SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *McCarthy v Pruneau*, 2025 NSSC 329

Date: 20251021
Docket: HFD No. 106799
Registry: Halifax

Between:

Elizabeth McCarthy

Respondent

v.

Joseph Pruneau

Applicant

Judge:	The Honourable Justice Cindy G. Cormier
Heard:	June 27, 2025, in Halifax, Nova Scotia
Final Written Submissions:	July 16, 2025
Counsel:	Elizabeth McCarthy, self-represented Respondent Janice Beaton, for the Applicant

By the Court:

1 Introduction

[1] This matter concerns a child of eight years of age who is in grade two and who has been the subject of court proceedings (*CFSA* and then *PSA*), since shortly after his birth in January 2017. In 2020, the child had been placed with Mr. Pruneau (the father) primarily, and Mr. Pruneau had decision making authority with respect to the child's health needs. The mother had specified parenting time.

[2] On or about March 5, 2025, pursuant to section 18(1)(b) of the *Parenting and Support Act* and *Civil Procedure Rules* 22.03(2) and 28(01), Mr. Pruneau filed an Ex Parte Motion for Ms. McCarthy's parenting time to be supervised at Veith House and asked that the motion be heard on an emergency basis and without notice to Ms. McCarthy. Mr. Pruneau understood that Ms. McCarthy had counselled the child not to take his prescribed medication for the treatment of symptoms related to the child's recent diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).

[3] Mr. Pruneau stated that Ms. McCarthy had advised him via a parenting application they use to communicate that she disagreed with the child's diagnosis of ADHD, and she wrote to him the following: "(The child) has been counselled to

protect his physical boundaries against any attempt of your household/grandparents/teachers to force him to take these drugs in his food/ drink." Specifically, Mr. Pruneau alleged there was a substantial risk Ms. McCarthy would withhold the child from Mr. Pruneau if she was notified about the motion, thereby ensuring the child would not receive his prescribed medication.

[4] Mr. Pruneau raised other concerns, including a concern about Ms. McCarthy interfering with the child's extracurricular activities including his music lessons, soccer practices, and his Beaver / Scouts meetings. Mr. Pruneau also reported that Ms. McCarthy was regularly late returning the child to his care, and he believed the child was being counselled to make false allegations against him.

[5] Mr. Pruneau reported that Ms. McCarthy had made various applications for peace bonds against him, heard in January 2024, where it was found she had insufficient evidence, another in June 2024 related to the child's soccer practices, and a third August 14, 2024 where she failed to appear and the matter was dismissed.

[6] Mr. Pruneau indicated that despite the Court's direction in a decision rendered in March 2020, the mother had been taking unilateral action with respect to publicly transitioning the child's gender while the father retained decision

making authority with respect to any inquiry or recommendations regarding the child's gender expression, specifically, without prior notice to the father, dropping the child off at school and daycare wearing girl's tights, girl's pajamas, dresses, and girl's underwear.

[7] The father sought:

> Supervision of Ms. McCarthy's parenting time with (the child) on at Veith House, since she is interfering with the medication recommendations for ADHD which I have accepted and intend to follow, and given her history of breaching the parenting orders herein by withholding (the child) when he is scheduled to be with me;
>
> Prohibiting Ms. McCarthy from attending (the child)'s extracurricular activities; and
>
> A Psychological assessment of Ms. McCarthy.

[8] The matter was scheduled before me with notice to Ms. McCarthy. Ms. McCarthy was served at the access control point at the Supreme Court of Nova Scotia Family Division on or about March 27, 2025.

[9] The matter was scheduled to be heard on April 2, 2025. On April 2, 2025, Ms. McCarthy contacted the court to request an adjournment. No formal motion was filed, but she did file an affidavit date-stamped April 2, 2025. Ms. McCarthy's affidavit contained child hearsay and expert hearsay (Dr. Parker). No third party reports or affidavits were filed.

[10] Ms. McCarthy requested that I dismiss Mr. Pruneau's request that Ms. McCarthy's parenting time be supervised with costs; that Mr. Pruneau's request for Ms. McCarthy to undergo a psychological assessment be dismissed with costs; that Mr. Pruneau be ordered to undergo a psychological assessment and an anger management program; and that Mr. Pruneau be ordered to provide Ms. McCarthy with a sufficient quantity of the child's medication to be administered during her parenting time.

[11] Prior to any evidence being heard, Ms. McCarthy agreed she would administer the ADHD medication to the child as recommended by the child's health care provider and as requested by Mr. Pruneau, who is authorized to make the child's health care decisions. Given the mother's consent, I did not order supervised parenting time. I did grant an order authorizing the father to dispense the child's medication, including to the mother during her parenting time. The matter of the mother being compelled to undergo a Parental Capacity Assessment with a Psychological component was adjourned to a pre-trial conference scheduled on May 13, 2025 to allow Ms. McCarthy time to retain a lawyer.

[12] On May 13, 2025, Ms. McCarthy did not consent to participate in a Parental Capacity Assessment with a psychological component. In addition, the mother indicated she wished to speak to legal counsel before consenting to the father's

request for the production of the records of the Sackville Detachment of the RCMP. Further, Ms. McCarthy filed correspondence (no motion or supporting documents) on the same day as the court appearance asking that a motion hearing be scheduled to have me recused from the matter. Based on her correspondence, Ms. McCarthy also sought an order to have the child seen by Dr. Parker again and clarification regarding parenting exchange locations.

[13] Both parties were directed to file all motions they wished to have heard at least one month before the motion hearing dates assigned. On May 23, 2025, Mr. Pruneau filed a motion for the Production of RCMP records from the Sackville RCMP. The process server attempted service on Ms. McCarthy on or about June 4, 2025, and he was advised Ms. McCarthy had not been living at her previous address for approximately one year.

[14] On May 27, 2025, Mr. Pruneau filed his pre-trial submissions regarding his motion for Ms. McCarthy to cooperate with the completion of a Parental Capacity Assessment with a psychological component. On June 25, 2025, Ms. McCarthy arrived late for the motion hearing, and she filed additional documents on the same date as the hearing.

[15] Before evidence was heard, Ms. McCarthy advised the Court she was consenting to the production of police records as requested by Mr. Pruneau. The presentation of evidence regarding the motion to compel Ms. McCarthy to participate in a Parental Capacity Assessment with a psychological component commenced on June 25, 2025 and evidence was completed on June 27, 2025.

[16] As noted above, Mr. Pruneau filed his pre-trial submissions on May 27, 2025. At close of evidence on June 27, 2025, I directed Ms. McCarthy file her submissions regarding Mr. Pruneau's motion to compel her to participate in a Parental Capacity Assessment with psychological component by July 4, 2025; Mr. Pruneau's response was due July 11, 2025; and Ms. McCarthy had a right to respond by July 16, 2025. Ms. McCarthy did not file any submissions while Mr. Pruneau filed supplementary final written submissions on July 16, 2025.

