

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Power v. Power*, 2025 NSSC 236

Date: 20250612

Docket: *Hfx*, No. 1201-075269

Registry: Halifax

Between:

Mary Eleanor Power

Petitioner

v.

Jerry Kenneth Power

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Daniel W. Ingersoll
Heard:	April 28, 29, 30, 2025, in Halifax, Nova Scotia
Written Submissions:	May 16, June 2 and June 6, 2025
Written Decision:	August 26, 2025
Oral Decision:	June 12, 2025
Summary:	Petitioner sought to admit transcripts and recordings of surreptitiously recorded conversations. Respondent objected to admissibility. The court balanced the probative value of the evidence against the prejudicial effects of its admission and admitted eight of the recordings.
Key words:	Voir Dire, admissibility of surreptitious recordings, probative value, prejudice.

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Written Mr. Bailey filed on behalf of Ms. Power on May 16, 2025

Submissions: Mr. Power filed on his own behalf on June 2, 2025

Mr. Bailey filed his reply on behalf of Ms. Power on June 6, 2025

Oral Decision: June 12, 2025

Written Release: August 26, 2025

Counsel: Brian Bailey for the Petitioner

The Respondent is self-represented

By the Court:

Introduction

[1] Jerry Power and Mary Power separated in January of 2022 after a 7-year marriage. They have one son, J who is seven years old.

[2] Ms. Power seeks court approval to relocate J's residence from Timberlea to Colby Village. In support of her relocation request, Ms. Power deposed two affidavits to which she attached transcripts of recordings of twelve interactions with Mr. Power. Eleven of these transcripts are in respect of recordings she made of regularly scheduled breakfast video chats involving herself, Mr. Power and their son. One transcript is in respect of a recording she made following one of J's hockey practices.

[3] Mr. Power seeks to suppress the transcripts and the associated recordings.

[4] This decision resolves the admissibility of the transcripts and the audio recordings from which the transcripts were created.

The Voir Dire

[5] I convened a Voir Dire to address the admissibility of the transcripts and the recordings.

[6] At the Voir Dire, Mr. Power objected, in part, to the admission of the transcripts because they were not accurate.

[7] At the Voir Dire, it quickly became apparent that the transcripts were not verbatim transcriptions of the recordings. Consequently, all recordings or agreed upon portions thereof were played during the Voir Dire with the parties identifying the portions of the recording which they wanted the court to hear.

[8] This process consumed two and a half days of court time.

The Law

[9] The surreptitious recording of a conversation by one of the parties to that conversation does not contravene the Criminal Code. In such cases the person who records the conversation to which they are a party is considered to have consented to the recording as contemplated in Section 184 (2)(a) of the Criminal Code.

[10] This court considered the test for admissibility of surreptitiously obtained recordings in *B.M. v. A.C.*, 2019 NSSC 100. In that case, Justice MacLeod Archer defined the threshold test for admissibility as being whether, on a balance of probabilities:

1. The recording was relevant to an issue that must be determined,
2. The recording was authentic, meaning that it has not been manipulated, and the identify of the speaker can be confirmed.

[11] The criteria set out in *B.M. v. A.C.*, *supra*, does not take into account the necessity of the probative value of the relevant evidence outweighing the prejudicial effect which the opposing party, the proceeding, the court or the administration of justice may experience as a result of the admission of the relevant evidence.

[12] The court's authority to refuse to admit relevant evidence because the prejudicial effect of its admission would outweigh its probative value falls within the courts general exclusionary discretion. (*R v Calnen*, 2019 SCC 6 and *Fraser v Nova Scotia Barristers' Society*, 2024 NSSC 173)

[13] This court in *Godin v. Godin*, 2010 NSSC 365 exercised its general exclusionary discretion when it considered the admissibility of evidence obtained by the mother in breach of the father's privacy. In *Godin*, *supra* Justice Lynch stated, "With the manner in which the material was obtained, the probative value of the email would have to be high to outweigh the prejudicial effect." Justice Lynch concluded that the probative value of the impugned evidence was very low and as a result held that the evidence was not admissible.

[14] The courts in Ontario have taken a conservative view of the admissibility of surreptitiously obtained recordings in family law cases because of the prejudicial effect of the admission of such evidence. In *Hamed v. Hamed* 2006 ONCJ 274 Judge Sherr ruled that surreptitiously recorded telephone calls were inadmissible because:

11Surreptitious recording of telephone calls by litigants in family law matters should be strongly discouraged. There is already enough conflict and mistrust in family law cases, without the parties' worrying about whether the other is secretly taping them. In a constructive family law case, the professionals and the courts work with the family to rebuild trust so that the parties can learn to act together in the best interests of the child. Condoning the secret taping of the other would be destructive to this process.

