only allow one parent...

[327] The father provided a copy of an email from Carole Ann Maloney RD CDE Clinical Sales Specialist (Maritimes), Omnipod, regarding the Omnipod DASH insulin management system: Training Confirmation. Stating in part:

For your records, I can confirm that you have been “technically” trained on the Omnipod DASH insulin management system. Topics covered include: ...

I would recommend additional education with your daughter’s diabetes care team to review her specific settings, troubleshooting for hypoglycemia, ketone testing, sick day management and uploading her PDM to Glooko.

[328] The father also provided an email from Anne Peterka, Diabetes Educator, Children’s Health Care of Atlanta confirming his registration in the Diabetes Caregiver’s class on February 28, 2023.

Officer Randip Samra (March 24, 2023 and April 6, 2023) – Canada Border Services Agency

[329] Officer Samra stated that he had previously acted as a removal officer with the Canada Border Service Agency (CBSA) but was now working in the capacity of a road investigation officer. He had worked as a removal officer beginning in 2008 and in 2020 he was assigned the father's case. On March 24, 2023, he stated he did not have his entire file available to him.

[330] The mother asked Officer Samra about the father's date and point of entry into Canada. Officer Samra indicated the father arrived in Canada at Pearson Airport on January 30, 2005, using a driver's license bearing the name Brad Michael West and there was no way of knowing who the father was with when he entered Canada.

[331] Officer Samra believed the father's criminal conviction in the United States would be considered if he applied to re-enter Canada. He was not familiar with all programs related to re-entry into Canada as he does not work for the immigration department.

[332] The mother requested Officer Samra return after the parties were able to access the entire business file of the Canada Border Services Agency and Officer

Samra had an opportunity to review the file. The parties agreed Officer Samra would be recalled as a witness.

[333] Based on documents filed by the father, I accept that the father completed a Pre-Removal Risk Assessment and that his initial request to remain in Canada was denied. The father then returned to the United States in or around September 2020.

[334] Either way, I accept that the father remains concerned the mother will commence criminal proceedings against him (charges were dismissed upon his deportation from Canada) if he returns to Canada. With respect to the father's deportation from Canada, I accept that the father believes he is ineligible to return to Canada for five years, presumably following the date of his deportation and he believes he must apply for authorization to return to Canada.

[335] To compound the father's problem, when the father returned to the United States in September 2020, he was arrested, charged criminally, and he plead guilty and was subsequently sentenced to 27 days in jail. The father is on probation until January 2026. Given his criminal conviction in the United States, the father has stated that he believes he is not eligible to apply to travel to Canada until five years past the date of his probationary period or not until January 2031.

[336] The mother has stated her belief that the father was charged and convicted of “four counts of theft of property in the 1st degree.” The father does not deny he was convicted of theft, but he has stated he has matured during the 20 years since he engaged in any criminal behaviour and left the United States for Canada under an assumed name.

[337] The mother has suggested that the father continued “borrowing” money from people under false pretenses including \$6,000 from Tom Muszalska. Mr. Muszalska did not testify but did provide the father with an email denying the mother’s allegation.

Denial of meaningful virtual parenting time and in person parenting time

[338] There appears to be some inconsistency with respect to how much contact the mother says the father requested with the children and how much contact the mother allowed or facilitated with the children after the parties initially separated. The father stated that during his detention he could only speak with the children by telephone and with great difficulty. That after his release in April 2020, until he left Canada in September 2020, the mother denied him meaningful virtual and/or in-person contact with their children in Canada.

[339] In the father’s letter to the Court dated February 14, 2020, he stated that the mother did not allow him “any communication with my 2 daughters for the first 45

(then later in his letter stated 46) days after their separation” on or about November 26, 2019, until he “called the police to get help and they told her to let me talk to my kids.” I accept that the father had difficulty speaking with the children by telephone while he was detained in an immigration detention centre and by telephone or virtually following his release.

[340] The father has stated that the mother continues to try to portray him negatively to their children, to her family, to their acquaintances, and to this Court. He suggested that in addition to the allegations she has made about emotional abuse toward her and inappropriate touching of G, she has continued to reference personal relationship(s) he was involved in over twenty years ago and biological children (Oliver and Noah who are now over 20 years old) and non-biological children who he chose not to have ongoing involvement with and chose not to support financially. The father has stated that the mother has told their children about his previous relationships, his previous life, and about the adult children he does not have relationships with by choice, and he has felt the need to try to explain his situation to the children as best he can.

Veith House involvement (beginning March 2022)

[341] The father was frustrated with what he believed was the mother’s continued misrepresentations about his virtual calls with the children and his perception that

the mother was failing to ensure he had predictable, consistent, quality virtual contact with the children. At a settlement conference held in November 2021, the father consented to have his virtual parenting calls supervised by Veith House staff and to have reports provided to the Court and to the parties.

[342] There were no “critical incidents” reported by Veith House staff. There was significant evidence that although the father was not perfect, he was making a concerted effort to improve his communication with the children, and it appeared he was trying to address the concerns and recommendations raised by Ms. Llewellyn.

[343] Upon review of the Veith House notes, I observed the father did a particularly good job of engaging G; the notes also reflected he did not become upset when M refused to engage with him, and he allowed her to play independently if that was her choice. He also appeared to respect G’s suggestions to engage in a particular activity or within reason, to end a call early.

[344] As noted previously, according to the Veith House notes, G did not express any anxiety verbally or otherwise related to her contact with her father. The fact that G mostly interacted with the father is to a certain extent to be expected given the children’s relative ages, the difference in the children’s relationships with the

father based on the history of care, and the limitations of virtual parenting with very young children such as M.

[345] The Veith House reports reflect that the father did his best to engage the two children. At no time did the reports suggest the father was frustrated with either of the children. Based on my review of the reports, I found the father used some very useful techniques to try to keep G engaged and he tried to engage M, although he was less successful with M initially. The final Veith House reports suggest significant improvement and more engagement with M.

[346] Upon review of reports of Veith House, I also noted that G appeared quite willing to both assist M during the visits or to also proceed without M if M was not willing to participate in a meaningful way. On one occasion, when the father asked G on multiple occasions whether M would be joining, G just stated, “she’s too upset” and G carried on quite happily with her father and without M.

[347] Veith House staff reported that the mother specifically asked them if G had expressed any anxiety or if G appeared anxious at all with her father. Staff reported to mom that neither child presented with any concerns and neither appeared anxious in any way. On one occasion the mother responded by stating that she supposed that was what was intended, that the visits improve.

[348] The father did at times complain to Veith House about the quality of the virtual experience. I have already directed the father to stop his complaints about the quality of the picture. Although I understand it may be frustrating for the father, he cannot expect young children to sit still for long periods and to adjust the video to suit him.

