CITATION: A.C. v. K.C., 2023 ONSC 6017
COURT FILE NO.: FS-18-928380-00
DATE: 20231024

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
A.C.	)	Joanne Lagoudis and Jennifer Lee, for the Applicant
	)	
Applicant	)	
	)	
- and -	)	
	)	
K.C.	)	Self-represented
	)	
Respondent	)	
	)	
	)	**HEARD:** September 11-15, 18-19, 2023

REASONS FOR JUDGMENT

MANDHANE J.

INTRODUCTION

[1] The parties' six-year marriage was chaotic such that they only lived together for a total of 19 months. Their problems began immediately after marriage, with the Applicant/Father, A.C., embarking on a pattern of violent, coercive and controlling behaviour that twice resulted in criminal charges. The pattern included physical violence, as well as threats to abscond with the Child, D.C. (born January 12, 2013), or to abandon the Respondent/Mother, K.C., while generally refusing to financially support the family. Overall, the Father's behaviour during the marriage has exacerbated the Mother's pre-existing disability and has left both the Mother and the Child in a perpetual state of hyper-vigilance, worry, and fear.

[2] The first issue before me is how the history of family violence should factor into my determination of the Child's best interests for the purposes of determining parental decision-making responsibility and parenting time. The second issue I must consider is whether the history of family violence is relevant to determining each party's conditions, means, needs, and circumstances for the purposes of determining the Mother's claim for spousal support.

[3] The parties appeared before me for a seven-day trial. The Father was represented by senior counsel, while the Mother represented herself. Both parents testified, along with two school principals, the Father's new partner, the Mother's family friend, and a social worker and clinical investigator with the Office of the

Children's Lawyer ("OCL"), Eva Casino. Ms. Casino testified that the Child, was able to articulate his views and preferences clearly and that his views were independent, balanced, and insightful. I rely on both her testimony and the OCL Report. The parties did not oppose the Court taking judicial notice of information contained in the Association of Family and Conciliation Courts (Ontario) *2021 Parenting Plan Guide* ("*Parenting Plan Guide*"), which succinctly outlines the developmental needs of children of separated parents who are around the same age of the Child, and also provides guidance on developing appropriate parenting plans in the face of family violence.

[4] On the facts before me, I find that the Child's direct exposure to violence favours giving his views and preferences significant weight, and making orders that offer stability in his day-to-day life and minimize requirements for his parents to see each other or communicate. I also find that it is appropriate to require the Father to engage in family counselling to address his anger and violence before the Child starts to spend extended periods with him over the summers. I find that the Mother is entitled to spousal support based on her childcare responsibilities, chronic disability, and the anxiety she has developed because of the Father's violence. Each of these factors has contributed to her inability to work in a meaningful way during the marriage and in the five years since separation. Given the young age of the Child, the Mother's support of the Father's career

advancement, and the income disparity between the parties and their differing standards of living, I would award spousal support at the high end of the range. My spousal support order shall be reviewed in three years..

FACTUAL OVERVIEW

[5] The Child is 10 years old and lives in Mississauga with his Mother, and his 18-year-old half-sister (his "Older Sister"). The Child attends a local Catholic school in Peel Region and has close friends there. The Child has regular parenting time with his Father and is close to his Father's new partner and his four-year old half-sister (his "Younger Sister").

[6] The parties met in Australia in 2010, married on July 7, 2012, and had an on-and-off again relationship until they separated for good in August 2018. The couple lived together in the Mother's Stouffville apartment for a month before the Child was born in January 2013, and then again in Mississauga for a period of less than 18 months when the Child was between seven and eight years old.

[7] During the Child's first five years of life, the Father was charged twice criminally—first in 2013, for threatening the maternal grandparents, and later in 2017 for assaulting the Mother. The first charge was withdrawn after the Father entered into a peace bond, and the second charge was withdrawn after he

completed the Partner Assault Response (“PAR”) program and entered into another peace bond.

[8] When they were not living together, the Father worked in Toronto and, later, in Halton, and generally saw the Mother, Child, and Older Sister on weekends. Because he had just recently immigrated from Australia, the Father had difficulty finding meaningful work at the beginning of the parties’ relationship, but later became an investment advisor. The Father has re-partnered and now lives in Burlington, about 40 kilometers away from the Mother and Child’s residence. The Father is 41 years old and, since separation, his income has significantly increased such that he is now making about $100,000 per year.