[15] Courts in other provinces have admitted surreptitiously made recordings concluding the prejudicial effect of the admission did not exceed the probative value of the impugned evidence. The British Columbia Supreme Court in *C.C. v. S.P.R.* 2022 BCSC 1057 admitted three surreptitiously made recordings. In that decision Justice Gibb-Carsley observed that the jurisprudence in Ontario has developed to support greater discretion to exclude surreptitious recordings and that in Ontario;

courts now place a greater emphasis on the presumption of significant prejudice that a party must overcome to adduce secretly made recordings. This presumptive prejudice arises from the impact that such recordings have on the parties, their children, and the administration of justice, including undermining the above-mentioned objectives of modern family law through the tendency of such recordings to erode relationships and increase conflict.

[16] Justice Gibb-Carsley held that:

the approaches to considering the admissibility of secretly recorded evidence in British Columbia and Ontario are not markedly different and ultimately consider whether, in the specific circumstances of each case, the probative value of admitting the recordings outweighs the prejudicial effect of admitting the evidence. The primary difference is that the Ontario courts appear to have greater consideration for the presumptive prejudice to the administration of justice by admitting secretly made recordings (paragraph 39).

[17] In considering the impugned evidence Justice Gibb-Carsley applied the following four-part test:

- i. the recordings must be relevant;
- ii. the participants must be accurately identified;
- iii. the recordings must be trustworthy; and
- iv. the court must be satisfied that the probative value of the recordings outweighs its prejudicial effects.

[18] In *Dostzada v. Marshal*, 2023 NLSC 78, the Newfoundland Supreme Court considered and applied the four-part test applied by Justice Gibb-Carsley in *C.C. v. S.P.R.*, *supra*. In *Dostzada*, *supra* Justice Shehan admitted a surreptitious recording made by a wife upon being satisfied that the probative value of the evidence outweighed its prejudicial effect.

[19] As the four part test applied by Justice Shehan in *Dostzada*, *supra* is consistent with and a good synthesis of the factors considered in the Nova Scotia jurisprudence in *B.M. v. A. C.*, *supra* and in *Godin v. Godin*, *supra* I will apply that four-part test to the evidence proffered by Ms. Power subject to the following comment regarding the prejudicial effect of surreptitiously obtained evidence.

[20] With respect to the issue of prejudice I accept that the surreptitious recording of family members is an odious practice that should not be encouraged. The courts should not encourage practices which erode trust between spouses or former spouses and is contrary to the core values of family law of assuring the best interests of the child, of reducing conflict and of maintaining, restructuring and encouraging family relationships. The prejudicial effect on hearing time must also be considered. In this case, the Voir Dire regarding the admissibility of these transcripts and ultimately the recordings themselves consumed two and a half days of trial time, which time was scheduled to address Ms. Power's relocation motion. Because the admission of surreptitious recordings will have prejudicial effects on the parties, the courts and the administration of justice the evidence must be more than marginally relevant. To be admissible the impugned evidence must have a high or strong probative value which standard will be met if the probative value of the evidence outweighs the prejudicial effect of its admission.

[21] With respect to trustworthiness, I make the following findings;

1. Mr. Power says the transcripts are not accurate. I agree with him. The transcripts are not an accurate transcription of the audio recordings to which they relate. While some portions of the transcripts are accurate, I cannot rely on them because they are not trustworthy. For this reason, none of the transcripts attached to Ms. Power's affidavits are admitted into evidence.
2. The audio recordings were tendered during the Voir Dire.
3. I will address the trustworthiness of each audio recording as part of my analysis of that recording.

[22] With respect to the identity of the participants in the recordings, I offer the following observations and findings:

1. All but one of the recordings (the recording made outside of a hockey rink) were recorded in the morning when J was eating his breakfast.
2. Ms. Power made the breakfast time recordings on her phone.
3. In the recording he was either in his mother's home and talking to his father via the Our Family Wizard App or in his father's home and talking to his mother via the Our Family Wizard App. In some instances, in addition to Mr. Power, Ms. Power and J, Mr. Power's partner is heard speaking and at times Mr. Power's mother is heard speaking.
4. The parties had no difficulty identifying the persons speaking on the recordings.
5. Mr. Power admitted that his voice is heard on the breakfast time recordings.
6. The recording made outside of a hockey rink involved Mr. Power, Ms. Power and J. Ms. Power recorded it on her phone. Mr. Power confirmed that his voice is heard in this recording.
7. Mr. Power acknowledges, and I am satisfied that all the participants in the recordings have been identified.
8. The second part (participant identification) of the four-part test is met for all recordings.