Analysis

The Father's Position on Parenting

[349] Initially, when the matter began in 2020, the father proposed the children be with him for a three-month period, and then with Ms. Archibald for three months, and that they continue to alternate three-month periods. The father stated that he offered Ms. Archibald “everything” in exchange for 50/50 parenting time with the children. The father's terms were not accepted by the mother. In addition, the father description of “his parents as wealthy” and suggestion that the children would have “opportunities to attend US universities and become American citizens” did nothing to reassure the mother about the father's intentions if the children visited him in the United States.

[350] Once in place, the father has presented as extremely frustrated about his virtual parenting time raising ongoing concerns about his perception that the mother has failed: to always facilitate the parenting time as agreed, including the

day, date, and time; to always prepare the children or the computer or the children's environment in advance of his scheduled parenting time; and to always eliminate distractions when the children are communicating with him virtually.

There is an expectation that the mother address these issues and allow the father to continue to have meaningful virtual contact with the children.

Mother's position

[351] In her affidavit filed in January 2022, the mother observed that as of her receipt of his affidavit dated October 4, 2021, the father was asking that the parties share the care of the children on a three-month rotation with the children residing with him in Alabama for three months and then returning to live with their mother and so on. In addition to the mother not supporting the father's proposed parenting schedule, she had additional concerns as noted above.

The issues

Other

[352] The mother asked for an order that "the father will stop sending emails, be they threatening and harassing or otherwise to the mother or her family members, including threats of civil action." I decline to order the father not to pursue civil action against the mother or her family members.

[353] If the father has been sending threatening or harassing messages to the mother or her family members and they are fearful for their physical or emotional welfare, they should consult with the police. If the mother believed the evidence was relevant to the decisions to be decided by me, she should have filed evidence of the threatening or harassing messages with the court and expressed her concerns.

[354] Although I find that the father's repeated email requests incorporating the same complaints over and over again, including his repeated requests for meaningful parenting time with the children, and often including some additional remarks or complaints, were generally unhelpful and time consuming to read and discern differences from email to email, I am not prepared to find his correspondence was anything other than notice of legal action he may take. I do find, however, that his correspondence shows a lack of constraint on his part and an inability to focus on the most relevant issues for the benefit of the children.

Decision making

[355] What decision making arrangement is in G's and M's best interests?

[356] The father seeks joint decision making for all major developmental decisions regarding the children. He suggested after meaningful consultation had taken

place, that in the event of a disagreement the parties should follow the advice of a relevant third-party professional.

[357] The mother seeks sole decision-making authority. She has alleged she left the father due to “fear of the father’s escalating anger and erratic behaviour towards the children and herself.” She argued that it was “near impossible to agree on decisions or to negotiate decisions for G and M” with the father. She has stated that she does not wish to have the father involved in decisions related to whether the children attend a public or private school in person or are “homeschooled.”

[358] I am prepared to grant the mother final decision making in relation to the children’s education, their health, their religion, their extracurricular activities, and travel, after consultation/notification to the father, and in accordance with third party professional advice.

[359] Given the role I have assigned to the mother, it will be her responsibility as the parent who has the privilege of being the children’s primary caregiver to provide timely first-hand information to the father about the children, and to keep the father “fully advised” about their development.

[360] The father has suggested the mother has not always kept him informed about the children’s development, or about their emotional and physical wellbeing,

which would usually include reasonable notice to the father of any news or concerns about the children generally, about the children's medical or any health appointments scheduled, and an update following each scheduled appointment.

[361] The father has requested, and I am ordering the mother to provide the father with updates about both children at least every two weeks. These updates would normally include written information, photographs and videos about the children's development, school activities, community activities, and all extracurricular activities.

[362] The mother stated she was prepared to continue to provide updates to the father and as noted above I order her to do so including: "regular updates, photos, information about the children's health and their extracurricular activities, etc." The mother suggested a summary be provided to the father on a regular basis via the girl's email address and I order her to do so. She stated that the father could provide input into what information he would like shared with him in these updates, and I note that the father is entitled to do so and the mother must comply.

Parenting

[363] What parenting arrangement is in G's and M's best interests?

In-person visitation

[364] As noted above, the father's position on in-person parenting has changed over the course of the court proceeding. He initially sought a shared parenting arrangement (3 months on / 3 months off or a 50/50 arrangement although the mother was living in Nova Scotia, Canada, and he was likely being deported from Canada and would be residing in the United States.) In support, he raised concerns about the mother's drinking habits and her emotional health, claiming he did most of the parenting.

[365] In or around April 2020 (see email dated April 3, 2020, after stating that he was seeking a 50/50 parenting arrangement despite his legal problems and pending deportation from the country), the father stated that he recognized a "50/50 split was unreasonable now." The father also unhelpfully suggested to the mother that he could "offer them so much that you can't and you shouldn't take that from them and their future."

[366] On April 22, 2020, he stated in part:

this is my last chance to offering you everything and just give me joint custody

...

I will get half the house by proving equity owner...

...

I will get paid back for the money you stole. I told you to take it out and hold it for me. Never said you could have it. Or keep it. Or that I couldn't pay child support and you could have it like you said.

...

I just want the kids and my god given right as a father. And to have them 50/50...

[367] In the father's affidavit filed with the Court in September 2021, the father was seeking a short transition to in-person parenting on a three-month rotation:

...I suggest the first visit in person be for one month, as soon as possible. I will make sure their schooling is not impacted by this. This would ideally occur in December 2021, such that two weeks of it would make up their school break.

Between now and then we would increase video and call time, including with my parents, and work toward preparing the kids to come.

I propose they come for another month in March 2022.

I propose the 3-month rotation start in June 2022.

...

I seek a settlement conference as soon as possible...

The father's initial positions were unreasonable and contributed to delay in this matter.

[368] At trial in 2023, the father recognized a need to be reintroduced to the children and he sought block in-person parenting time with the children in the United States on a graduated basis. Specifically, the father suggested:

1. that after an initial reintroduction, with the first in-person visit occurring in Bangor, Maine at the beginning of the Summer 2023 for seven (7) days, the father's plan was for the children to travel to Tuscaloosa, Alabama to visit he and his family at his foster parent's home and his parenting time would initially take place in their presence.

2. The father suggested the second in-person visit should occur at the end of Summer 2023, for a minimum of two weeks and the visit would occur in Alabama at his foster parent's home. His foster father Dan Rountree who obtained a Master degree in Arts and has an art studio locally and was previously a preacher at the First United Methodist Church in Tuscaloosa, Alabama and his foster mother Barbara Rountree who obtained a doctorate in early childhood education, was the Dean of the Education Department for the University of Alabama and previously a professor at the University of Alabama, and who owns and operates a private internationally accredited school in Tuscaloosa called The Capital School, were prepared to assist him with the children during his parenting time.

[369] The father's ongoing parenting plan was as follows:

1. He should have no less than 14 days with the children over the Christmas break 2023 (arguing that this should be make up time as he missed Christmas visits for the past four years and he was only permitted "one call total over four Christmas"). He suggested that in alternate years, his Christmas parenting time would start on December 26th.

2. He should have the option of having every March break with the children, including the option of the children attending for two weeks.
3. He should have care of the children every summer school break in the US except for the mother having one week at either the beginning or at the end of the break “split up however she would prefer.”