[17] In his final submissions, Mr. Pruneau highlighted Ms. McCarthy's non-compliance with court orders and the Court's directions to her. Specifically he alleged in part:

1. On June 30, 2025, Ms. McCarthy made a decision not to follow the parenting schedule, specifically that the child would not be attending the last day of school on June 30, 2025;

2. At the motion hearing, Ms. McCarthy initially denied counselling the child not to take his ADHD medication until she was confronted with her own message to Mr. Pruneau indicating she had told the child not to take the medication and showed a lack of insight regarding how her behaviour may impact the child;

3. She is typically late returning the child to Mr. Pruneau's care;

4. She called the police to attend the child's soccer practice to interview the child;

5. She withheld the child from the father during his scheduled time on Easter weekend;

6. She was four hours late returning the child on Christmas Day; and

7. She did not return the child to the father on January 17, 2025.

[18] Mr. Pruneau argued that Ms. McCarthy has at times created disruptions at the child's extracurricular events, and that he suggested alternating their attendance and she refused. The evidence presented to me in June 2025 suggests it may be harmful / not in the child's best interests for his mother to continue to attend the child's extracurricular events, however, I am not necessarily convinced the mother will take him to those events if she is not permitted to remain while he participates.

2 Litigation background

2.1 Contested hearing January 2017

[19] On January 27, 2017, a contested hearing was held and the child was placed in Mr. Pruneau's care and custody subject to the supervision of the Agency. Ms. McCarthy continued to have parenting time arranged through the Agency. The Minister had identified a concern with respect Ms. McCarthy's ability to read the child's cues and to respond to the child's needs. The Minister did not identify any concerns related to Mr. Pruneau's parenting but did identify a concern related to Ms. McCarthy's and Mr. Pruneau's ability to co-parent.

2.2 Child placed in Mr. Pruneau's primary care

[20] Ms. McCarthy initially resided with her parents beginning in or around February 2017, and she secured her own accommodations in or around June 2017. Ms. McCarthy's parents acted as supervisors for her parenting time with the child until she was granted fully unsupervised overnight parenting time in August 2017.

[21] A shared parenting plan was developed by the Minister and implemented beginning in or around August 2017 through to September 3, 2017. The Minister's expectation thereafter was that the parties would work together to develop a parenting schedule, however, the parties required further support / intervention by the Minister.

2.3 Notice of Application filed by Ms. McCarthy in August 2017

[22] On August 31, 2017, Ms. McCarthy filed a Notice of Application requesting primary care and for Mr. Pruneau to be granted care of the child every second weekend, another day during the week, and shared holidays. She also requested shared decision-making responsibility, allowing Ms. McCarthy to make decisions regarding the child's healthcare, and his education, with shared decision-making for decisions regarding the child's religion, culture, and any extracurricular activities.

[23] Ms. McCarthy stated that some of the reasons she had for seeking primary care of the child included making sure:

> …(the child) is in the care of a parent and that his best interests are therefore served appropriate to his developmental stage… He has not been, and will not be, placed in the care of grandparents/extended family members, friends, hired babysitters, current/future relationship partners or daycare / childcare providers for extended periods. The exception to this is/will be brief periods in the care of his maternal grandparents and/or childcare providers for court appearances, engagements and appointments where bringing an infant is inappropriate or unsafe, and then only on occasion. I believe that, at this developmental stage, it is best for (the child) to be cared for by a parent.

Ms. McCarthy indicated she wanted to maximize the parenting time available to her with the child while she was on parental leave, pending any agreement to a long-term parenting arrangement pursuant to the *Parenting and Support Act*.

[24] While the child was transitioning to a shared parenting arrangement developed by the Minister, Ms. McCarthy alleged that around labour day weekend in 2017 the child was experiencing "night-terrors" at her home following visits to Mr. Pruneau's home. Ms. McCarthy "diagnosed" the child with "night terrors," and attributed the child's discomfort to Mr. Pruneau's parenting. There was no indication that Ms. McCarthy had considered that perhaps the child was having some difficulty adjusting to spending additional time in her care, including recently approved overnights, after an increase in her parenting time.

[25] Later, I accepted the evidence that the child had no trouble sleeping at Mr. Pruneau's home and that he had easily transitioned to bed at an age appropriate time. I found no evidence Ms. McCarthy had considered whether that changing the child's regular bed time routine, from what was established in Mr. Pruneau's home when he had primary care of the child to the child co-sleeping with Ms. McCarthy when he began overnights in her new home at approximately 13 months through to his second birthday, could have caused the child any confusion or upset.

[26] Despite Ms. McCarthy attributing blame to Mr. Pruneau, the parties reached an interim agreement, adopting a shared parenting arrangement, per Consent Order October 24, 2017. A further Consent Interim Order, providing for shared parenting, was agreed to in January 30, 2018.

2.4 Notice of Motion for Interim Relief filed by Ms. McCarthy in July 2018

[27] In July 2018, Ms. McCarthy filed a Notice of Motion for Interim Relief. According to her Affidavit filed in August 2018, Ms. McCarthy was seeking to deal with holiday parenting time. Ms. McCarthy raised concerns regarding the following:

(a) Labour Day weekend 2017, requesting a Court Order specifying parenting time for Labour day weekend in 2018;

(b) Christmas 2017 holiday parenting time;

(c) Easter 2018 parenting time;

(d) Not dealing with March break (child is a baby); and

(e) Mother's Day, and Father's Day 2018 parenting time.

The Interim Orders previously granted were silent with respect to sharing the holidays. The parties were expected to continue the regular parenting schedule until a final order was in place or reach an agreement.

2.5 Proposed Settlement January 2019 – July 2019 Ms. McCarthy failed to attend.

[28] In or around January 2019, Ms. McCarthy advised the Court she wished to resolve the parenting issue by continuing the shared parenting arrangement which

was in place. She confirmed she was no longer seeking an order granting her primary care of the child, which she had sought based on her Notice of Application filed in 2017.

[29] In February 2019, Mr. Pruneau suggested the possibility of "parallel parenting." Mr. Pruneau agreed to participate in a judicial settlement conference with the understanding that the parties would be discussing a shared parenting arrangement, and Ms. McCarthy consented to participate.

[30] Prior to the settlement conference, Ms. McCarthy's counsel filed a motion to be removed as solicitor of record. Subsequently, Ms. McCarthy failed to attend the settlement conference. Based on the evidence contained in two affidavits of attempted service filed around that time, I found Ms. McCarthy was avoiding service of documents.

[31] Ms. McCarthy testified about her involvement in a new intimate partner relationship between June of 2019 and February of 2020, explaining she had a pregnancy loss during that time. Ms. McCarthy stated that she introduced her new partner to the child in August 2019. She explained that the relationship was on "hiatus" since February 2020 and Ms. McCarthy's previous partner did not testify at trial. I was aware of and I considered Ms. McCarthy's personal circumstances

and how they may have impacted her participation in the proceeding, especially as it related to her "pregnancy loss."

2.6 Ms. McCarthy's parents' support and / or involvement

[32] After Ms. McCarthy returned to work in or around February 2018, her parents cared for the child bi-weekly for 4 – 6 hours in the evenings, and they assisted with travel to exchanges with Mr. Pruneau beginning in the summer of 2017 through to February 2018 when the child was placed in daycare.

[33] Ms. McCarthy's parents would also have contact with the child at her home, attend activities, have communication with him on the telephone, and they would participate in video calls with the child perhaps more than once per week. When asked about any harm that may have come to the child when spending time with her mother, Ms. McCarthy stated that the was "not physically harmed."