[23] Having found that the persons speaking in the audio recordings are identified I must now consider each recording to determine if it meets the remaining three threshold admissibility requirements – relevance, trustworthiness and probative value that outweighs the prejudicial effect of the recording. If any portion of a recording is admitted the weight, if any, to be accorded to the recording will be determined in the relocation proceeding.

[24] With respect to the questions of relevance and probative value I must bear in mind that the issue in this proceeding is whether Ms. Power should be permitted to relocate J to Colby Village. Ms. Power says the relocation issue must be determined on the basis of J's best interests and that in considering J's best

interests the court must consider among other things any family violence and in that regard whether there is a pattern of coercive and controlling behaviour.

[25] Ms. Power refers to Justice Chappel's description of coercive and controlling behaviour in *M.A.B. v. M.G.C.*, 2022 ONSC 7207. In this case Justice Chappel considered the term coercive and controlling behaviour as that term is used in the Ontario *Children's Law Reform Act*, (the CLRA) and not the *Divorce Act* but I find Justice Chappel's consideration of the term applies equally to the phrase coercive and controlling behaviour as that term is used in the *Divorce Act*. Justice Chappel said:

183......A general review of this caselaw indicates that "coercive" behaviour includes conduct that is threatening, intimidating or exerts inappropriate pressure on the other person. Behaviour is broadly being considered as "controlling" if its intent or effect is to inappropriately manage, direct, restrict, interfere with, undermine or manipulate any important aspect of the other person's life, including their important relationships and their physical, emotional, intellectual, spiritual, social and financial autonomy or wellbeing.

184 For the purposes of this case, it is important to highlight that the concept of a pattern of coercive and controlling behaviour encompasses the following types of behaviour:

1. Engaging in verbal abuse, yelling, name calling and insults (*W.A.C. v. C.V.F.*; *McBennett*; *K.M. v. J.R.*; *S.S. v. R.S.*, [2021 ONSC 2137](#) (S.C.J.); *Freitas v. Christopher*, [2021 ONSC 2340](#) (S.C.J.); *M.N.B. v. J.M.B.*, [2022 ONSC 38](#) (S.C.J.));
2. Making numerous unsubstantiated allegations against the other party (*Armstrong v. Coupland*, [2021 ONSC 8186](#) (S.C.J.); *I.S. v. J.W.*, [2021 ONSC 1194](#) (S.C.J.); *K.M. v. J.R.*; *Ammar v. Smith*, [2021 ONSC 3204](#) (S.C.J.));
3. Unilaterally changing court-ordered parenting time terms without justification (*Armstrong*); and
4. Regularly engaging in behaviour that has the effect of undermining the other parent's authority or influence and alienating the child from that parent (*E.V. v. V.-E.*, [2021 ONSC 7694](#) (S.C.J.); *Ammar*; *I.S. v. J.W.*; *S.S.G. v. S.K.G.*, [2022 ABQB 130](#) (Q.B.), per Devlin J.).

[26] Ms. Power says the audio recordings demonstrate Mr. Power has engaged in the coercive and controlling behaviour as defined by Justice Chappel in *M.A.B. v. M.G.C.*, *supra*. Specifically, Ms. Power says Mr. Power undermines her in her role as a parent, refuses to collaborate on key decisions, controls and overrides decisions unilaterally, escalates conflict when she does not agree with him and

creates loyalty pressures for J. She says these facts are relevant to the best interest's analysis required in the relocation motion.

[27] Mr. Power says the audio recordings do not demonstrate a pattern of coercive and controlling behaviour. With respect to the criteria identified by Justice Chappel in *M.A.B. v. M.G.C.*, supra at paragraph 187, Mr. Power says that there is no evidence in the recordings that:

1. he made claims of child abuse to police, child protection authorities and other professionals.
2. he yelled at Ms. Power, called her names or insulted her.
3. his behaviour undermines Ms. Power, rather he says that the conflicts between he and Ms. Power depict different points of view.

[28] Mr. Power says the recordings are not trustworthy and their probative value does not outweigh the prejudice caused by their admission and as a result the recordings should not be admitted.

[29] Mr. Power says not all of the recordings are relevant to parenting conduct or indicate conflict between the parties. He says while some recordings demonstrate certain behaviours reflecting poor choices these do not appear to be regular occurrences and may be considered irregular.