[370] The father suggested that with respect to travel:

4. He should book flights for the children and the mother would be responsible for bringing the children to the United States for the start of the father’s parenting time and the father would arrange to have the children brought back to Canada at the end of his parenting time until the children are old enough to travel by themselves.

The mother was not prepared to agree to the father having his parenting time during almost all the children’s non-school time.

[371] Following trial, the mother argued that given G’s therapist’s, Karen Llewellyn’s testimony in March 2023, she had changed her position on in-person contact between the children and their father. That she believed Ms. Llewellyn was suggesting G was not ready for in-person visitation with her father, and that G

was fearful of her father, and that G, through her therapist had “additional information to share about her disclosures.”

[372] The mother described G’s anxiety as “real and debilitating.” In her submissions following trial in March and April 2023, the mother argued that in person contact with her father should be on hold until G has an opportunity “to speak her truth fully” and the parties could then return to the Court to determine the best path forward. Her position is not workable and is not supported by the evidence.

[373] I feel both parties’ positions at trial were unreasonable. The father was demanding too much time with the children too quickly, and the mother was not prepared to give anything.

[374] The mother expressed various additional concerns about the father’s prospective in-person parenting time with the children. In her final submissions the mother requested:

1. Assurances that the children would be together during visitation, including sleeping in the same room.

2. Assurances that the father would be able to properly feed the children, including having regard to the children's special dietary requirements.
3. In addition to his mother's, Barbara Rountree's address and the names of person's residing in her home where the children would stay in Alabama, that the father would provide his own address and a list of persons with whom he resides.

The above noted requests #'s 2 and 3 are granted, #1 is granted assuming the mother ensures both children cooperate and attend the father's court ordered virtual and in-person parenting time. For instance, if the mother claims she is unable to arrange for G to attend, then M may attend without G and vice versa.

[375] The mother requested an order that the father to stop speaking with the children about in-person contact and about the court process. On the other hand, the father has alleged that the mother has stated to the children that they will no longer be living with their father which he believed may suggest to the children that they will not be having in-person contact or sleeping over with their dad due to the risks associated with such contact.

[376] Both parties are ordered to stop speaking with the children about their preferences or concerns about any contact between the children and the father.

They are ordered to enlist the assistance of therapists to offer choices with respect to what reasonable activities/parameters for contact the children would prefer either virtually or in person with their father.

[377] I am adopting Ms. Llewellyn's recommendations from her December 2022 report:

[378] She offered the following recommendations:

That it would help G feel more comfortable visiting their father at his foster parent's house if they **had direct contact with her in advance of any visit** (most likely in the US), and specifically if they visited Canada to spend time with the children, or **started writing letters to them and / or sending them little things through the mail...**

To increase G's level of comfort it would be best for the father to visit her in Canada first **or at a neutral location such as New England. Spending days with their father but sleeping in a hotel with their mother or another family member they have travelled with. That the father could arrange to take them to a park.**

The father should **avoid talking about his belief that people are lying about or to him while in the presence of the children.**

[379] I am ordering the following reintroduction visits for both G and M in a neutral place in the United States. My decision is to first be communicated to G by her therapist and to M by a therapist if one is in place. If the parties cannot agree on the location for the reintroduction visits, then they shall take place in Bangor Maine at the designated times (or as agreed between the parties):

1. The first in-person reintroduction visit shall take place at a neutral location in the United States over the Christmas holidays from **December 26 through December 30, 2023;**
2. The second in-person reintroduction visit shall take place at a neutral location in the United States over the March break, between **March 11 and March 15, 2024;**
3. The third in-person reintroduction visit shall take place at a neutral location in the United States between **July 15 through July 19, 2024;** and
4. The fourth in person reintroduction visit shall take place in Alabama, **August 12 to 16, 2024,** and the day visits may take place at Barbara Rountree's home in either Barabra Rountree's and / or her husband Dan Rountree's presence / with their knowledge that visits shall be fully supervised by them.

[380] The above noted reintroduction visits are to include at least 5 separate day time visits on 5 separate consecutive days and the parties should aim for visits lasting between 1 hour to 4 hours long (or within reason, as tolerated by the children).

[381] The first three visit periods may be supervised by a supervisor chosen by the mother (who will not include the mother, her brother, the mother's mother, or the mother's father).

[382] The fourth visit period may include the entire family for the first hour of each visit (including the mother, maternal grandmother, paternal grandmother, maternal uncle, or other family) and thereafter either Barbara Rountree or Dan Rountree may provide supervision for the children for the remainder of the visit.

[383] If either child chooses to leave a visit early, the other child may choose to stay. The mother should plan for that possibility.

[384] A court review shall be scheduled in September 2024. The parties are welcome to file their suggestions or the children's therapist's recommendations about how best to proceed with supervised in person overnight parenting time for the children with the father in Alabama / or elsewhere.

[385] The parameters for expanding the father's parenting time includes that the father shall be entitled to: 5 days of in-person parenting time at Christmas or to alternate Christmas breaks of up to 10 days with the consent of the mother, one party taking even years and the other odd years; 7 days of parenting time each March break; and up to 3 weeks of parenting time each summer with each child.

Virtual visitation

[386] In March 2020, the mother advised the father through her legal counsel that she would permit him to have contact with the children every Tuesday and Friday for fifteen minutes each time and she would not respond to other continued attempts by the father to contact the children.

[387] The mother expressed concern that before the children were advised of the father's personal circumstances, the father had used the name David Rountree as his login name. The mother believed the father was confusing G who could read at that time. The mother later complained that the father had introduced G to the real "Brad West." The father has noted that the mother has continued to refuse to refer to him as David Rountree, which is confusing. And he stated that he introduced his friend "Brad West" as Brad only.

[388] In early April 2020, the father objected to being limited to two 15 – 20 minute calls with the children in a 20 minute window of 5:20 – 5:40. He expressed that he wanted to see his children's faces and that he would be "recording all calls with G" and that the recordings would prove that the mother takes "M's cochlear implants off when I call so she can't hear my voice as G tells me so and that is beyond cruel and despicable parenting."

[389] He sought Facetime contact with the children 5 times per week for 10 – 15 minutes. He believed 2 video calls per week was too few and 30 minutes per call too long.

[390] For a period in 2020 the father was opposed to communicating with the children via Zoom link or contacting the children through the mother's parents due to: the mother's father's alleged threats and behaviour toward the father (stating to the father that he had no power in these circumstances, cursing and laughing at the father in the presence of the children); his pending civil suits against the mother's parents; and direction from police and child protection services that calling the mother's parents' home should be avoided.

[391] The father made it clear to the mother that he would prefer to Facetime the children with Apple products he knew were in the mother's possession as he had paid for them. He alleged he could not use Zoom on his computer, that the picture quality was poor, and that the mother was recording his time with the children and then editing the recordings to portray him as threatening or harassing. Throughout April 2020 and May 2020, the parties were back and forth with no apparent consistency with respect to using the Zoom platform or the Facebook option.