[34] Ms. McCarthy expressed concern about her parents contact with the child, including concerns about her mother's use of medication since 2018 or before, and about her "level of cognition." At trial in 2020, Ms. McCarthy confirmed she had not arranged for the child to see her parents since November 2019.

[35] Mr. Pruneau stated that Ms. McCarthy had previously described her parents as abusive. Ms. McCarthy objected to Mr. Pruneau meeting with her parents,

which had been at Ms. McCarthy's sister's request, to arrange to give the child Christmas presents from them in December 2019. Ms. McCarthy alleged that Mr. Pruneau's meeting with Ms. McCarthy's parents and / or sister and the present exchange in December 2019 was in contradiction to the direction she had provided to Mr. Pruneau in a parenting log entry dated November 13, 2019.

[36] Ms. McCarthy accused Mr. Pruneau of "disregarding the terms of their court order re: agreement on the major upbringing decisions around our co-parenting (the child)," objecting to him allowing the child to see her parents, stating that she had advised her parents to retain a lawyer and fill out an application with the court pursuant to Section 18, Contact Time for Grandparents, *Parenting and Support Act*, if they wish to have contact with the child.

[37] Ms. McCarthy also took exception to Mr. Pruneau allowing the child to have contact with her sister at the same time he had taken the child to meet with her parents. She suggested that her sister had behaved in an aggressive way toward her and placed the child at risk.

[38] Neither Ms. McCarthy's parents nor her sister testified at trial in 2020. Although Ms. McCarthy did initially have the support of her parents and her sister, she was apparently estranged from them at the time of trial in March 2020.

2.7 Ms. McCarthy's requests at trial in 2020

[39] At trial in 2020, Ms. McCarthy was asking me to order the parties to attend co-parenting counseling in separate sessions; create a detailed parenting plan to be filed with the Court; learn new communication strategies; plan options in the event of a dispute; and "create and place boundaries around the roles of non-parents and of non-custodial family members in (the child)'s life, to avoid ongoing conflict in the co-parenting relationship."

[40] Despite Ms. McCarthy's request that I order the parties to attend co-parenting counseling, at trial in 2020, Ms. McCarthy conceded that "outside any settlement conference proposals" she had failed to respond to letters from Mr. Pruneau's counsel suggesting co-parenting counseling in October 2018 and April 2019. In addition, Ms. McCarthy acknowledged she had failed to file written submissions in advance of, and to attend a settlement conference scheduled in July 2019.

[41] Further at trial in 2020, Ms. McCarthy asked me to grant orders directing as follows:

(a) That Mr. Pruneau not attend the child's extracurricular activities on "her" time;

(b) That Mr. Pruneau not attend exchanges to or from her parenting time;

(c) That Mr. Pruneau's mother not attend exchanges to and from Mr. Pruneau's parenting time / without police oversight; and

(d) That Mr. Pruneau's mother not go into the Tim Horton's restaurant if Ms. Pruneau is dropping the child off to or picking the child up from Ms. McCarthy at Tim Horton's.

Ms. McCarthy indicated she would agree to have Bob Pruneau, Phil Pruneau, Jennifer Pruneau, or anyone from the family she referred to as the Fraser family drop the child off.

[42] Ms. McCarthy apparently saw no problem associated with expecting others to drop the child off at his daycare as early as 7:30 am to accommodate her preferences and / or stated problems with Mr. Pruneau and his mother, which she had failed to make any attempt to mitigate.

2.8 The child's health needs

[43] Ms. McCarthy placed the child on a wait list for a family doctor and a pediatrician was then identified. Ms. McCarthy requested that if the pediatrician was unavailable, and if there were other concerns, that either parent should attend at the community care clinic in Sackville. I found there was no doubt that Ms.

McCarthy had arranged for the child to be seen by appropriate healthcare professionals.

[44] Ms. McCarthy suggested Mr. Pruneau had been unresponsive to the child's needs. She stated she had taken the lead regarding his medical care by arranging for the child's flu shot in 2017; his immunizations in 2018/2019 and 2019/2020; a referral to the IWK chest clinic; an appointment regarding his breathing; a follow up appointment with respect to immunizations; and she had made arrangements for his dental care.

[45] Ms. McCarthy reported that she experienced problems in her relationship with the child's pediatrician. Mr. Pruneau did not have any concerns. Ms. McCarthy advised the child's pediatrician she would no longer be attending any appointments with the child at the pediatrician's office, but Mr. Pruneau continued to take the child to see his pediatrician on his own parenting time.

[46] Ms. McCarthy felt she was not being heard by the child's primary health provider or by Mr. Pruneau regarding her concerns about the child's breathing difficulties. Subsequently, Ms. McCarthy arranged for the child to be accepted as a patient with a nurse practitioner, and then another primary care physician for appointments during her parenting time.

[47] For a period, the child had two primary physicians. Ms. McCarthy did not see a problem with that situation. Mr. Pruneau felt it was in the child's best interest to have one primary care physician and for both parents to attend all appointments when possible or to have an alternate person attend any appointments on their behalf.

[48] Ms. McCarthy did not recognize or she refused to acknowledge the importance of the child seeing the same primary care physician on a consistent basis. Ms. McCarthy did not acknowledge it may be important for a primary care physician to hear from both parents together if possible or that it may be important for both parents to be able to ask the physician questions in person, especially given they live in separate households.

[49] Based on the evidence before me, I found Mr. McCarthy's position on retaining two primary health providers could contribute to a problem sharing vital information and could create a scheduling problem. I was not satisfied Ms. McCarthy had an appreciation that it is in the child's best interests for both parents to set aside any differences in the interests of both parents receiving the same, possibly critical healthcare information. Ms. McCarthy's expectation that every health care professional would be amenable or available to meet with parents

separately or to respond to a parent's telephone call after the child's appointments was unreasonable.

[50] Given the ongoing conflict between the parties, I found it was not in Dalton's best interests that either parent be forced to rely on the report from the other parent regarding what a health care professional said or recommended. Unless there was a very good reason, both parents should be entitled to provide input and to ask the healthcare professional questions directly while the child was being examined.

[51] I found it was in Dalton's best interest to have only one primary care physician, and that his primary care physician should be the pediatrician who had had involvement with him since shortly after his birth. Further, I found it was in the child's best interest that Mr. Pruneau make final decisions related to the child's medical care.

3 2020 Findings / Decision

[52] When the child was three years and two months old, I rendered a decision *E.A.M.* v. *J.P.P.*, 2020 NSSC 112, and my findings of fact included the following:

> …
> Upon (the child)'s birth Ms. McCarthy experienced difficulties developing a plan to care for the child, and the parties' experienced significant difficulties co-parenting.

> Mr. Pruneau presented a plan for the child and he provided for (the child)'s needs while Ms. McCarthy took advantage of services available in the community, and services provided by the Minister of Community Services – Child Welfare. The services were put in place to assist Ms. McCarthy to develop a plan for (the child), and to support both Ms. McCarthy and Mr. Pruneau to come up with a plan to co-parent their then newborn child, (the child).
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> Despite the interventions and services provided, conflict between Ms. McCarthy and Mr. Pruneau persists to this day. (The child) is now over three years old.
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> Ms. McCarthy suggests (the child) is unaware of any conflict between the parties, and he is therefore not affected by it. Ms. McCarthy suggests the parties should continue making major decisions together, except that she should be entrusted to make medical decisions. Ms. McCarthy believes a shared parenting arrangement should be finalized.
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> Mr. Pruneau argues that the conflict does have an impact on (the child), and that it is caused by Ms. McCarthy…

Based on a critical review of the evidence presented to me on June 25 and 27, 2025, and a review of the chronology of events in this case, a question arises about a possible "clinical issue" which may have continued to interfere with Ms. McCarthy's decision making.