[9] The Mother was diagnosed with Chronic Fatigue Syndrome in 2009 and has had a sporadic work history since before the parties first met, though she did have a few casual, part-time jobs before and during the relationship. She has not worked since the end of the marriage. In addition to her minimal income earned during the marriage, the Mother supported herself and the Children at first, through long-term disability payments; and later, through proceeds from an insurance settlement that she received in 2015, plus Canada Pension Plan disability benefits. The Mother continues to live in Mississauga with the Child and the Older Sister. The Mother is now 43 years old, has not worked since the separation, and continues to receive

disability benefits. Throughout her relationship with the Father, the Mother was in receipt of child support for the Older Sister, and that support continued until Older Sister turned 18 years old (earlier this year) and became self-sufficient. The Mother does not claim retroactive or ongoing child support from the Father in relation to the Older Sister.

[10] For the purposes of this litigation, the parties have agreed that their date of separation is August 1, 2018. The Father filed this Application on July 31, 2018, and the Mother filed her Answer on August 24, 2018. In his Application, the Father seeks sole decision-making authority in the areas of education and healthcare. He says that the Mother has made major educational and health decisions without his input, and that her decisions have negatively affected the Child's social development and educational achievement. The Father seeks an equal parenting schedule with mid-week overnights, alternating weekends, holiday time, and extended summer parenting time. The Father says that the Mother has repeatedly frustrated his efforts to work towards an equal parenting schedule, even though the Child is capable of spending significant time away from her. The Father blames the Mother for projecting her own anxieties onto the Child. He says that he has addressed his previous anger issues and that there is no ongoing safety risk in relation to the Child. He doesn't rule out the possibility that the Child could come to live with him at some point in the future.

[11] The Mother opposes the Father's Application and seeks joint decision-making responsibility, albeit with her having the final say across all domains after consultation with a parenting coordinator. She says that she has always made sound decisions that are in the Child's best interests, especially in light of the Child's high emotional needs and the additional challenges posed by the pandemic. She says that she has tried to consult with the Father about major decisions but that they have never been able to agree. The Mother seeks primary parenting time because the Child has always been in her primary care, and because she has lingering concerns about the Father's anger and the Child's exposure to violence. She does not believe that overnight mid-week parenting time is in the Child's best interests because it is too disruptive to his school routine, and because the Child himself does not want it. She agrees that the Father should spend time with both his parents over the holidays and summer break but proposes a more gradual approach to expanding the Father's time. The Mother seeks retroactive s. 7 expenses in relation to the Child's private school education, as well as ongoing spousal support. The Father opposes both these claims.

ISSUES

[12] What parenting orders are in the Child's best interests?

[13] What child support is owed or owing?

[14] What spousal support is owed or owing?

SHORT CONCLUSION

[15] The Mother shall have sole decision-making authority save and except that she must ensure that the Child remains enrolled in public Catholic school in Peel Region.

[16] The Mother shall also have primary parenting time with the Child. The Father shall have parenting time on alternating weekends and over various holidays. He shall have Wednesday evening parenting time at the Child's discretion. The Father shall have equal parenting time during the summers after the Child turns 13 years old, so long as he completes the counselling recommended by the OCL.

[17] The Father shall pay Table child support consistent with his reported income. The parties have resolved the issue of retroactive child support on consent. There are no arrears owing for s. 7 expenses, and the parties have come to an agreement on s. 7 expenses going forward.

[18] The Father shall pay spousal support at the high end of the range from the date of separation onwards. I decline to impose a termination date at this time, however, my spousal support order shall be reviewed in three years.

WHAT PARENTING ORDERS ARE IN THE CHILD'S BEST INTERESTS?

[19] In relation to parenting, the parties both rely on both the *Divorce Act*, RSC 1985, c 3 (2nd Supp) and the *Children's Law Reform Act,* R.S.O. 1990, c. C.12 ("*CLRA*"). Subsection 16.1(1) of the *Divorce Act* and s. 28 of the *CLRA* allows me to make an order providing for the exercise of parenting time or decision-making responsibility by either parent. My powers under these sections are broad and purposive. I can allocate parenting time and decision-making authority between the parents, impose a schedule, provide for the means of communication to be used by the parents, and make any other orders that I consider appropriate to secure the child's best interests: *Divorce Act*, ss. 16, 16.1, 16.2; *CLRA,* s. 28.