[30] The question to be answered at this Voir Dire is not whether coercive or controlling behaviour between these parties occurred but whether the impugned evidence is trustworthy evidence relevant to the relocation issue generally and specifically relevant to the child's best interest and in that regard relevant to whether coercive or controlling behaviour has occurred and finally whether the probative weight of this evidence exceeds its prejudicial effect.

Recording # 1 - December 19, 2024

[31] In this recording J is eating his breakfast and watching videos on his tablet. His parents talk to him and each other while he eats.

[32] The only potentially relevant portion of this recording is the parties' discussion regarding a failed attempt to have their son see a counselor.

[33] This is not a conversation that the parties should have had in front of their seven-year-old son. The audio confirms the child has a very limited understanding

of the situation and was confused by the discussion. Their son did not need to know the details of why the meeting with the counselor did not proceed.

[34] In the audio Mr. Power says words to the effect of “we should not be dishonest with him.” While this statement could be interpreted as a suggestion that Ms. Power is being dishonest, he did not accuse her of being dishonest.

[35] I have considered this recording, and I am not satisfied that the probative effect of this recording is sufficiently high to outweigh the prejudicial effect of this surreptitious recording.

[36] I will not admit the recording of this communication.

Recording # 2 - December 20, 2024

[37] In this recording J is eating his breakfast with his father. During the recording J asks his mother about an upcoming hockey tournament in Prince Edward Island. This question leads to a discussion about the tournament and Mr. Power tells J that his “Mama” is not being honest with him several times during the recording. Mr. Power tells J that what his mother is saying to him is not true. Mr. Power says to his seven-year-old son that if his mother is being dishonest and directly lying to his face, he should say something. Mr. Power says to J that it stinks that he is not allowed to participate in the tournament. Mr. Power tells J that he asked Ms. Power four times if J can participate and she said no every time.

[38] Ms. Power says this recording is relevant to the issues before me as it is probative as it is evidence of unsubstantiated allegations and undermining behaviour.

[39] Mr. Power says the probative value of this recording does not outweigh its prejudicial effect. Mr. Power says this call relates to paragraph 85 and 86 of the *Tillger v. Tillger*, 2019 ONSC 1463 decision in which it was stated that the parties were making disparaging comments about each other and that other than showing parental conflict in front of the child there was nothing relevant to the video.

[40] I find that the audio recording is relevant to the best interest analysis and in particular to the issue of whether controlling or coercive behaviour such as making unsubstantiated allegations or undermining a parent’s authority or influence, is or has occurred between these parents.

[41] I find that the recording is sufficiently trustworthy to be admitted. Mr. Power admits that it is his voice heard on the audio, and he does not suggest that he did not say what the audio reflects he said. Ms. Power testified that she did not tamper with the audio. The recording does not appear to be edited. I find that Ms. Power did not provoke or set Mr. Power up knowing he would react strongly to something she said. I am satisfied that Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive or unreasonable. I am satisfied that the circumstances giving rise to this recorded discussion were not particularly unique. Discussions about hockey have been an ongoing feature of the parties' post separation experience. I am satisfied that this call does not give a distorted picture of the parties' relationship or of Mr. Power's engagement with Ms. Power in the presence of his son.

[42] I find that the audio recording of this conversation is probative of the issue of whether controlling or coercive behaviour is occurring and to other aspects of the best interests analysis and that this probative value outweighs the prejudicial effect of admitting a surreptitiously obtained recording.

[43] This audio recording is admitted into evidence.

Recording # 3- September 29, 2024

[44] The audio tendered by Ms. Power was the end of a two-hour long conversation. Mr. Power did not tender a recording of the balance of the conversation.

[45] In this recording Mr. Power speaks to J about the importance of being honest and reminds J of his values. Mr. Power does not say anything critical about Ms. Power, nor does he directly attempt to undermine her parental authority.

[46] I have carefully considered this audio recording and am not satisfied that its contents are sufficiently probative of the issues raised by Ms. Power that its probative effect outweighs its prejudicial effect.

[47] I will not admit this audio recording.

Recording # 4 – October 18, 2024

[48] This is another breakfast time recording.

[49] Mr. Power says there are twelve minutes and forty-two seconds missing from the beginning of this recording. Ms. Power said she was walking toward her bedroom when this call started, and she started to record the conversation a few seconds after it started.

[50] At the outset of the recording produced, Mr. Power advised J that Ms. Power was recording the conversation.

[51] The majority of this recording is not relevant to any issue before me. To the extent that any part of the recorded conversation is relevant I am not satisfied that the probative value of this recording exceeds its prejudicial effect.

[52] I will not admit this recording.