4 Previous Findings of Fact regarding Ms. McCarthy's presentation

[53] In *E.A.M* (supra), I found Ms. McCarthy had a misconception about real world resources and that her expectations of others, including service providers, her own family, Mr. Pruneau and his family, and other support persons in her life, were not realistic.

[54] I found Ms. McCarthy had a history of attributing blame to others and then limiting her contact with them while claiming there would be no impact on the

child. Ms. McCarthy appeared to be able to accept only very limited responsibility for her role in any ongoing conflict, and there was no evidence she would be able to change her behavior and or reconsider her perceptions.

[55] I found that despite the services Ms. McCarthy had taken advantage of over a more than a three-year period (2017 – 2020), Ms. McCarthy was still regularly alleging a risk of harm / blame to other persons and still asking the Court to require others to accommodate her, with little focus on the child. I found Ms. McCarthy used a communication log not only for relevant and necessary parenting updates but also to also communicate with Mr. Pruneau about legal issues and to direct Mr. Pruneau to comply with various requests / demands she made for him to comply.

[56] Mr. Pruneau suggested that Ms. McCarthy was preventing the child from progressing through the "normal stages of his development." He argued that Ms. McCarthy was not responding to the child's needs when she demanded that Mr. Pruneau, and to some extent that the daycare, no longer provide the child with opportunities to learn, along with his peers, to toilet train. He argued that Ms. McCarthy's behavior around the child's toilet learning was a striking example of Ms. McCarthy placing her needs ahead of the child's needs. Ms. McCarthy should have known her behaviour may cause increased conflict.

[57] Another concern raised by Mr. Pruneau was Ms. McCarthy's attempts to monitor the time Mr. Pruneau's fiancée was spending at his home. I found that at Ms. McCarthy's request, Daniel Arnold did monitor, and at times Mr. Arnold took pictures of Mr. Pruneau's home and yard to document when Mr. Pruneau's fiancée / now wife was at his home. Ms. McCarthy agreed she was introduced to Mr. Arnold through his association with the Pruneau family in or around 2015, as Mr. Arnold lives close to Mr. Pruneau and Mr. Pruneau's parents. Again, Ms. McCarthy should have known her behaviour may cause conflict.

[58] In addition, Ms. McCarthy acknowledged she had hired a private investigator to investigate Mr. Pruneau and his family shortly after the child's birth in 2017. Although she stated to the Court that she would be filing video surveillance information at trial, no such information was filed by Ms. McCarthy.

5 False allegations

[59] Ms. McCarthy accused Mr. Pruneau's fiancée / now wife of abusing the child and of interfering with the previous *Children and Family Services Act* matter involving the parties. Ms. McCarthy allegedly wrote to the Newfoundland Barrister's Society to make complaints or comment about Mr. Pruneau's fiancée's / now wife's past work and her volunteer history. Ms. McCarthy has contacted the

Nova Scotia Legal Aid Society to make allegations about Mr. Pruneau and to suggest that Mr. Pruneau's fiancée / now wife was ethically unfit to practice law.

[60] After reviewing several letters reportedly written on Ms. McCarthy's behalf by members of her family and then forwarded to Mr. Pruneau's fiancées' parents, and to a professional support person, I found Mr. Pruneau's allegations about Ms. McCarthy's efforts to defame his fiancée / now wife were most likely true. I found the letters were entirely inappropriate, and I found that on the balance of probabilities Ms. McCarthy drafted the letters and sent the letters, or she had a hand in drafting the letters and ensuring the letters were sent. It is not reasonable to suggest that Ms. McCarthy did not know her behaviour would cause conflict.

6 Gender development

[61] When the trial was held in March 2020, the child was three years and two months old. At that time, Ms. McCarthy claimed the child was expressing a desire to have a dress to wear to and / or at Mr. Pruneau's home. I took judicial notice and I found in part that it was widely accepted that:

> … gender development usually begins during the toddler years. Children start to identify as a boy or as a girl, and that process is often referred to as gender labelling. Children then develop an understanding that gender continues, and it is understood that they develop **gender stability around ages four or five**. During this period children may not understand that gender continues despite superficial changes (wearing a dress), they may not yet grasp the idea of gender constancy.

[62] In the context of the litigation between these parties, I was not prepared to rely on Ms. McCarthy's reports of her observations and her assessment of the child's needs in relation to his gender expression. For instance, given Ms. McCarthy's failure to answer in a forthright manner about the issue of the child's "toilet learning" which I found was most likely an effort to control the child's circumstances and to meet her own needs, I chose to proceed cautiously.

[63] Based on the circumstances of this case I found:

> When children present with conflicting histories from two parents, especially parents going through a contested hearing involving parenting, there is definitely good cause to proceed with caution. A desire for some stereotypical female gender expression (if in fact there has been any expression from (the child) himself), does not equate a desire to change to a female identity.
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> … (the child) should be allowed a variety of ways of expressing himself, and that both Ms. McCarthy and Mr. Pruneau should avoid giving (the child) the message that there is one way of expressing himself given his gender, or for any gender. For instance, parents are often given the recommendation to avoid generalizing "pink" as only a "girl thing," and blue as a "boy thing."
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> … it is not in (the child)'s best interest for either parent to begin "socially transitioning" (the child), including dressing him as a girl and posting images of him, or using female pronouns or names for him. Neither parent should make any assumptions as gender variant preferences do not automatically indicate a need for a change of identity and for social transitioning. Neither party should take unilateral action with respect to (the child)'s gender.
>
> … that the ongoing conflict between the parents and any disagreement between the parents regarding (the child)'s gender expressions creates a risk of emotional harm. Ms. McCarthy has suggested that (the child) is aware of a difference between his parents and their view about his gender expression (reportedly asking her to ask his father to have dresses available at his home). I do not accept Ms. McCarthy's testimony. I have serious concerns about Ms. McCarthy's credibility and therefore I am reluctant to say more on the topic of (the child)'s gender preference.

> … **that on a balance of probabilities Ms. McCarthy has misperceived, exaggerated, lied, or made false statements about Mr. Pruneau's, and Wendy Pruneau's allegedly intimidating behaviors. I also find Ms. McCarthy has completely fabricated concerns about Mr. Pruneau's fiancée, and that she has supported or made allegations about her parents, her sister, and about (the child)'s pediatrician, to suit her own needs at various times**.
>
> I have determined it will be up to Mr. Pruneau to monitor (the child)'s needs with respect to his gender development and to respond to those needs whatever they may be. I am satisfied that regardless of (the child)'s gender expressions to him, that Mr. Pruneau will respond appropriately.
>
> I further find that (the child) is too young to be socially transitioned (including having pictures posted on any public / online forum), in girl clothing. His concept of gender is not fully developed, and it is generally understood that gender variant preferences do not automatically indicate issues with gender identity or a need for social transition. **I find it is in (the child)'s best interests for a gender-neutral approach to be used until it is determined whether professional guidance should be sought. Mr. Pruneau will make the decision regarding the need for professional assessment**.
>
> (The child) has the right to express himself, and it is hoped that each parent will accept, and respect and support (the child) as he develops, in whatever way he develops. **However, neither party shall unilaterally dress (the child) as a girl or force (the child) to take on certain gender roles**. Both parents shall ensure (the child) is involved with playgroups, and or with playmates, and in settings that support his interests.