[20] Consistent with a children's rights perspective, the *Divorce Act* and *CLRA* call on courts to recognize, respect and reflect each child as an individual distinct from their parents, and to empower children to be actors in their own destiny: *S.S. v. R.S.,* 2021 ONSC 2137, paras. 38-40; *Brown v. Fagu,* 2021 ONSC 4374, para. 23. In practice, the legislation requires judges to probe into each child's

lived experience, to meaningfully consider their views and preferences, and to craft an order that promotes that child's best interests.

[21] The *Divorce Act* and *CLRA* call on to courts to engage in a rigorous assessment of the child's specific situation as part of determining their best interests. Subsection 16(3) of the *Divorce Act* sets out numerous factors related to the "circumstances of the child" which include: the child's needs given their stage of development, the nature of the child's relationship to each parent, each parent's willingness to support a relationship with the other parent, the history of care, the child's views and preferences, the ability of each parent to communicate and cooperate on matters affecting the child, and any history of family violence. This provision is mirrored in s. 24(3) of the *CLRA.*

[22] "Family violence" is defined broadly in s. 2(1) of the *Divorce Act* and in s. 18(1) of the *CLRA* as conduct by a family member towards another family member that is violent, threatening or that constitutes a pattern of controlling behaviour; that causes that other family member to fear for their own safety or for that of another person; and/or in the case of a child, "the direct or indirect exposure" to such conduct. Subsection 16(4) of the *Divorce Act* and s. 24(4) of the *CLRA* provide guidance about some of the factors I must take into account when determining the impact of "family violence" on the Child, including: the nature,

seriousness and frequency of the family violence, whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence; the physical, emotional and psychological harm or risk of harm to the child; any compromise to the safety of the child or other family member; whether the family violence causes the child or other family member to fear for their own safety or for that of another person; and any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child.

[23] In *Ahluwalia v. Ahluwalia*, 2023 ONCA 476, paras. 1, 99, 101, the Court of Appeal for Ontario recognized that: “the relatively recent addition of family violence considerations reflects Parliament’s awareness of and concern about the devastating effects of family violence on children” and that it is an important consideration when developing a parenting plan. The Court notes that family violence can have “widespread and intergenerational effects.” In *Barendregt v. Grebliunas,* 2022 SCC 22, para. 143 (citations omitted), the Supreme Court of Canada stated:

> The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it.

The Government of Canada explains that a child's direct exposure to family violence (*e.g.*, seeing or hearing the violence) or indirect exposure (*e.g.*, seeing that a parent is fearful or injured) is itself recognized as family violence and a form of child abuse: Government of Canada, Department of Justice, *The Divorce Act Changes Explained* (23 February 2022).

[24] As I discussed in *S.S. v. R.S.*, paras. 31-47, the family violence provisions in both pieces of legislation are consistent with Article 19 of the *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3 (entered into force 2 September 1990, accession by Canada 13 December 1991), which grants children the right to state protection from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child": In General Comment 13, the UN Committee on the Rights of the Child provides a similarly expansive definition of violence and identifies exposure to domestic violence and corporal punishment (including slapping and hitting) as forms of violence that impact children uniquely: *General Comment 13: The right of the child to freedom from all forms of violence*, UNCRC, 2011, UN Doc. C/GC/13. The Committee notes the devastating impact of violence on children's survival and their "physical, mental, spiritual, moral and social development": para. 15. It states that both the

short- and long-term health, development, and behavioural consequences of violence against children and child maltreatment are widely recognized, and notes that “there is evidence that exposure to violence increases a child’s risk of further victimization and an accumulation of violent experiences, including later intimate partner violence”: paras. 15(a)-(b).

[25] When making a parenting order, I must stay laser-focused on the child’s best interests: *Divorce Act*, s. 16(1); *CLRA,* s. 24(1). Parental preferences or “rights” play no role except insofar as they are necessary to ensure the best interests of the child: *Young v. Young*, [1993] 4 S.C.R. 3, at paras. 74-77, 159, 210. “Past conduct” is not relevant to determining the best interests of the child, “unless the conduct is relevant to the exercise of the person’s decision-making responsibility, parenting time or contact with respect to the child”: *Divorce Act,* s. 16(5); *CLRA,* s. 24(5).