[392] The father claimed the mother failed to facilitate virtual contact for him with the children for Christmas 2019; New Years Eve 2019; on April 12, 2020 (Easter);

April 13, 2020 (M's birthday); April 17, 2020; April 21, 2020; and April 24, 2020.

The father acknowledged he had virtual access with the children on April 22, 2020.

[393] The mother's lawyer responded on April 24, 2020:

There is a recurring Zoom meeting scheduled for the evening. For recurring Zoom meetings, a link is not necessary, nor is an invitation. One need only to to the Zoom website, which a simple internet search will bring up, click on join a meeting, and type in the meeting number and password.

The meeting number and password have been given to you on or before April 10th and you've also been advised the alternative is a phone call.

...

It's very clear you're determined to raise objections to every form of communication proposed. The mother's cell phone number will not be given to you for Facetime or any other purpose; you've inappropriately used her email address to harass her for months, so her decision not to give you another method to contact her is justified and entirely reasonable.

[394] The father continued to argue that he could not log into "the old invite" and that he could not call the mother's father's house. Stating "all you have to do is send a new invite each time. Or a new reoccurring one and I'll write down that password and code. And see if that works." The issue appears to have been resolved in or around the end of May 2020.

[395] As noted above, at trial in 2023 the father requested ongoing virtual parenting time three times per week and the ability for he or the children to contact each other virtually for other brief periods, and contact every holiday, birthday, and special occasion for the children. He stated he would provide an iPad mini for the

children so that they may Facetime him. He sought an order requiring the mother to keep the iPad charged.

[396] The mother asked the Court to limit the children's contact with their father to one virtual call per week to be supervised by Veith House and to be re-evaluated at the six-month mark – when the Court would take into consideration the parties' plans and the children's level of functioning (to be guided by Dr. Killorn and Karen Llewellyn).

[397] The mother was open to continuing to facilitate virtual telephone contact on holidays and additional contact if the children asked to speak with their father. She stated she would prefer the father supply a laptop which makes use of Microsoft Teams.

[398] The mother argued it was in the children's best interest for virtual contact to move to “a single, 1one hour call per week with Veith House for a six-month period”, and “additional calls be arranged (through her) on every holiday, birthday, and on special occasions on a Microsoft Teams platform”. She argued that G's anxiety and overall mental health needed to continue to be evaluated and considered when determining whether to increase the duration or frequency of virtual contact with the father.

The father's specified virtual parenting time

[399] I am granting the father's request for ongoing specified virtual parenting time with both children three times per week. It is expected that each of the children's virtual visits with the father be at least 15 minutes long if possible but no longer than a half hour unless a child wishes to participate longer. Unless the parties agree otherwise, each specified virtual visit with the father should occur between 7:15 pm and 8:15 pm AST on Tuesdays, Thursdays, and Saturdays.

[400] The father shall provide an iPad mini for the children so that they may Facetime him and the mother is ordered to keep the iPad charged at all times. Whoever is facilitating the father's virtual access must be able and willing to properly prepare the children and the device for the father's virtual contact with the children, including but not limited to ensuring the children are fed and comfortable and there are minimal distractions.

[401] The children may have separate 15-minute virtual visits with their father if they prefer. With at least two weeks notice to the father, virtual visits with the father may be suspended for up to two weeks in the summer months to allow for travel or for the children to attend various camps with their friends uninterrupted. Ideally those virtual visits will be replaced by brief telephone calls. The mother

shall provide the father with information about the children's whereabouts and with updates about their experiences, including photographs and video.

The father's holiday parenting time when the children are not in his care

[402] In addition, the mother shall arrange for virtual contact between the father and the children every holiday or special occasion when the children are not in the father's care including: Christmas Eve, Christmas Day, New Years' Day, Valentine's Day, Easter Sunday, M's birthday, G's birthday, the father's birthday, Father's Day, the last day of school, the first day of school, Halloween, Canadian Thanksgiving Monda, and United States Thanksgiving Monday.

Other special occasion contact

[403] The mother shall also arrange brief virtual contact or a brief telephone call for the children with their father on other special occasions as requested by the children and/or provide the father with pictures and video. For instance, for a school concert, for a music concert/performance, and for a special sporting event such as a tournament, or other interesting community event.

The children's right to contact the father anytime

[404] I am granting the children the right and directing the mother to arrange for the children to initiate contact with their father by video, telephone, text, or other application at any time they wish.

Contact through Veith House or child(ren)'s Therapist

[405] I am granting an order that the mother may arrange for some contact to be facilitated through Veith House or through the child(ren)'s therapist(s) with the time to be arranged with the father. The Veith House or therapist led contacts would be in addition to any of the above noted specified virtual access, holiday access, or access requested by the children as noted above.

[406] Ideally, the therapist led contact would aid in planning for in-person contact. A Veith House Order may be sent to my attention at any time. Any reports prepared by Veith House shall be shared with the parties, and with the child(ren)'s therapist(s), and the Court, in advance of the review to be scheduled in September 2024 at which time the arrangement can be reevaluated.

Third party information about the children

[407] Both parties were agreeable to each having access to third party information in relation to both children and an order is granted.

Children's last name and their Passports

[408] What last name is in G's and M's best interests?

[409] The father seeks an Order that the children's last names be Archibald Rountree per Section 4(8) of the *Nova Scotia Vital Statistics Act* R.S., c. 494.

[410] The mother seeks an Order that the children's last names be Archibald. She argued that the children have been using Archibald as their last name. I note that at least some of the hospital records for the children reference the last name West. Neither parent sought to have the children continue to use the last name West.

[411] This is an unusual case. The parents are not disagreeing about the last name to be given to infant children. These children have either used the last name "West" or "Archibald" throughout their lives.

[412] The father changed his name to David Gann Rountree after his foster family provided him with love and support for several years when others did not or could not. The evidence suggests the father did his best to be a good father to G and M while the parties lived together between 2013 and 2019, and that following their separation in or around October or November 2019, his foster family has stood behind him as he was apparently working to "get back on his feet."

[413] I am satisfied that the Rountree's are the father's chosen family. However, given the unique circumstances in this matter, and more specifically because the children have not previously identified with the Rountree name but have been using the father's alias of West or more recently Archibald, I order that the children's legal last names be listed as Rountree Archibald.

[414] Upon receipt of my decision, the mother must immediately arrange for the children to obtain their passports in anticipation of travel to the United States. The mother shall bear the cost associated with the passports and the mother or her designate shall retain possession of the children's passports at all times.

Child Support (table amount)

[415] What amount of child support should be payable by the father, if any?

[416] The father argued that the mother did not claim child support until September 2022. In addition, he stated that the mother had not indicated what amount of child support she was claiming.

[417] As noted previously, on August 5, 2022, the mother filed an Amended Notice of Application with a request for the table amount of child support from June 1, 2022, onward.