Recording # 5 – January 21, 2025

[53] During this recording J is resisting eating his breakfast. Mr. Power asks Ms. Power if J is drinking fresh water or water out of the tap. He says that he guesses that Mama (meaning Ms. Power) does not care about the boil alert. He then says that he is going to hang up if J does not eat his oatmeal. He also says that J will not get to go to school, or practice if he does not eat, which will mean he will not see his friends or family at practice.

[54] I do not accept that Mr. Power trying to get his son to eat the oatmeal Ms. Power prepared for him was evidence of verbal abuse. Ms. Power had made the child oatmeal. Mr. Power's attempt to have the child finish his breakfast is not probative evidence that outweighs the prejudicial effect of the surreptitious recording.

[55] I will not admit this audio recording.

Recording # 6– January 22, 2025

[56] Both parties recorded this conversation.

[57] The context for this breakfast time call was that Ms. Power messaged Mr. Power just before the call was scheduled to start to advise the call would be pushed back by half an hour. It is apparent from the audio recording that J was sick.

[58] During the call Mr. Power encourages J to ask his mother why she only messaged Mr. Power five minutes before the call was to start. He tells the child he

thinks Ms. Power's behaviour was rude and not very respectful. Later in the conversation he tells Ms. Power her behaviour was disrespectful, rude and unacceptable. The child is crying while Mr. Power makes these comments. Later in the recording Mr. Power tells J that it does not matter what he says or what he wants as Ms. Power will dismiss him. Mr. Power suggests that Ms. Power is making up excuses for her behaviour.

[59] At the Voir Dire it became clear that Ms. Power disclosed the transcript of this recording to Mr. Power but provided the wrong audio recording. Mr. Power was provided the correct recording after the first day of the Voir Dire. I permitted time for Mr. Power to listen to the recording the morning of the second day of the Voir Dire.

[60] Mr. Power asks that I not consider this recording because of its late disclosure. I will not disregard this audio recording for two reasons: first Mr. Power told me that he had recorded this conversation himself and had his own recording of the conversation and secondly, although he did not have Ms. Power's recording he did have the transcript of Ms. Power's recording which, while not an accurate verbatim record, conveyed the content of the recording to Mr. Power.

[61] I am satisfied the information contained in this audio recording is relevant to the issues before me and in particular to the question of whether coercive and controlling behaviour has occurred in the form of unsubstantiated allegations and undermining behaviour.

[62] I am satisfied with the trustworthiness of this recording. Mr. Power admits it was his voice on the audio. He did not identify any part of the recording that he said was manipulated. Ms. Power testified that she did not manipulate the recording. I am satisfied that Ms. Power did not set up this situation to incite a negative reaction from Mr. Power. I am satisfied that Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive, unreasonable or inclined to act in a manner contrary to J's best interests. I am satisfied that the nature of Mr. Power's reaction to this situation was not isolated and is therefore trustworthy.

[63] I find that the probative value of this recording exceeds its prejudicial effect.

[64] I will admit this audio recording into evidence. The audio tendered by Ms. Power includes a conversation between Ms. Power and J; I am not admitting that portion of the audio recording.

Recording # 7– January 23, 2025

[65] At the outset of this call Ms. Power advised Mr. Power the call was only going to last twenty minutes that day. Mr. Power says that announcement created conflict and stress to all parties. These calls, even on school days, lasted for an hour or more.

[66] Mr. Power says that both his and Ms. Power's behaviour in this call were due to the stress and significant conflict happening during the litigation.

[67] During the call Mr. Power says to J that "Mama doesn't care about what you want." He asks the child if his mother "basically just dismisses you?" Mr. Power encourages his son to stand up to people who are doing the wrong thing like his mother ending a call after twenty minutes. Mr. Power asks his son, who is seven, if he thinks his mother's behaviour is fair. Mr. Power goes on to say that he loves how the child's mother is dismissive of anything the child says. Mr. Power then returns to the issue of Ms. Power ignoring the child and tells the child his mother can ignore him all she wants but what the child says matters. He says Ms. Power 100% ignores what the child is saying at the moment. He encourages the child to ask his mother why she is not saying anything.

[68] I find that the audio recording contains information relevant to the issues before me and in particular to the allegation of coercive and controlling behaviour, which is manifested in the verbal abuse, substantiated allegations and undermining of a parent.

[69] I find that the recording is trustworthy. I accept that Ms. Power had imposed a twenty-minute limit on the call which limit frustrated Mr. Power however, I am satisfied that the circumstances of the call were not so unique that I should not consider them. I am satisfied Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive or unreasonable or inclined to act in a manner contrary to J's best interests. Mr. Power does not deny that this was his voice or that he said the things noted above.