7 Co-parenting efforts

[64] At the conclusion of the trial in 2020, I found Mr. Pruneau had attempted to co-parent with Ms. McCarthy, and Ms. McCarthy created unnecessary ongoing conflict, resulting in Mr. Pruneau deciding it was in the child's best interests for him to request primary care of the child. Although I recognized that some degree of conflict occurs in most, if not all, families regarding child rearing issues, I found that in this case, the evidence showed Ms. McCarthy was responsible for the ongoing conflict.

[65] In addition, I found the evidence suggested Ms. McCarthy had no intention of letting go of any perceived slights by Mr. Pruneau, his fiancée, his mother, her parents, her sister, the counselor, or the child's initial primary care physician. Based on my review of the evidence, I found Mr. Pruneau remained polite and supportive in his comments about Ms. McCarthy's parenting, and that he tried to address any disagreement through legal counsel.

[66] For instance, in his affidavit filed March 3, 2020, he described Ms. McCarthy as "an enthusiastic mother" stating "it is evident she cares for (the child)." He also indicated "Ms. McCarthy takes (the child) to many extracurricular activities, which I believe is well-intentioned.".

[67] Courts have often found it is not in the best interests of young children to have an equal access schedule. I recognized that in this case, following the child's initial placement in the primary care of his father, there were two successive interim orders granting a shared parenting arrangement for over two years, and I found the arrangement was not working. Due to the level of ongoing conflict, which courts have found can have devastating effects on a child's overall emotional health and wellbeing, I found it was in the child's best interests to be placed with Mr. Pruneau primarily and for Mr. Pruneau be the child's primary decision maker.

[68] Despite my decision, in 2020 the conflict continued.

8 Notice of Variation Application filed by Ms. McCarthy on July 2021 / and amended by Ms. McCarthy on August 5, 2021

[69] On July 27, 2021, Ms. McCarthy filed a further Notice of Variation Application seeking primary care of Dalton; decision-making authority; a finding of denial of parenting time pursuant to section 40 of the *Parenting and Support Act*; and an order clarifying the Court's direction regarding the parties' summer parenting schedule. Ms. McCarthy then amended her application to request I terminate her child support obligation and revisit (relitigate) her application for retroactive child support.

9 Child Support

[70] In February 2018, Ms. McCarthy registered the child in daycare coinciding with her return to work, where she indicated she was a "permanent unionized employee." Ms. McCarthy has previously indicated that her:

> current part-time position is customized such that (the child) is nearly 100% in my personal care during my shared custody time, with the sole exception of two Wednesdays / month….

Ms. McCarthy explained that previously she had worked two part-time positions for a total of approximately 30-35 hours per week. She stated that she reduced her

work hours to 15 hours after the child's birth. I cautioned Ms. McCarthy about her decision not to return to full-time (35 hours / two part-time jobs) employment.

[71] After reducing her work obligations, Ms. McCarthy claimed:

> I have no need of childcare beyond that provided by daycare for both parents while (the child) is in custody transit between myself and Mr. Pruneau, on the 2-2-3 parenting schedule."

An Interim Consent Order dealing with child support was consented to on October 30, 2018 and issued December 20, 2018. Mr. Pruneau agreed to pay Ms. McCarthy child support.

9.1 2020 Decision on Child Support

[72] At the conclusion of the trial in March 2020, I ordered that the child be placed in Mr. Pruneau's primary care. I determined Ms. McCarthy was underemployed by choice based on her employment history/skills and that Ms. McCarthy's availability to parent was somewhat of an "illusion" and it was unclear how she expected to cover her financial expenses and provide for the child's needs.

[73] Pursuant to section 19 of the *Child Support Guidelines*, I imputed an annual income for child support purposes of $35,000 to Ms. McCarthy as of April 1, 2020. Ms. McCarthy was ordered to pay Mr. Pruneau child support based on her imputed income of $35,000.

9.2 Child Support requests from Ms. McCarthy were dismissed in 2020

[74] Ms. McCarthy failed to file the necessary documents and / or financial information as directed. In August 2021, Ms. McCarthy sought to relitigate child support issues which had been finalized by me in 2020. It is unclear to me why Ms. McCarthy would do so despite my previous findings.

10 Security for Costs

[75] On June 10, 2022, Mr. Pruneau filed a Response to Ms. McCarthy's Notice of Variation Application (amended), seeking to address parenting time; an order that Ms. McCarthy's parenting time be reduced due to her failure to follow the previous order; costs; and he also sought security for costs pursuant to the *Parenting and Support Act* s. 40(8).

As noted in my decision reported at *Pruneau* v. *McCarthy*, 2023 NSSC 118, (which was appealed by Ms. McCarthy *McCarthy v. Pruneau*, 2023 NSCA 89):

> …
>
> [42] In June 2022, a judgment was registered against Ms. McCarthy and an Execution Order was issued. Costs were ordered in the amount of $40,786.49 to be paid in monthly installments of $849.71 commencing in October 2020. Mr. Pruneau claims, and Ms. McCarthy has not refuted, that as of November 2022 she had not made any payments toward the costs award granted in September 2020.
>
> [43] Ms. McCarthy requested I deal with child support for a period before the trial was held in March 2020. I dismissed her application in March 2020 due to Ms. McCarthy's failure to file the necessary financial information. The matter is dismissed.

> [44] Ms. McCarthy requested I terminate her ongoing child support obligation. In March 2020, I imputed an income of $35,000 to Ms. McCarthy, finding she was underemployed. Ms. McCarthy has stated that she has not sought out full-time employment outside her **pre-existing employment situation**.
>
> [45] **Many of Ms. McCarthy's concerns expressed about Mr. Pruneau or the allegations made against Mr. Pruneau which are contained in the information filed in Ms. McCarthy's most recent Variation Application are very similar to the concerns and allegations Ms. McCarthy advanced at the hearing in March 2020. In 2020 I determined it was in the child's best interest to be in the primary care of Mr. Pruneau** (*E.A.M.* v. *J.P.P.*, 2020 NSSC 112.)
>
> …
>
> (my emphasis)

I would note that with respect to paragraph 44, Ms. McCarthy had previously stated she had been working two part-time jobs (35 hours) before she chose to limit her employment to only one part time job.

[76] In *Pruneau* v. *McCarthy*, 2023, NSSC 118, when granting an order for Security for Costs, I reviewed and I summarized my concerns (many previously detailed in my previous decision *E.A.M.* v. *J.P.P.*, 2020 NSSC 112), in the context of the best interest test. Many concerns related to Ms. McCarthy's apparent lack of understanding about the presenting problem (conflict) and / or level of understanding of the litigation process, despite her repeated engagement with the court:

> Analysis
>
> [72] Mr. Pruneau is asking for security for costs for Ms. McCarthy to proceed with her Variation Application because she has not paid any costs arising from the hearing in March 2020.