The father's income / past work experience and evidence of income / lifestyle

[418] In his affidavit filed in July 2022 the father stated:

Para 23: In the beginning of our relationship, I was still **doing Alarm system sales and installations but began my own painting company a few months after moving into 655 Cargill Path**. I paid the utilities and the cellphones for both of us, which cost me about \$1000 per month. Meg and I agreed she would pay for the baby-sitters and I would just pay the utilities and cell phone bills.

Para 24: This turned out to be a whopping huge costs savings to her and I asked repeatedly to revisit the unfairness and imbalance of this cost to me, to no avail

and **she made approximately \$80,000.00 more than me per year**. She was able to save more and be able to have nicer cars and more house with my huge financial contribution. (my emphasis)

[419] The mother suggested that the father claimed he earned \$43,000 US from a construction company in 2022 and she argued he should pay the “table amount” of child support from June 1, 2022, onward. As evidence of his ability to pay child support, the mother claimed that although the father had paid only \$2,000 in child support to her since separation, he had purchased a truck valued at approximately \$75,000.00.

[420] In the father’s Statement of Property filed January 11, 2023, the father noted he had a 2022 RAM Laramie Diesel worth approximately \$78,000, which he was using for his new business. He claimed his foster parents assisted him with his finances.

[421] The mother stated that while she was in a relationship with the father, he had owned the following vehicles: a black Venza, a white Venza, a black Forerunner, a black Tundra, a blue Volvo and a Black VW Atlas and had also purchased a motorcycle. The father stated that he “only had three cars”, that he would “buy a car, keep it for a year or two and trade it in.”

[422] The father stated:

I had sold my first paid off car and used the proceeds in the next car to get financed with my credit to build it. I did buy a \$4,700.00 dollar motorcycle in 2018 because my friend and I both did to ride together as a hobby.

Evidence of the father's annual income for child support

2020

[423] The father claimed that after he was detained in December 2019, he was unable to work in Ontario until he could obtain a work permit, and that the process of getting a “permanent residency decision” had been delayed due to Covid. He had been uncertain when things would “open up” or when he would be permitted to return home to the United States. The father subsequently returned to the United States in September 2020, and he was incarcerated for approximately 27 days (it is unclear whether he served straight or intermittent time).

[424] In his Parenting Statement filed with the Court on June 2, 2020, the father stated he would be working for a family business which would allow him to work less than two hours a day and still earn a salary. In a letter received from the father's foster parents dated June 8, 2020, they stated that the father was being offered a Project Manager position for their PK-12 private school for the 2020-21 school year beginning on **August 12, 2020, at a salary of \$45,800 for 12 months of work** doing repair work and maintenance. That the father would be supervising three workers and that much of the supervision and delegation could be done from home.

2021

[425] Subsequently on July 24, 2021, the father indicated he would be working on a Saturday when the mother suggested the children were not available for contact one evening. In September 2021 the father advised “I began working at **Timber and Hew on August 3, 2021, as a Project Manager**, Monday to Friday 9:00 am to 5:00 pm.”

[426] Despite the father’s evidence that he could have earned \$45,800 for 12 months of work beginning as early as August 2020, and that he returned to the United States in or around September 2020, and arguably he was available to take advantage of the work offer, and despite the father’s previous evidence advising the Court that he had begun working as a project manager for Timber and Hew on August 3, 2021, after the mother claimed child support in September 2022, the father filed R&R Tax and Business Solutions LLC for tax years 2020 and 2021 claiming he earned no income in those years.

[427] I do not accept the father’s representations about his income in 2020 and 2021. I find the father either failed to properly disclose his income for 2020 and 2021 or he was underemployed during that period. I am imputing a notional income of \$45,800 US dollars (to be notionally grossed up for US funds) to the father for 2020 and 2021.

2022

[428] In his affidavit filed July 2022 the father stated:

...I had asked repeatedly to have the calls at 5:00 pm my time when I am home from work...

I find the father was still employed in or around July 2022, and he **owes child support for June 2022 and July 2022**.

[429] The father indicated that he decided to take a nine-month course and open his own business in or around April 2023. On October 12, 2022, the father filed a Statement of Income suggesting his income was \$0. I find the father was employed for at least seven (7) months, between January 2022 and the end of July 2022, and that arguably he was retraining between August 2022 and April 1, 2023.

[430] When the father was asked if he had sent money to the mother for the children in the time since separation, the father stated that he offered more than once but the mother kept saying the children did not need anything. That the first time the mother raised the issue of child support was in June / July (2022). He stated that they'd had an understanding that once they divided the equity in the home, she would get more although he expected she would account for the \$17,000 he says she took from his bank account.

Table amount of child support / section 7

[431] Conservatively, I impute a yearly income of \$45,800 US dollars (**\$62,283.42 CA**) to the father for the period between January 2022 and July 2022. The father must pay child support for two children for June and July 2022 of \$866.63 for the months of June 2022 and July 2022, or a total of **\$1,733.26**.

[432] As of April 1, 2023, I impute an income of \$50,000 US dollars (**\$67,995.00 CA**) to the father and for each month thereafter, for a payment of **\$942.53** per month on an ongoing basis, with payments to be made through the Maintenance Enforcement Office.

Special or Extraordinary expenses / section 7 expenses

[433] The mother is seeking a “specified amount for extracurricular activities for both children each year, and specifically an order for the father to contribute to the children’s extracurricular activities in the amount of \$3000 per child per year. In cross examination the father stated he was prepared to contribute to extracurricular expenses for the children, but he did not state how much he was prepared to contribute.

[434] The parties are free to negotiate the issue of special or extraordinary expenses. However, I retain jurisdiction to address the issue of special or extraordinary expenses and the matter may return to me only after at least the

mother has filed complete financial disclosure for 2020, 2021 and 2022 including T1 Tax and Benefit Returns and a Statement of Special or Extraordinary Expenses with all necessary attachments.

Income for determination of proportionate sharing / section 7

[435] The mother has a Bachelor of Education in Elementary Education. She has worked for BD Canada since 2015. In or around October 2019, she began working for BD Canada again, this time based in Halifax, Nova Scotia.

[436] The mothers' Statement of Income dated January 17, 2023 was filed without the necessary attachments. She claimed she was earning \$9,172.11 per month but after "deducting other Schedule III Adjustments" of \$2,055.34, that her monthly income was \$7,116.77 or her income was \$85,401.24. The mother also claimed that in 2020 she was earning an annual income of \$95,000, receiving a car allowance of \$800 per month, and she anticipated receiving quarterly bonuses based on performance.

[437] The mother attached her Royal Bank of Canada transaction record for the period December 2015 through January 2023, but she provided little or no explanation about the transactions listed in that printout. She acknowledged that the parties had agreed the father would send his share of the mortgage payment and that he sent e-transfers to her, although she alleged he was inconsistent in making

his payments, she agreed that it was not possible to determine who sent her e-transfers based on the bank records she had provided to the court.