[70] I find that the probative value of this recording exceeds the prejudicial effect of its admission.

[71] I will admit the audio recording into evidence.

Recording # 8– January 27, 2025

[72] The context for this breakfast time call is that the day before the call J had a dental device installed to help him stop sucking his thumb. Ms. Power asks the child if the device is hurting him while he eats and suggests that they may need to go back to the dentist to see what is going on.

[73] Mr. Power responds by saying the device is not coming out and that Ms. Power can promise whatever the child wants but she is 100% wrong. Mr. Power tells J “that thing is staying in until you stop sucking your thumb for six months.” And to Ms. Power he says, “The thing is staying in his mouth, and I don’t care how much you think he’s upset or hurt.” Mr. Power tells J that Ms. Power did not do any research into the appliance and that she was putting things into the child’s head. Later in the conversation Mr. Power says that Ms. Power is lying to J and tells Ms. Power to stop lying to their son.

[74] Mr. Power acknowledges that there was a kinder way for him to have expressed his frustration regarding the dental appliance.

[75] I am satisfied that the information in the recording is relevant to the question of J’s best interests, which among other considerations involves a consideration of whether a pattern of controlling or coercive behaviour has occurred based on the allegations of verbal abuse, unsubstantiated allegations and the undermining of a parent.

[76] I am satisfied that this audio recording is trustworthy. Mr. Power admits it is his voice in the recording. He does not deny saying the things contained in the recording. The circumstances of the call relate to a particular event (the dental appliance), but Mr. Power’s response appears to be consistent with his response to other challenges and frustrations. Ms. Power did not create the dental appliance situation. I find that Ms. Power did not incite or provoke Mr. Power into making the comments noted above. I am satisfied that Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive, unreasonable or inclined to act in a manner contrary to J’s best interests.

[77] I find that the probative value of the evidence exceeds the prejudice arising from its admission.

[78] I admit this recording into evidence.

Recording # 9– February 28, 2025

[79] The context for this audio recording is that Mr. Power had proposed J attend a number of hockey camps in the summer of 2025 and Ms. Power had not agreed to the full slate of options proposed by Mr. Power.

[80] During this breakfast call J asks his mother about one particular hockey camp. With respect to Mr. Power's summer hockey camp proposals, Mr. Power said to the child "Mama takes a long time to answer and then when she does, she just says no. So that's why you're not playing in these hockey camps, right." Mr. Power says "if you ask me, I'd say, yeah, you can do whatever you want to do for summer. I think it's important you do what you want to do." As the discussion continues the child asks about a hockey camp at a water park and asks Mr. Power about the name of the hotel at the waterpark. Mr. Power tells the child "It doesn't matter, because you can't go unless Mama says you can and you're not going to be able to go to Yogi Bear unless Dada says yes."

[81] Later in the conversation Mr. Power says to Ms. Power "J[sic] wants to participate in hockey and he's telling you a number of times and you don't want to hear him." When Ms. Power objects to the conversation Mr. Power says "He's asking the question not me. He's trying to communicate with you that he wants to play hockey, he's struggling with communicating with you and you just try to isolate him." Mr. Power then asks the child what the child wants to do for the summer, and the child says he wants to go to a basketball camp. Mr. Power asks what else do you want to do, and the child says hockey and baseball. Mr. Power then says to the child "But it really doesn't matter because every suggestion that Dad has suggested to Mama, Mama just says no." He goes on to say "I emailed Mama about your silverback summer camp that's invite only to silverback players and your Mom said no to it. There's no reason why you should not be able to play with the silverback players."

[82] During the call, the discussion of hockey camp continues. Ms. Power attempts to explain her position regarding the summer. Mr. Power says "Well, it's a legitimate question, J[sic] and you've asked Mama four times on this call, and she has not answered it one time for you. So, it's a legitimate question. Why can't you go to the Waterpark HOA hockey camp? That's a legitimate question that you're asking her and she's not answering." When Ms. Power attempts to answer that criticism Mr. Power says "That's not an answer to your question J[sic]. And that will fool you if you're by yourself, but the question is, why can't he go to the

HOA summer camp? The question and the answer is that Mama won't let you go. That is the answer and whether Mama wants to be honest with you or not, that's up to her." At that point Ms. Power attempts to object to the discussion and Mr. Power says, "He's asking you a direct question Mary and you're being dishonest with him."

[83] I am satisfied that the portion of the audio recording that was played during the Voir Dire is relevant.