[73] When considering Mr. Pruneau's request for costs following the trial in March 2010, in addition to finding that Mr. Pruneau was the successful litigant, I also **considered Ms. McCarthy's behaviours during litigation. Behaviours including but not necessarily limited to: her failure to disclose necessary financial information before trial in March 2020; her failure to appear for a case management conference in October 2019; and her failure to respond to Mr. Pruneau and to the court in or around November 2019, necessitating an interim motion and an Order for Substituted Method of Providing Notice of a Proceeding, to move the matter forward.**

[74] Earlier in my decision I outlined the difficulties the court has experienced scheduling various motion hearings in this proceeding based on what appears to be **Ms. McCarthy's lack of understanding or lack of concern about her obligations to the parties and to the court**. This includes Ms. McCarthy's obligation to advise her counsel of upcoming court dates, and her obligation to represent herself in these matters as scheduled if she is unable to retain legal counsel. It should go without saying that Ms. McCarthy should not ever send a letter to the court without copying all parties, including her lawyer if she has retained a lawyer to represent her, and also if she is representing herself she should not be sending any letters to the court without copying all parties each time.

[75] Mr. Pruneau has also argued that **Ms. McCarthy is seeking to relitigate issues pre-dating the hearing held on March 16 and 17, 2020**, and she should not be permitted to do so.

[76] When considering any Variation Application, I must always ensure three requirements are satisfied: *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.) at para 13. The requirements are:

(a) there must be a change in the child's condition, means, needs or circumstances or the ability of the parents to meet the children's needs;

(b) the change must materially affect the child; and

(c) the change was either not foreseen or could not have been reasonably by the judge who made the initial order.

[77] The burden of proving the material change rests on the person asking for the order to be changed… (emphasis mine)

Best Interests of the Child

[78] Every decision made, including a decision about whether to grant security for costs, must be made with the child's best interests in mind. For ease of reference and illustrative purposes, I have re-organized some of my findings from my decision rendered in March 2020, according to the best interests factors outlined in section 18(6) of the *Parenting and Support Act*.

[79] Section 18(6)(a), The child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development were considered at trial in March 2020, examples include but are not limited to:

(a) At paragraphs 101 – 106, **I found Ms. McCarthy failed to consider how she might be contributing to any emotional or any developmental issues she stated she was witnessing with the child in her home**. For instance, she suggested that any night terrors the child was experiencing while at her home were more connected to Mr. Pruneau's care of the child.

(b) At paragraphs 109 – 110, Ms. McCarthy suggested the bruise on the child's face was due to a lack of supervision in Mr. Pruneau's home**. I found Ms. McCarthy's allegations suggesting a lack of supervision or neglect or abuse were not supported by the evidence.**

(c) At paragraphs 111 – 114, **I found Ms. McCarthy's allegation that Mr. Pruneau and his fiancé failed to respond adequately when the child had a temperature was unfounded**. After considering all the evidence, I did not attribute blame to Ms. McCarthy who did not take the child to be seen at emergency before dropping the child off to Mr. Pruneau, or to Mr. Pruneau and his partner, for not taking the child to seek medical care when Ms. McCarthy believed they should have. There was no medical evidence offered at that time.

(d) At paragraphs 129 - 133, **I found that the ongoing conflict between the parents and the disagreements between the parents regarding the child's gender expressions was creating a risk of emotional harm for the child.** The child was approximately three years and two months old when I presided over the trial in March 2020.

(e) I observed that when parents present conflicting histories regarding a child, especially parents going through a contested hearing involving parenting, there is definitely good cause to proceed with caution. I observed that although it is not unusual for children to have gender variant expressions, that **neither party had presented any expert evidence in relation to the issue of gender expression and their child's particular needs.**

(f) **I determined I was not prepared to rely on Ms. McCarthy's observations and assessment of the child's needs with respect to gender expression.** I directed that neither parent make any assumptions as gender variant preferences do not automatically indicate a need for a change of identity and/or for social transitioning. I directed that neither party take unilateral action with respect to the child's gender.

(g) I found it was not in the child's best interest for either parent to begin "socially transitioning" the child, including dressing him as a girl

and posting images of him, or using female pronouns or names for him. **I determined it was in the child's best interest to have Mr. Pruneau monitor the child's needs with respect to his gender development and to respond to those needs whatever they may be. I was satisfied that regardless of the child's gender expressions to Mr. Pruneau, that Mr. Pruneau would respond appropriately to the child.**

(h) I found it was in the child's best interests for the parents to have a gender-neutral approach until it was determined whether professional guidance should be sought**. I directed Mr. Pruneau to make the decision regarding the need for the child to see a professional. I directed that both parents ensure the child was involved with playgroups, and or with playmates, and in settings that supported the child's interests.**

[80] Section 18(6)(b). Each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian was considered at trial in 2020. Some of the findings included:

(a) At paragraph 115, **I found Ms. McCarthy's entries in the "parenting log" to be difficult to read**. I found it would not be easy to take a quick look at the journal and determine what, if any, information may be "crucial" in terms of providing immediate care for the child.

(b) Mr. Pruneau expressed concerns about the parenting journal, including but not limited to: **Ms. McCarthy using the journal to communicate about legal issues and to direct him to do certain things without prior agreement between the parties.**

(c) Ms. McCarthy alleged that Mr. Pruneau's decision to allow Ms. McCarthy's family to see the child to give the child presents contravened the direction she had provided to Mr. Pruneau in a parenting log entry dated November 13, 2019. Ms. McCarthy accused Mr. Pruneau of "disregarding the terms of their court order re: agreement on the major upbringing decisions around our co-parenting the child." She explained that she had advised her parents to retain a lawyer if they wish to have contact with the child**. I found Ms. McCarthy to be unreasonable and lack empathy for even her own family members, preferring to address issues through the use of court.**

[81] Section 18(6)(c). The history of care for the child, having regard to the child's physical, emotional, social and educational needs;

…

(d) Although I recognized that some degree of conflict occurs in most, if not all, families regarding child rearing issues, **I found it was more likely than not Ms. McCarthy who was responsible for most of the ongoing conflict. I found Ms. McCarthy had no intention of letting go**

of any perceived slights by Mr. Pruneau, his fiancé, his mother, her parents, her sister, the counselor, or the child's initial primary care physician. That Mr. Pruneau had tried to address any disagreement through legal counsel but had been mostly unsuccessful. In any event, I find that the **reliance on counsel was not sustainable**..

(e) I found that throughout the proceeding, Mr. Pruneau had remained polite and supportive in his comments about Ms. McCarthy's parenting. For instance, in his affidavit filed March 3, 2020, Mr. Pruneau described Ms. McCarthy as "an enthusiastic mother" stating "it is evident she cares for the child." Mr. Pruneau also indicated that "Ms. McCarthy takes the child to many extracurricular activities, which he believed was well-intentioned."