[26] According to the *Divorce Act* and *CLRA,* to judicially determine the child’s best interests, the court must “give primary consideration to the child’s physical, emotional and psychological safety, security and well-being”, while considering “all factors related to the circumstances of the child”: *Divorce,* ss. 16(2)-16(3); *CLRA,* s. 24(2). Judicial determination of the “best interests of the

child" is broader and more wholistic than a child welfare agency's determination of whether a child needs protection: *S.S.*, para. 36.

[27] There is no presumption in favour of joint parenting and the term "maximal contact" is not found in the *Divorce Act* or the *CLRA*. Subsection 16(6) of the *Divorce Act* and s. 24(6) of the *CLRA* state that: "in allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child". Clearly the idea of a presumption in favour of one type of parenting order is anathema to the court's unrelenting focus on the child's "best interests." The most one can say is, all things being equal, the child deserves to have a meaningful and consistent relationship with both of their parents so long as it is in their best interests: *E.M.B. v. M.F.B.,* 2021 ONSC 4264, para. 71.

Family violence

[28] During the relationship, whenever the couple was together, there was a lot of conflict in the household. The Mother's largely unchallenged evidence is that the Father was emotionally, physically, and financially abusive towards her and the children. In her submissions before me, the Mother stated that the history of family violence is the root cause of her ongoing anxiety and the parenting

issues between the parties. While the Father admitted that the parties did not get along, he refused to characterize himself as abusive or the relationship as violent.

[29] The Mother testified that the parties' relationship changed immediately after their marriage—she described it like "flipping a switch." It started with arguments over trivial matters while the couple were on their honeymoon in Muskoka—for example, about the cost of a gift that the Mother wanted to buy for her brother. The Mother testified that when she would express a different opinion from the Father, he would remind her that, "You are my wife now and we have to think the same way." The Father admitted that upon marriage, he expected the Mother to "submit to him." There was ample evidence before me that spoke to the traditional nature of the parties' relationship, including their wedding vows and various correspondence indicating their shared intentions for the relationship. For example, the Father repeatedly promised to "provide" for the Mother and Children, often in an effort to win the Mother back after an argument.

[30] The Mother said that, from the beginning, the couple were arguing daily. In the fall of 2012, while the Mother was in her second trimester of pregnancy with the Child, the family faced serious financial challenges because the Mother was only receiving disability benefits, and the Father was struggling

to find work in Canada. The Father says that he found the Mother's financial expectations of him to be "eye-opening" and questioned her motives when she tried to help him find work through her family and friends. The Father would call the Mother "lazy." He suggested that she was lying about the extent of her disability to avoid working, that she was using him for his ability to earn money, and even that the Child might not be his. During these arguments, the Mother testified that the Father would "get in my face," "force eye-contact," "call me names," and block her from leaving the house by standing in the doorway. The Father also struggled to bond with the Older Sister—the Mother's child from a previous relationship. While he expressed an early intention to adopt the Older Sister, his approach to building trust with her was to "lay down the law." The Mother testified that the Father would sometimes handle the Older Sister roughly to ensure her compliance with his rules, and that this sometimes resulted in soft-tissue injuries like soreness and bruising.

[31] In and around September or October 2012, the Mother said that she became concerned that the Father's behaviour was abusive. She thought the Father regretted marrying her. When the Mother told the Father that his anger was "crushing" her, the Father minimized her concerns. However, in his testimony before me, he did recall the Mother sending him a document entitled "How to create an abuse-free household" around this time. In November 2012, a Pastor

and the maternal in-laws staged an ”intervention” with the Father and suggested that the Mother move out temporarily. The Father recalled this conversation but characterized it as a “hustle” rather than an intervention. He said the focus was on his financial obligations to the Mother. The Mother eventually moved out with the Older Sister, and the couple started couples counselling.

[32] With her pregnancy advancing, the Mother said that she did not feel safe moving back into the matrimonial home with the Older Sister, but that she eventually moved back in after the Father assured her that things would be different. The Father recalled the Mother demanding a “set dollar amount per month to provide for her,” and some other “soft, emotional stuff.” After she moved back in with him, the Father obtained employment but refused to share his earnings with her. He admitted in his testimony that he was being financially controlling but said that he had to “protect himself” against the Mother’s efforts to access his money.