[84] With respect to trustworthiness, I am satisfied that the audio is an accurate recording of this conversation. Mr. Power admits he was speaking on the recording and does not deny he said what he appears to say on the recording. I find that Ms. Power did not initiate the conversation, I find that she did not provoke Mr. Power into saying what he says on the recording. I am satisfied that Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive or unreasonable or inclined to act in a manner contrary to J's best interests. The issue under discussion had been under discussion for some time between the parties. The extent of the child's engagement with hockey has been an ongoing issue in this family. Mr. Power was not content with Ms. Power's response. Mr. Power's presentation in this conversation is not a one-off circumstance. I find that Mr. Power's presentation in this call is sufficiently reflective of his approach to Ms. Power when issues on which the parties disagree are discussed such that the content of the recording is trustworthy.

[85] I find that its probative value regarding the issue of coercive or controlling behaviour and other aspects of the best interests analysis outweighs the prejudicial effect of its admission.

[86] I will admit the portion of the audio recording that was played during the Voir Dire into evidence.

Recording # 10 March 4, 2025

[87] This is the only non-breakfast time audio recording. The events recorded by Ms. Power occurred in a hockey rink parking lot after J's evening practice. Just prior to the recording commencing, J exited the rink with his father and walked toward Ms. Power's vehicle. J says his dad has some quarters and then asks his mother if he can get something by which I understand that he means going back into the rink to get some hockey cards from a vending machine. Ms. Power denies

his request and attempts to explain that it is 7:20 pm and he needs to get home, have a snack and get into bed.

[88] Mr. Power admits that at some point during this interaction his partner also began recording this interaction.

[89] J does not accept Ms. Power's refusal or her request that he get into her vehicle. J resists. Mr. Power asks J if he has expressed himself. The child says that Ms. Power was trying to dismiss him.

[90] Mr. Power asks J if Mama yelled at him and the child said no. Mr. Power can be heard telling his sister who happened to be driving by in her vehicle that Ms. Power had yelled at J.

[91] Ms. Power repeatedly asks the child to get into her car. Mr. Power does not assist in getting J into her car. When Ms. Power gets out of her car Mr. Power says that J does not want her hands on him and encourages his son to express himself.

[92] The exchange in the parking lot continues with the child refusing to get into his mother's car. At one point the child gets into Mr. Power's vehicle. This exchange is occurring during Ms. Power's parenting time. At one point J runs away from Ms. Power's vehicle which is parked at the end of the parking lot, and he can be heard laughing. Ms. Power tells J that it is not OK and not safe. Rather than speak to J about the fact that he is refusing to get into Ms. Power's car, Mr. Power says to Ms. Power "what are you going to do about it Mary?" About fifteen minutes into the conversation Mr. Power is asking J some questions which are unrelated to Ms. Power's request that J get into her vehicle. Ms. Power says that's enough. Mr. Power tells Ms. Power that she cannot dismiss him saying "I can tell you that right now. You can dismiss him all you want to." When Ms. Power says that Mr. Power is not talking to her in a nice way Mr. Power says that he is standing up for what is right. At that point, the child asks his mother why she dismisses him. Ms. Power tells J that she does not dismiss him, and J responds saying that she does. Mr. Power raises the issue of lying and encourages J to stand up to his mother. He goes on to say to Ms. Power that she "should not lie to our son."

[93] Mr. Power suggests that the child is being endangered by Ms. Power's failure to secure the child into the car.

[94] I find that the content of this recording is relevant to the issues in this proceeding.

[95] I accept that this recording is trustworthy. Both parties were recording the incident. Mr. Power admits his voice is recorded on the recording. I find that Mr. Power was not provoked by Ms. Power. I am satisfied that Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive, unreasonable or inclined to act in a manner contrary to J's best interests. I accept that this was a typical post practice transfer of J from his father's company during the practice to his mother's care following the practice and contains an interaction between the parties that is not an isolated in its tone or content.

[96] I find that the audio provides relevant evidence that is probative of the best interest issues I must decide including but not limited to the question of whether controlling or coercive behaviour has occurred by way of unsubstantiated allegations and undermining conduct. I find that probative value of this evidence outweighs its prejudicial effect.

[97] I will admit this audio recording into evidence.

Recording # 11 April 1, 2025

[98] The context for the issue being discussed at this breakfast time recording is that the day before the call J had a hockey practice which he had attended and an optional training event before that practice which he had not attended. Ms. Power had brought J to the rink in time for the practice but not the optional training.