(f**) I found the conflict between the parties was primarily the result of Ms. McCarthy's need to control the child's circumstances. Ms. McCarthy was unable to work with other important persons in the child's life despite services offered to her. As a result, in March 2020, I did not grant Ms. McCarthy's requests that I order both parties:**

(i) attend co-parenting counseling separately;

(ii) create a detailed parenting plan to be filed with the Court;

(iii) learn new communication strategies;

(iv) plan options in the event of a dispute; and

(v) create and place boundaries around the roles of non-parents and of non-custodial family members in the child's life.

[82] **I declined Ms. McCarthy's requests as I found Ms. McCarthy was not capable of considering other viewpoints and working with others**. I believed Mr. Pruneau was capable of all the above. However, **I did not believe it was in the child's best interests for Mr. Pruneau to engage in any of the above with Ms. McCarthy, and I gave him decision making authority to avoid the ongoing conflict, to provide some stability, consistency, and predictability for the child**.

…

(f) Mr. Pruneau argued, and I agreed, that Ms. McCarthy had at times prevented the child from progressing through the "normal stages of his development." At paragraph 131, I found that on balance of probabilities, Ms. McCarthy had **lied about the "toilet learning" to try to control the child's circumstances and to meet her own needs.** I agreed with Mr. Pruneau that Ms. McCarthy's behavior around the child's toilet learning was a **striking example of Ms. McCarthy placing her own needs ahead of the child's needs.**

(g) At trial in 2020, Ms. McCarthy acknowledged she still occasionally put the child in pull ups/training pants. Ms. McCarthy indicated that she had determined the child was fearful of public washrooms, and specifically the child was fearful of "auto flush toilets/hand dryers." Ms. McCarthy stated that the child would become "overwhelmed by fear." Ms. McCarthy's choice to put the child in pull ups rather than teach him "auto flush toilets/hand dryers" were nothing to be afraid of was of concern to me**. I was concerned about Ms. McCarthy's perception of the child's reactions and her apparent inability to reassure the child about everyday occurrences and expectations when using a public washroom**.

[84] Section 18(6)(d). The plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social, and educational needs. In March 2022 I found in part:

> [98] …**Ms. McCarthy had a misconception about real world resources, and her expectations of others, including service providers, her own family, Mr. Pruneau and his family, and other support persons in his or her life, were not realistic.**
>
> [99] **Ms. McCarthy had a history of attributing blame to others, and then limiting her contact with them. She appeared to be able to accept some very limited responsibility for her role in any ongoing conflict, but there was no evidence Ms. McCarthy had been able to change her behavior and or reconsider her perceptions**. Ms. McCarthy argued that "the conflict", apparently referring to conflict with some or all of the key individuals in the child's life (Mr. P., W. P., Mr. P.'s fiancé, Ms. McCarthy's parents, Ms. McCarthy's sister, the child's pediatrician), did not or would not have any direct impact on the child.
>
> [100] Despite all the services Ms. McCarthy had taken advantage of over more than a three-year period, and despite her concerns about Mr. Pruneau, his fiancé, Mr. Pruneau's mother, Ms. McCarthy's parents, Ms. McCarthy's sister, and the child's pediatrician, not being supported by any credible evidence before this court, Ms. McCarthy was still asking me to place restrictions the child's family members. **There was no evidence Ms. McCarthy had considered she may be wrong and that her position may affect the child's best interests.**

[85] Section 18(6)(e). The child's cultural, linguistic, religious, and spiritual upbringing and heritage.

> (a) In March 2020 Mr. Pruneau was prepared to grant Ms. McCarthy decision-making authority with respect to the child's religious upbringing. **I granted Mr. Pruneau decision-making authority in all aspects, as I was concerned Ms. McCarthy would not be able to use any authority granted to her without causing conflict**.

(b) Although Mr. Pruneau has decision making authority in relation to the child's schooling, Ms. McCarthy insisted the child should learn French due to Mr. Pruneau's heritage. Ultimately, Mr. Pruneau acquiesced to some degree. However, Mr. Pruneau was not required to agree to Ms. McCarthy's requests with regard to the child's education.

(c) Ms. McCarthy's position on whether the child should attend daycare/school or be at home has fluctuated at times. She does not appear to have a consistent position. Expressing concerns when the child was mostly cared for at home by Mr. Pruneau and his family citing limited exposure to other children, then more recently suggesting the child should be cared for at home by her.

[86] Section 18(6)(f). The child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained. The child is too young to express a view or preference.

[87] Section 18(6)(g). The nature, strength, and stability of the relationship between the child and each parent or guardian. **The question in this matter has always been whether Ms. McCarthy was able to respond appropriately to the child's needs. It is Ms. McCarthy who has always observed problems with the child's presentation and emotions while with her. More recently Mr. Pruneau has acknowledged some acting out by the child**, but I understand the child has been or did see a therapist and his functioning improved.

[88] Section 18(6)(h). The nature, strength, and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

(a) In March 2020, I accepted Mr. Pruneau's position that **Ms. McCarthy was interfering unduly in his relationships with others**. I found that Ms. McCarthy was involved in attempting to discredit his fiancé at her place of work. Mr. Pruneau's fiancé had been involved with the child since shortly after his birth and would have acted in a parent like role to him. Ms. McCarthy's ongoing dislike of Mr. Pruneau's partner is most likely contributing to any ongoing issue the child may be experiencing.

(b) In March 2020, I found Ms. McCarthy had difficulty accepting other people's views of the world if different from hers, and other people's limitations or weaknesses. I found that as a result, Ms. McCarthy had been unable to find a way to include or accept certain people in the child's life. **Overall, I had concerns about Ms. McCarthy's credibility, and / or her ability to work cooperatively with anyone who challenged her view of the world or her beliefs.**

(c) In March 2020 Ms. McCarthy's dismissiveness and accusations did not end with Mr. Pruneau's partner but extended to Ms. McCarthy's

own family of origin. At trial, when Ms. McCarthy was asked about any harm that may have come to the child when spending time with Ms. McCarthy's mother, Ms. McCarthy stated that the child was "not physically harmed" but she maintained she had concerns about her parents for several years.

(d) Mr. Pruneau stated that Ms. McCarthy had previously described her own parents as abusive. At trial, Ms. McCarthy indicated she was concerned about her mother's use of medication (since 2018 or before) and her mother's level of cognition. At trial in March 2020, Ms. McCarthy confirmed she had not arranged for the child to see her parents since November 2019.

(e) Ms. McCarthy objected to Mr. Pruneau meeting with her parents (at Ms. McCarthy's sister's request), to arrange to give the child Christmas presents in December 2019, as Ms. McCarthy was estranged from her family at that time. Ms. McCarthy also took exception to Mr. Pruneau allowing the child to have contact with Ms. McCarthy's sister at the same time Mr. Pruneau allowed the child to see his maternal grandparents. Ms. McCarthy suggested that her sister had behaved in an aggressive way toward her and that her sister placed the child at risk. Ms. McCarthy's parents and sister did not testify at the trial in March 2020.

[89] Section 18(6)(i). The ability of each parent, guardian, or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;

(a) At paragraph 115 of my decision rendered in March 2020, I express that I have concerns about Ms. McCarthy's position regarding the parenting log (journal) she was insisting the parties maintain. I agreed that **Ms. McCarthy included considerable "non-crucial" information in the parenting log**. I found Ms. McCarthy's entries to be difficult to read, and I found it would not be easy to take a quick look at the journal and thereby determine what if any information may be "crucial", in terms of providing immediate care for the child.