[33] Under a great deal of stress emotionally and financially, the Mother proposed that she move out a few weeks before the baby’s birth. The Father’s response was that, if she moved out, he would move back to Australia and would not support her or the baby. On another occasion in the same time period, the Father told the Mother that if she left him, he would abduct the baby to Australia.

The Mother said that this particular comment stayed with her for a long time afterwards. Eventually, their counsellor suggested a “therapeutic break,” and the Father reluctantly moved out, though he refused to tell the Mother his whereabouts or provide her with any financial support. The couple saw each other a few times before the baby was born and were physically intimate on those occasions.

[34] After the Child was born on January 12, 2013, the Father spent more time at the matrimonial home with the Mother, often coming over on weekends. He said that the Mother “dictated the parenting time because the Child was breastfeeding.” The parties still considered themselves to be married, held themselves out as such, and were intimate. However, their arguments continued, especially around the Mother’s decision to homeschool the Older Child. The Father felt that this was an “excuse” to evade working and providing financially for the family. Around this time, the Father started paying about $300 per month to help cover some of the Child-related expenses—but the payments were sporadic and not regular.

[35] Throughout 2012 and 2013, the Father repeatedly accused his in-laws of interfering in the couples’ family life. On one occasion, in March 2013, the Father threatened the Mother’s parents, saying that he would “kill them,” “slit their

throats," "burn their house down," "watch them die in the fire," and then "dance on their graves." While the Father denied threatening to "slit their throats," he admitted that he had threatened to kill them but said that these were "just words" and an expression of his "extreme emotions" at the time. The Mother said that the Father uttered these threats while she was holding the infant Child in her arms, and that she was shocked, broke down, and ended up huddled and crying in a corner. When the Father approached her and told her that he loved her, the Mother says she asked him to leave, made her way to the bedroom, locked the door, and nursed the Child. When the Father came to the bedroom door, the Mother asked him once again to leave. When the Mother eventually exited the bedroom with the Child sometime later, she found the front door to their home wide open and the Father standing across the street staring at her. The Mother called a crisis counsellor who told her that she should take the Father's threats seriously and encouraged her to report them to the police, which she did. The Father was charged criminally with uttering threats and the Mother and Older Child were referred for counselling through the court's Victim Witness Assistance Program. After the Father promised to change, the Mother wrote a letter to the Crown asking that the Father be given a second chance. This allowed the charges to be resolved with a peace bond.

[36] As of April 2013, the Father's bail conditions were changed, and the parties were back in contact with one another. However, the Mother remained fearful of the Father and suggested that they meet in public places so that he could spend time with the Child. The Father eventually started coming to the Mother's house on weekends. The Mother said that she was still concerned about leaving the Child alone with the Father because of his previous threats to abscond with him, though she admitted that she did leave the Child at least once overnight in July. The Father says that the parenting time was "dictated by how [the Mother] felt about our relationship" and that from that point onwards, he began to see the Mother as his "abuser."

[37] While the Mother considered a formal separation in 2014, she decided to stay with the Father because she was committed to being his wife "for better or for worse," even if they were not living together full-time. She said her decision was informed by her traditional Christian values. The parties settled into a routine where the Father would spend weekends with the family in Stouffville and return to Toronto to work during the weeks. The parties remained intimate with one another. However, there was another incident on the parties' anniversary on July 7, 2014, when the Child was 18 months old. While the Father was trying to settle the Child for bed, the Mother suggested that she take the Child because he would only settle after being nursed. The Father was upset because he felt that the

Mother was using the fact that the Child was breastfeeding as an excuse to exclude him from performing basic parenting responsibilities. Nevertheless, he handed the Child to the Mother, who began nursing him while lying down on a mattress on the floor. A few minutes later, the Father came back into the room and tried to grab the Child away from the Mother's breast. When the Mother held onto the Child, the Father became more aggressive, pinning her down on the mattress with one hand, and trying harder to pull the Child away from her. When the Mother pushed back, the Father walked away, later sheepishly admitting that he had been overly aggressive because he was "mad." The Mother said she didn't tell anyone about the incident but also didn't feel the Father was truly remorseful about it. Under cross-examination, the Father said that he "could not recall" the incident but also did not deny that it had occurred.