[99] The audio recording establishes Mr. Power was not pleased that J was not present for the optional training. He tells J he will never be the captain of a team if he is the last person on the ice. Mr. Power then shifts the topic to an upcoming TASA spring skills program practice which Ms. Power had not agreed J could attend. Mr. Power goes on to say Ms. Power has done a lot of things recently to prevent J from playing hockey and that it was wrong. Mr. Power tells J he is going to fight for what J wants and for what is right and do everything he can to make sure J gets a chance to play hockey as much as he likes and that in the meantime "Mama's gonna stop you from playing hockey."

[100] The topic returns to the optional training event and Mr. Power says it was Ms. Power's fault, that she was making excuses and not being honest with J. Mr.

Power tells J that everyone was not very happy with J for being late. Mr. Power then returns to the upcoming practice and tells J “Well, J[sic], my promise to you, buddy, is that you’re going to be on time for practice when you’re with Dad, and you’re going to go to what you want when you’re with Dad. That’s a promise.”

[101] Mr. Power tells J that Ms. Power either did not read an email or is not being honest with him. He again tells J he will never be a team captain if he’s an hour later for practice. At that point in the conversation Mr. Power asks J if J wants his mother putting her hands on his hair and making him feel uncomfortable. Mr. Power shortly thereafter tells J that Ms. Power does not want to be accountable.

[102] At one point during the call when J was rude to his mother Mr. Power told him to apologize to his mother.

[103] I find that the audio provides relevant evidence that is probative of the best interest issues I must decide, including but not limited to the question of whether controlling or coercive behaviour has occurred by way of verbal abuse, unsubstantiated allegations and undermining conduct.

[104] I accept that this recording is trustworthy. I accept that Mr. Power is recorded on the audio and that the audio was not altered by Ms. Power. Mr. Power does not deny that it is his voice in the audio. I find that Mr. Power was not provoked by Ms. Power. I am satisfied that Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive or unreasonable or inclined to act in a manner contrary to J’s best interests. I accept that this was a typical breakfast event and that hockey was again being discussed. Neither the fact that hockey was being discussed nor Mr. Power’s engagement with Ms. Power and the child were extraordinary. I am not satisfied that this interaction between the parties was an isolated event.

[105] I find that the probative value of this evidence outweighs its prejudicial effect.

[106] I will admit this audio recording into evidence.

Recording # 12– April 2, 2025

[107] The final recording is another breakfast event. This call picks up on the issue from the day before of the TASA spring training session that J did not attend. Mr. Power encourages J to ask his mother why he did not attend the session. Mr. Power

tells J that Ms. Power can dismiss him and ignore his questions as much as she wants and that she just dismissed him. Ms. Power tells the child she will discuss the issue with the child after his call with his father. In response to this Mr. Power tells J that his mother is trying to manipulate him, dismiss him and that that is not OK. He tells the child his mother is trying to isolate him and manipulate him.

[108] At one point in the call Mr. Power asks J what he did after school. J tells his father that his mother had a dentist appointment and what he said about his mother's appointment was true and that she was not lying.

[109] Later in the audio Mr. Power asks the child about a birthday party invitation. The child asks his mother about the issue and when she tries to answer the child asks his mother if she is lying. Later the child accuses his mother of not listening to him.

[110] I find that the audio provides relevant evidence that is probative of the best interest issues I must decide, including but not limited to the question of whether controlling or coercive behaviour has occurred by way of unsubstantiated allegations and undermining conduct.

[111] I accept that this recording is trustworthy. I find that Mr. Power was not provoked by Ms. Power. I am satisfied that Ms. Power did not orchestrate, stage or manipulate this conversation to make Mr. Power appear aggressive or unreasonable or inclined to act in a manner contrary to J's best interests. I accept that this was a typical breakfast event and reflects what appears to be a typical interaction between the parties regarding hockey and not an isolated event.

[112] I find that the probative value of this evidence outweighs its prejudicial effect.

[113] I will admit this audio recording into evidence.

Disposition

[114] In summary the following eight recordings are admitted into evidence.

1. Exhibit C to Exhibit 3 Recording # 2 - December 20, 2024
2. Exhibit L to Exhibit 3 Recording # 6– January 22, 2025
3. Exhibit O1 to Exhibit 3 Recording # 7– January 23, 2025

4. Exhibit O2 to Exhibit 3 Recording # 8– January 27, 2025
5. Exhibit P to Exhibit 3 Recording # 9– February 28, 2025
6. Exhibit Q to Exhibit 3 Recording # 10 March 4, 2025
7. Exhibit F to Exhibit 4 Recording # 11 April 1, 2025
8. Exhibit G to Exhibit 4 Recording # 12– April 2, 2025

The relocation hearing with proceed on July 15 and 16, 2025.

Ingersoll, J.