[438] The mother provided Tax Assessments for the period between 2012 and 2019. They indicate she earned the following income: **2012** \$152,475; **2013** \$153,888; **2014** \$168,069 (refund \$644.15); **2015** \$87,293 (refund \$11,157.36, while on maternity leave with G for half of 2014 / 2025); **2016** \$149,155 (refund \$10,090.54, working for BD Canada); **2017** \$139,938 (refund \$10,642.54); **2018** \$124,974 (refund \$2,107.45); **2019** \$53,833 (refund \$10,784.28, while on maternity leave for M).

[439] The mother did not provide all necessary income documents for 2019, 2020, 2021 and 2022. She did not attach T1 General Tax and Income Return documents as directed and ordered by the Court. The mothers' pay stub from her employer for the pay period ending October 29, 2022, showed a gross pay of \$165,355.95, her gross pay as of December 24, 2022, was \$236,369.24.

Registered Disability Savings Plan

[440] The mother has requested the father be ordered to contribute to a Registered Disability Savings Plan for M which has a matching government contribution. She is seeking to have the father contribute \$2000 per year to M's RDSP with RBC via direct deposit no later than March 31 every calendar year.

[441] An RDSP is not a special or extraordinary expenses. The parties may agree to contribute to an RDSP but I decline to order the father to do so.

Division of Property

[442] Should any notional equity in the family home at **#20 - 485 Pringle Avenue**, Milton, Ontario, purchased for \$620,000 in June 2015 (now appraised for \$1,240,000.00 with an outstanding mortgage of \$656,679.96 = \$583,320.04 \$29 – (notional and approximate legal fee \$1000 + \$300 for disbursements and real estate fees of 4% \$49,600) = \$532,420.04 / 2 = \$266,210.02.

[443] The father requested half of the equity in the home (after notional legal fees, disbursements, and real estate fees) and specifically that **\$264,422.52** be transferred to him. In 2020, the father was claiming \$115,000 pursuant to an unjust enrichment claim.

[444] The mother has argued that the father is not entitled to 50% or any percentage of the equity in the home on Pringle Avenue. Her reasoning is that the father “has not paid a full mortgage payment, on time, ever” and he has not contributed: to the property taxes “after one year of living at Pringle Avenue,” to the gap in mortgage and rent, to the costs of maintaining the property, or to the repairs or appliance replacements.

[445] The mother suggested the Court should rely on the tax assessment to establish the value of the home at Pringle Avenue as **\$654,000** per the mother's Statement of Property filed on February 6, 2023.

[446] The father arranged for the house on Pringle Avenue in Milton, Ontario, to be appraised. The Appraisal Report was prepared by Victor Gibbs B.A., DipMan, CRA, P. App Bruggess Appraisal Services, 1220 Burloak Drive, Burlington, Ontario. The house was appraised **at \$1,240,000.00**. In his Statement of Property filed July 18, 2022, the father had estimated the value at \$1,500,000.00.

[447] The father suggested the only mortgage information provided by the mother indicates the outstanding mortgage on 485 Pringle Avenue was **\$656,679.96**. He has requested the mother transfer him half the equity in the home in an amount of \$264,422.52.

[448] I adopt the appraiser's valuation of the home and rely on the mortgage information filed by the mother.

[449] The father's position at trial in 2023 was significantly different than it was at 2:49 p.m., on February 14, 2020 when the father filed a letter with the Court stating that he gave the mother money and he offered to give her his portion of the equity in their shared home (**\$115,000** then for just his half after fees for selling the

house) and all the contents of the home in exchange for a 50 / 50 parenting arrangement. I understand the offer was also in lieu of child support.

[450] On April 10, 2020, when the father wrote to the mother's legal counsel, and stated in part:

I am not asking for her to sell a house and pay me out.

Or to reimburse me for my belongings she gave away or threw away.

Or to pay back the money she stole from my account.

Or to give me 100 % custody of the children.

I am only asking her to let me communicate 4-5 times a week for 10 – 15 minutes and with a fair window time frame to make those Facetime calls that isn't with in 10 mins plus or minus...

I am only asking that she communicate with me about my children's lives and health which is also fair and reasonable and normal to ask and normal to expect...

...

I am not saying keep the kids and just pay me half of our house that she couldn't afford to buy in the first place with out my financial contribution to pay half each month and to pay all of the utilities that were in my name.

I am not saying anything except let me have 50 / 50 custody of my children whom I love more than anything.

[451] In an email sent in May 2020 the father stated:

I have offered to give away **\$180k of my property** to get my kids. My equitable share of our joint venture home. Even your lawyer knows this is easy for me to prove. Along with the nearly 25k worth of belongings your (sic) trashed. Even down to my golf clubs and suits. The money stolen from my account.

[452] At 3:42 on April 10, 2020, the father wrote in part:

She stole my money out of my personal account while I was in custody and then refused to give it back when told she had no right.

She is trying to act as if I don't have equity in our home (even tho (sic) the (sic) emailed and threatened me under extreme duress, to sign over my rights to our house, acknowledging they know I have equitable rights to 50%) so she can keep all the assets.

She did not let me talk to my kids for 46 days and even over the holidays, yet she told me she loved me multiple times during that period and in emails and over the phone while taking \$3000 a day out of my account.

She is the one who gave away my belongings without my knowledge or consent.

...

I only want open lines of communication with my children both ways.

And 50/50 custody. I have already said **she can have the house to be applied towards child support** if she agreed to open lines of communication and 50/50 custody.

If she does not then I will continue to fight for my rights as a father for as long as it takes and will also then be fighting for my half of the home. Fighting for alimony since she made \$148,000 per year (not the \$98,000 she claimed in her affidavit as she left the documents on my computer with her tax returns to prove her income) and **I made zero according to my tax returns and had to fight tooth and nail to pay half of everything** and is why I was punished already when reported me to be deported...

Fighting for reimbursement of the money she stole

Fighting for reimbursement to my belongings she gave away without my knowledge and consent.

And fighting for 100% custody based on her actions that clearly do not put the children first and her parents' actions in from (sic) of the children as well as her callous demeanor and intentionally harming the children's relationship with their father.

...

655 Cargill Path, Milton, Ontario

[453] The father stated that the parties' lived for approximately five (5) months in the mother's previous home she had shared with her husband before she decided to sell the home and together they decided to purchase **655 Cargill Path, on or about**

May 14, 2013. The father stated they purchased the home at Cargill Path as it was closer to the mother's place of work.

[454] The father acknowledged the mother paid a down payment for 655 Cargill Path from the equity she received from the sale of the home she had shared with her previous husband. He claimed the title to both the Cargill Path and Pringle Avenue homes were solely in the mother's name because the father was in Canada illegally.

[455] The parties agreed 655 Cargill Path sold for \$515,000.00 (the father stated they also received \$2,500 for a patio set and new grill) on or about September 10, 2015, and the mother gave him a grand piano which cost approximately \$2,700 as he did "all the heavy work when packing and moving" from Cargill Path to Pringle Avenue.