[38] The next incident was in October 2014 when the Child was 21 months old. During dinner time, the Father became upset with the Older Sister who refused to remain at the table for the meal. The Mother said that she felt that the Father was on the verge of "losing it" so she stepped in between the Father and Older Sister while holding the Child in her arms. The Father then tried to grab the Child out of the Mother's arms, and when the Mother resisted, he held her by the neck and pinned her against the kitchen cupboards. The Mother said that the Older Sister then kicked the Father, which prompted him to remove his hands

from her throat. As the Mother tried to leave the kitchen, the Father yelled after her that, “You haven’t seen my backhand yet.” The Mother went into the bathroom with both Children and locked the door. When the Father demanded that the Mother give him the Child, she refused, and he stormed out of the house and left. Despite his apologies, the Mother said this incident left her feeling “defeated” and that this time the Father suggested that the couple take a break from seeing each other. Again, during his testimony, the Father “could not recall” the incident but did not deny that it had happened.

[39] The parties eventually reconciled and the Father spent Christmas 2014 with the family. In early 2015, when the Child was two years old, the family travelled to Australia to visit the Father’s family. At this point, the Mother says she was pregnant with the couple’s second child. They argued throughout the trip, including at the Child’s birthday party in a park. The Mother went for a walk with the Child to deescalate the situation, but the Father followed her, tried to grab the Child away from her, and when she wouldn’t let him go, grabbed her arm, and squeezed it so hard that there was bruising for days afterward. The Mother said that she broke down crying and was very embarrassed that this had occurred in front of the Father’s family. A few days later, when she tried to talk to the Father, he was cavalier about the incident and said that he didn’t realize that he had grabbed her so hard. In his testimony, the Father “could not recall” the incident

but also did not deny that it had occurred. Later in the trip, when the Mother told the Father of her plans to visit friends in a different part of the country, he called her “a fucking whore.” The Father could not recall the name-calling but admitted that he was upset that the Mother wanted to visit her friends when the purpose of the trip to Australia was to visit his family.

[40] After returning back to Canada around February 2015, the Mother and Children ended up living with the maternal grandparents. The Mother had a miscarriage and she formed the impression that the Father blamed her for it. In his testimony, the Father could not recall the Mother being pregnant or having a miscarriage but admitted that he had no reason to doubt her testimony in this regard. The parties didn’t talk until Valentine’s Day 2015. The Mother said that, from that point onwards, she wanted to minimize her contact with the Father and started to drop the Child off at his apartment for weekend visits. She said that the Father wanted to see the Child more often and that this caused tension between them. He accused her of dictating the terms of his relationship with the Child.

[41] Over 2015 and 2016, the Mother was becoming more concerned about her financial situation and made an extended trip to Newfoundland with the Children to explore the possibility of the family resettling there. She eventually returned to Ontario when the Father proposed that they move in together in

Mississauga instead. The Mother said that she was concerned about moving back in with the Father given the history of family violence between them, the negative dynamic between the Father and Older Sister, and the high cost of living in Peel Region. However, she agreed because she thought it would be good for the children to grow up in an intact family. The Father said that he felt his "only option" was to offer to pay for the family's housing if he wanted the Mother to return to Ontario with the Child.

[42] In March 2017, when the Child was four years old, the parties moved in together in a rental home in Mississauga. By this time, the Father was working in Oakville and the Mother was homeschooling the two Children. Both parties tried to normalize their relationship and establish a routine. However, the Father acknowledged that the relationship was "fragile." The Child enjoyed spending time with his Father on weekdays, picking out his tie and eating breakfast together each morning. That said, the Father was still quick to anger. For example, once, when the Child woke the father by poking him in the cheek, the Father threatened to "throttle him" if he continued. When the Mother told the Father to "back off," he pushed her and told her to "pack your bags and leave." On another occasion, after the Child had (inappropriately) punched the Mother and was being disciplined, the Father told the Child that if he ever punched him, he would "punch

him back." Again, he could not recall these incidents in his testimony before me but did not deny that they had occurred.