(b) In March 2020, I found Ms. McCarthy's **use of the journal "inappropriate and I advised her that it must stop." Due to my concerns about the content of the parenting journal, I directed that the parenting journal never be shown to the child**. As an alternative to the parenting journal, I directed the parties use a program such as the My Family Wizard program and that **they exchange only crucial information necessary to meet the child's day to day needs**.

(c) At paragraphs 116 and 117, I discussed the problems in 2020 raised with respect to the transitions. Ms. McCarthy suggested the transitions would be "fine if everyone acted like an adult" – she believed there was **no need for discussion at all, and that any discussions should**

take place in the parenting journal. As noted above, I found Ms. McCarthy's use of the journal was inappropriate.

(d) In 2020, Ms. McCarthy objected to having Mr. Pruneau or his mother drop the child off to her, expecting others to drop the child off at his daycare as early as 7:30 am to accommodate her preferences, and stated problems with Mr. Pruneau and his mother. Ms. McCarthy raised the issue of drop off location in her new variation application. **I provided direction on the issue and the matter is settled.**

(e) At trial in March 2020, Ms. McCarthy requested an order prohibiting Mr. Pruneau from attending any of the child's medical and dental appointments or other health related appointments with her, and **she expressed that she would not attend any health related appointments for the child with Mr. Pruneau**.

(f) In her new Application, **Ms. McCarthy suggested the child should stop seeing the therapist arranged by Mr. Pruneau and see another arranged by her. Ms. McCarthy has claimed she wants the child to see her own expert, who will speak with both parents**. **At trial in 2020, I did not believe Ms. McCarthy was able to work with Mr. Pruneau cooperatively or effectively.**

[90] Section 18(6)(j). The impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on:

1. the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

2. the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such cooperation would threaten the safety or security of the child or of any other person.

(a) As noted earlier, Ms. McCarthy was granted an Emergency Protection Order, HFX No. 454413 on August 12, 2016. Mr. Pruneau left his home while Ms. McCarthy remained in Mr. Pruneau's home. The Order gave Ms. McCarthy possession of Mr. Pruneau's residence until September 12, 2016;

(b) Mr. Pruneau subsequently filed an application to have Ms. McCarthy ordered to vacate his home, HFX No. 457397; a Consent Order issued on December 16, 2016 confirming Ms. McCarthy had no interest in his property and she was required to vacate his home by January 16, 2017;

(c) Mr. Pruneau was charged with an assault under the *Criminal Code* against Ms. McCarthy. **He was acquitted following Trial in Provincial Court. The decision was rendered January 11, 2018**; and

> (d) **I expressed serious concerns regarding Ms. McCarthy's credibility. Ultimately, in March 2020, I found that on a balance of probabilities Ms. McCarthy had misperceived, exaggerated, or made false statements about Mr. Pruneau's, and about Wendy Pruneau's allegedly intimidating behaviors. I found Ms. McCarthy had allowed her emotions and her desire to control everything in the child's life, to provide support for a conspiracy theory about Mr. Pruneau's fiancé's involvement with Mr. Pruneau, and with the child.**
>
> …

11 Further requests from Ms. McCarthy - December 8, 2022

[77] In addition to the relief specified in her Notice of Variation filed in July 2021 and her Amended Notice of Variation Application filed in August 2021, on December 8, 2022, Ms. McCarthy specified that she wanted me to address denial of parenting time; medical care; and ineffective co-parenting. Effectively, she asked to relitigate issues decided in 2020.

[78] Given the history of this proceeding and my findings, I directed Ms. McCarthy would need to pay Security for Costs to proceed with a variation application, or:

> [96] For me to reconsider my decision to grant Mr. Pruneau decision-making authority and my decision to place the child primarily with Mr. Pruneau, I would need credible and trustworthy evidence from a third party who has no interest in this matter. For instance, **clear and convincing evidence from the child's school or another independent third party about how the child's behaviour or his emotional health or physical health are being negatively impacted due to the current custody and parenting arrangement**. In other words, evidence of a material change of circumstances related to those issues.
>
> …

12 Law

[79] Section 18(5) states "In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction with the child, the court shall give paramount consideration to the best interests of the child."

[80] Section 18(6), outlines relevant circumstances the Court shall consider when assessing a child's best interests. Mr. Pruneau argued that a psychological assessment would provide the Court with information about factors that might be affecting Ms. McCarthy's judgement and / or her insight into how her behaviour affects the child's best interests.

[81] Mr. Pruneau referenced the case of *Farmakoulas* v. *McInnis* (1996) NSJ No 268, 152 NSR (2d) 52 as a leading case in Nova Scotia on when a court-ordered assessment is appropriate in family law matters, suggesting that in that case Justice Edwards reviewed case law from Ontario, Alberta, and Newfoundland and emphasized that:

> …the court should not order an assessment as a matter of course. Instead, the person seeking the assessment has the onus of proving why it is needed…

[82] Further, in *Jarvis* v. *Landry*, 2011 NSSC 116 Justice Jollimore found in part:

> The dispositive consideration is the children's best interests. If their best interests required it, an assessment would be ordered, regardless of the fact it might delay the scheduled trial…

[83] In *Penney* v. *MacKenzie* 2014 NSSC 263, Justice MacLeod Archer recognized that parental capacity assessments were costly and invasive and should not be ordered routinely, however:

> …The exception is where serious concerns of a clinical nature arise, in which case a parental capacity assessment may be appropriate.

[84] Mr. Pruneau suggested courts had found that the question of whether there is a "clinical issue" is not limited to psychiatric illness or severe psychological impairment but as noted in *Tammy* v. *Oddy* 1998 CarswellONT 4987 (Ont. Master), encompasses "those behavioural or psychological issues about which the average reasonable person would need assistance in understanding."

[85] Mr. Pruneau suggested that Justice Moreau in *AM* v. *RI*, 2022 NSSC 46 and Justice Forgeron in *RH* v. *LN*, 2025 NSSC 137 ordered an assessment, suggesting that certain patterns of conduct were sufficient on their own to constitute a "clinical issue."

13 Conclusion

[86] My review of previous litigation in the matter and more recent developments in this case show a pattern of conduct by Ms. McCarthy which is very likely influenced or exacerbated by "clinical issues" which should be identified and addressed. For instance, I find there is historical and more recent evidence Ms.

McCarthy has continued to make false allegations about the father, his wife, his mother, and others in an effort to gain a litigation advantage and / or to influence the child against them and / or to meet her own needs.

[87] I agree that Ms. McCarthy presents with several concerning behavioural patterns which more than likely amount to a clinical issue. The evidence does not support any other explanation for her behaviour, therefore:

1. I am ordering Ms. McCarthy to participate in a Parental Capacity Assessment with a psychological component; and
2. I am ordering that the assessment be completed by a court appointed assessor who may be able to assist me in determining whether and / or what interventions may be necessary to support Ms. McCarthy's parenting.

14 Directions

[88] Ms. Beaton will draft the final order. The parties must file their submissions on costs within one month of receipt of this decision.

Cindy G. Cormier, J.S.C. (F.D.)