[456] The mother claimed that her equity from the sale of 655 Cargill Path was \$300,000.00. In his affidavit filed in February 2023 the father stated: "although the house sold for \$300,000 more than the purchase price, the mother only profited **\$150,000** and she/they paid off more debt amounting to a profit of approximately \$70,000.00". In his affidavit dated July 18, 2022, the father had stated that "the profit after all was said and done was **\$120,000.00.**"

485 Pringle Avenue, Milton, Ontario

[457] The father suggested he contributed a substantial amount of his time and physical labour dealing with the sale of 655 Cargill Path and the purchase of 485 Pringle Avenue. The parties purchased 485 Pringle Avenue for **\$620,000** in June 2015 and that he understood a downpayment of approximately **\$53,000** was made for the purchase of the home. The mother filed a Royal Bank of Canada receipt for a deposit of **\$10,000** dated June 25, 2015, (not \$53,000) for the purchase of the Pringle Avenue home.

[458] At one point in his evidence, the father stated that from the proceeds of 685 Cargill (\$150,000), and after the downpayment on 485 Pringle Avenue (he believed was \$53,000), the mother transferred \$22,000 of the remainder of the proceeds to him, and she kept \$75,000.00 as she was on maternity leave at that time.

[459] The father suggested that they used money they received from the sale of 685 Cargill Path to renovate their home on 485 Pringle Avenue. That they added 980 square feet to the home, including an extra bedroom, bathroom, playroom, workout room, and extra television room. He stated that he worked for six (6) weeks on the project, and this cost him approximately \$47,000.00. He further suggested that in addition, both he and the mother agreed to remortgage 485

Pringle Avenue to buy new furniture and they received \$162,000. They spent \$42,000 on new furniture, he received \$25,000 to pay his credit card, and the mother kept the remaining \$95,000.

[460] In his affidavit filed July 18, 2022, the father has claimed that he and the mother:

1. Split every bill together except for our personal cars and insurance and credit cards.
2. Everything else, including groceries and even purchases were split 50/50.
3. All utilities that could be in his name were in his name at Pringle Avenue and Cargill Path.
4. They split the mortgage, which included property taxes and homeowners' insurance.
5. He paid for dinners and purchased wine and he paid for any outings or vacations, then he would add it up, and split the total and **subtract her share from what I owed her**. (my emphasis).

6. He paid her \$1,750 each month for the established bills and sometimes less or more any given month based on our spending and outings for those months.

[461] The mother suggested the father used her credit card and he agreed that at times he did use her credit card to “get the miles” at her request as he did not fly. Further he stated that when she needed cash, he would give her cash so that she could avoid “cash advance fees or penalties.”

[462] The mother reported that there were only two bills in the father’s assumed name of “Brad West” – the “hydro and Bell”, and she was responsible for sending him money to pay those utilities/bills. The father provided a statement for utilities in Brad West’s name which were related to the Cargill Path home including: Union Gas; and Milton Hydro distribution Inc. He also provided a statement for Telus Mobility in Bradley West’s name for 458 Pringle Avenue as the address, dated in December 2019.

[463] Based on the evidence available to me, it appears the party were involved in a joint venture. I see no reason not to award the father half the equity in the home the parties shared together: \$264,422.52, after accounting for the notional payment of the outstanding mortgage, and any notional real estate or legal fees, and disbursements.

Other property

[464] The mother reported she owned other property including the following accounts with values as of October 2022, amounts not provided as of date of separation or date of trial. **The father did not seek division of this property:**

1. A Sunlife Defined Contribution Pension Plan with value of \$164,481.40;
2. An RRSP with BMO account number ending 34-17 with value of \$160,000;
3. Chequing with RBC ending **8069** value \$548.67 (October 2022); the value upon leaving the home November 27, 2019, was \$5,319; and value January 10, 2023, \$8,291.26.
4. Savings with RBC ending in 7393 value \$3,45;
5. RDSP with RBC ending 3571 value \$33,472.34; and
6. The only debt listed as \$656,679.96 as the mortgage on 485 Pringle Avenue in Milton, Ontario as of June 2022.

[465] The father filed an Updated Statement of Property sworn January 10, 2023, and he disclosed his claim for an interest in the home the parties resided in as noted above. He also listed the following property/debt:

1. Whole house furnishings \$40,000.00 value as of November 2019;
2. Value of new bedding in the home \$5,500 as of November 2019;
3. The father's personal items valued at \$23,000 as of November 2019;
4. Vehicles:
 - a. 2018 VW Atlas (the father's) repossessed value of \$58,000.00 as of November 2019;
 - b. 2019 Volvo XC 60 (the mother's) unknown value;
 - c. 2022 RAM Laramie Diesel (the father's) for business value at \$78,000.00.
5. Checking Scotiabank \$18,000.00 as of November 2020.
6. Checking Bryant Bank 8115 \$2,096.52 as of January 9, 2023.
7. Debt credit card Capital One \$6.12.
8. Debt credit card Apple \$0.00.
9. Debt vehicle loan Bank NA for Business (\$75,614 as of January 6, 2023.

Contents of the family home

[466] On or about December 6, 2019, the mother's lawyer at that time, Randy S.

Brant, B.A., LL.B., SV Law, Guelph, Ontario sent a letter to the father stating that

the mother had concerns that the father had misrepresented himself to her. The mother suggested the father had a secret life; had **become** abusive toward her; and was possibly in Canada illegally.

[467] She requested the father grant her “full custody” of the parties’ children, allow the children’s last names to be changed from “West” to “Archibald”, neither party would have any financial obligation toward the other, and the father would take “his own possessions” out of the home. The mother provided a list detailing the father’s possessions as follows: TV in basement; surround sound in basement only; black furniture in basement; aide table in basement; all consoles in basement and console cabinet; paintings in basement bathroom; his clothes; his work items in garage (materials and supplies for painting); his golf clubs in garage; Christmas tree and all of his ornaments; and all other contents would remain in the home which the mother suggested was owned by her solely.

[468] At trial, the father was seeking to be reimbursed for his “golf clubs, his speakers, and his clothing” and the joint property the mother took such as furniture, to be equally divided between the parties. In his Statement of Property filed January 10, 2023, the father estimated the mother had retained for their home at 485 Pringle Avenue in Milton, Ontario: furniture valued at approximately \$40,000 and bedding valued at \$5,500.00. He claimed the mother sold most of his/their

furniture and the furniture she had in her previous home to a friend who was a nurse, and she sold it before they moved to Cargill Path.

[469] The mother shall compensate the father for half the value of the parties' furniture or **\$20,000.00** and bedding **\$2,700.00**.

The father's personal items

[470] Whether the mother should compensate the father for the personal items belonging to the father and thrown away by the mother?

[471] The father stated he is seeking to be reimbursed for his "golf clubs, his speakers, (and) his clothing."

[472] He suggested the mother disposed of his personal items including the following: watches; electronics; 2 Sonos speakers; all garage equipment; new appliances he had purchased; his bed; his sporting equipment; his golf clubs; all his bathroom supplies; his clothes; his suits, his belts; and his shoes, all of which were worth approximately \$23,000.

[473] In May 2020, the father listed his personal possessions as follows: my watches; my golf clubs; my shoes; my clothes; my furniture; my 65-inch tv; my \$6000 surround sound system; my everything without my consent... and he stated:

Don't forget. That while she had him clean out all of my possessions while I was in detention. She also emptied my bank account after I had already given the women (sic) who left me \$\$7,500.00. Because she was talking about my kid's as long as I was giving her money. And when I stopped. She took the rest. I have the email money transferred she sent to herself. I couldn't do it. I was in detention.

[474] The father attached an electronic message from Ray Heaps

“ray.heaps@sympatico.ca” dated April 11 wherein Mr. Heaps stated to the father:

Sorry it took so long to get back to you. I really don't want to be involved between you and (the mother).

But here are the facts.

I was hired by the mother to clean out the house so she could get it ready to list for sale. **I did acquire the surround sound, subwoofer, receiver, end tables, some pictures, 2 leather couches, TV, and a king size bed frame with large headboard.** Everything else was disposed of as directed to do so.

I'm sorry to hear about all of this and wish you the best.

Thanks

Ray Heaps.

[475] In contrast, the mother suggested she knew the father removed his home computer, tv, surround sound system, clothing, Canada Goose (clothing?), work computer screen, home printer, lamps, and he took his gaming station. I do not accept the mother's account as accurate and given her unilateral decision to give away/or dispose of a significant amount of the father's personal effects, I will air on the side of compensating the father for his personal effects.

[476] The mother is ordered to reimburse the father **\$23,000.**

Investment loss

[477] The mother suggested the father was “solely responsible for losing a \$40,000 investment.” The father stated that the investment was a joint venture, but it was in the mother’s name in a TD Waterhouse account. He suggested the mother may still have the TD account, but it was not disclosed on her Statement of Property. The father stated that she would have been able to get the records.

[478] Should the mother provide the father’s lawyer and the court with the proper documentation regarding this debt within one week of receipt of my decision, I will order that the debt be shared between the parties.

The mother’s access to and transfer of the father’s money

[479] Did the mother e-transfer herself some or all of the father’s money (\$17,000) without his consent and if so, should the money be returned to the father?

[480] Based on my previous findings imputing income to the father a yearly income for child support of \$45,800 US dollars (**\$62,283.42 CA**) for two children or \$866.63 the father should have notionally been paying child support between September 2020 and December 2020; between January 2021 – December 2021; and between January 2022 and May 2022, before the mother made a formal request for child support in June 2022. He notionally owes child support of \$866.63 for two children for 21 months or **\$18,199.23 prior to June 2022.**

[481] Throughout his early submissions to the Court the father acknowledged he should be helping support the children financially. At various times he suggested the mother should keep up to \$150,000 or \$180,000 of his equity in the home as a substitute for him paying child support, which would equate to approximately 15 years of child support for two children near the level of income I have imputed to him (\$10,000 per year).

[482] The father is seeking reimbursement of \$17,000.00 the mother either kept without his consent according to the father or she distributed according to his directions according to mother. She accessed the funds when the parties were still speaking in relatively civil terms in December 2019, before the mother applied to the Court.

1. On January 22, 2020, the father had his immigration lawyer, Allison Pyper of Pyper Law, write to the mother and in part she wrote: “I am advised by my client that you emptied his bank accounts without his permission. My client is therefore asking for his funds (**\$13,600**) back immediately.”
2. In his letter to the court dated February 14, 2020, the father stated that he had sent **\$7,500** to the mother over a period of 15 days because the mother stated she needed help with the children and then he stated

she took an additional **\$6,800**, transferring \$3000 per day to herself, and he last spoke to her on the telephone on or about December 19, 2019.

3. In an email to the mother's father dated April 5, 2020, the father stated that the mother had "stole over **\$7k** out of my sole personal account via email money transfer to herself while I was in detention."
4. In an email to the mother's lawyer dated April 17, 2020, the father stated in part:

All I want is my children. Joint 50/50 custody.

Meg is still to have to pay me **\$3000** for actually stealing from my account. I am willing to let it go legally but will require that be paid back.

5. In what appears to be a text from the father to the mother's brother, Anthony Archibald, sent on May 17, 2020, at 1:47 p.m. the father states in part about the money:

She cried and said she couldn't do it alone and **I sent her \$7,000.00 between December 1st and December 13th. To help her.** She then took the remaining **\$6,800.00** over the next three days out of my account without my permission. With lies. So she got a total of \$13,800.00 over 19 days from my account. I couldn't hire a lawyer and I couldn't work(s) (sic) and she got rid of all my possessions. (my emphasis)

6. However, in a text sent on May 17, 2020, at 8:30 p.m., the father makes changes to his lengthy email stating in part about the money:

Now a letter from my lawyer asking her to put the money she took out and stole and lied and said I said she could. As if I would give her all my

money. That's just ridiculous. So I got my immigration lawyer my parents paid for to send her a letter to put it back. As anyone would. She said (sic) told her she could have it. I only told her to hold it for me. I thought I could trust her.

...

Don't forget. That while she had him clean out all of my possessions while I was in detention. **She also emptied my bank account after I had already given the women (sic) who left me \$7500 dollars.** Because she was talking to me about my kid's (sic) as long as I was giving her money. And when I stopped she took the rest... (my emphasis)

[483] The mother acknowledged she had access to the father's money. Initially the mother stated that in December 2019 the father authorized her to withdraw \$3,000 from his bank account for expenses for the children.

[484] At another point in her evidence the mother stated that she was instructed by the father to transfer amounts as follows: \$2000 for a "paint bill"; \$2000 to Adrian Trott; and \$2000 the father told her to transfer to herself to use on the children, and the mother stated she paid the mortgage with it.

[485] Considering the parties circumstances and the fact that the father did not regularly pay child support when I have found he could have paid between September 2020 and May 2022 (notionally owing **\$18,199.23 prior to June 2022**), which is prior to the mother's request for child support, and due to the parties conflicting evidence and their failure to provide me with details of relevant withdrawals and deposits I am ordering the mother to compensate the father for **\$6,800 only of the \$17,000 the father alleges is owing.**

The mother's claim she had loaned the father money

[486] The mother has suggested she loaned the father \$70,000 to assist the father to pay utilities, the mortgage (the mother alleged the father missed mortgage payments in June, September, October, November, and December 2018), his car lease payments, and failed to pay for his supplies for his work. She stated that in addition to paying all the bills she had also e-transferred \$32,175.00 to the father.

[487] The father did acknowledge that the mother had loaned him money, but he did not state or account for how much. Given the circumstances of the parties, and the father's failure to pay child support between September 2020, 2021, and May 2022, and the mother's failure to request a retroactive calculation of child support, I find that the most equitable thing to do would be to have the father pay the mother **\$70,000.00**.

Costs

[488] Both parties sought to be heard on costs. They must file their briefs within one month of receipt of this decision.

Cindy G. Cormier, J.