[43] On May 28, 2017, the Father became angry with the Mother when she parked her car on the "wrong side" of their shared driveway. The Father acknowledged in his testimony that this was an ongoing source of conflict. While the Mother was making dinner, the Father demanded that she give him the keys to her car or he would "tear the house apart" to find them. He counted down to three. When the Mother tried to deescalate the situation by suggesting that they eat dinner as a family and move the cars afterwards, the Father said he was going to take the Child and go out for dinner. The Mother said that she was "not okay" with the Father taking the Child while he was angry and took the Child into her arms and started to set the table. While the Mother's back was turned to the Father, he came up behind her, grabbed her wrist, twisted it, and knocked the Child's body hard against the kitchen cupboards such that he started crying. In his testimony, the Father admitted that he was angry about the car situation but explained that he had only twisted the Mother's arm to "disarm" her because she had had knives and forks in her hand while holding the Child. At this point, the Mother says that she thought the Father was going to break her wrist and she screamed loudly, "Get your hands off me. Back off. Stop." The Father complied, however, unbeknownst to the parties, the Older Sister had already called the

police. The audio recording of the 9-1-1 call was played in court. The Mother said that she did not want the police to attend at the house because she was scared about the Father's reaction, but that the officers arrived anyway. The Mother said she told the officers the truth about what happened but asked them not to arrest the Father. The Father was arrested anyway and had to leave the home.

[44] After this incident, the Mother says the Child was very distressed. He was upset about what he witnessed, but also wanted to understand where his Father was and why they were no longer living as a family. The Mother said that she explained that the Father had "laid hands" on her and that they needed to take a break for a while. The Mother testified that the Child was extremely unsettled during this period and that his behaviour deteriorated such that he would follow her around constantly and would not let her out of his sight. In and around, June 2017, the Child started seeing his Father again for visits in the community. However, the Father was unhappy about the Mother's insistence that the visits be supervised. In his testimony, he said that "to see my son, I had to do what she wanted."

[45] Towards September 2017, when the Child was about four-and-a-half years old, the parties established a more regular parenting regime where the Child would see the Father in the community for a few hours during the week and

for a few hours on the weekend. However, the Mother noticed that the Child would have bathroom accidents after seeing his Father, and that he would be overly clingy at home. Around this time, while in the company of the Mother, the Child also started to act out violent scenes and talk about protecting his Mother. The Father testified that he did not notice anything out of the ordinary when the Child was in his care.

[46] By October 2017, the Father was seeing the Child for longer periods on weekends and started asking for consistent overnights. The Mother was not agreeable because she did not think overnights were in the child's best interests given the history of violence. In April 2018, the Father's criminal charges were withdrawn after he completed the Partner Abuse Response (PAR) program and entered into a peace bond. The Father told the Court that he learned a lot from the PAR program but did not provide any specific examples of what he learned or how it changed his behaviour.

[47] The Mother said that she only realized that there was no chance of reconciliation between the parties when the Father filed this application in August 2018. She admits that there have been no incidents of violence since separation, that the Father has travelled for a week at a time with the Child and has always

abided by court orders, and that the Child has not reported witnessing any violence in the Father's home.

[48] The Child has strong memories and impressions regarding his parents' relationship, as outlined in the OCL Report:

> [The Child] said he was young when his parents separated. He remembers that they separated because his mother parked on the wrong side of the driveway and his father was mad and said, "I don't think he should have gotten mad about that". He wishes his parents would get back together but feels it is 99% probable that they won't, and he feels sad and cries about that. He shared: "I've basically been sad for my whole life since my dad left" and that he gets sad "when I'm away from Mom". He said he hasn't talked with his father about this because "I don't think he would actually care". He said he hasn't had an experience where he has told his father something and his father didn't care. He said he has cried with both parents and both try to comfort him when he does. [The Child] said he is closer to his mother than his father but loves both of them. He said "Now they mostly get along but "My Dad doesn't like my mom at all. I can just tell". Asked how he can tell, he said "whenever he messages my mom, he makes a face or when I say something about her or want to call her, he makes a mad face, so I can tell that he doesn't like my Mom. He doesn't want me to call her. He doesn't want me to see my mom at all. I know. I can tell. He wants me to just live there with him". When asked what he bases this on, he said, his father has never said this to him, but "I know he doesn't want me to see her at all. I can just tell. He wants him to live with him". [The Child] said he worries: "If I lived with my Dad, I would probably never see my mom and I'd be sad and scared". He said he has talked with his mother about this and "she believes it too" i.e., that he would never see his mother if he lived with his father.

[49] When asked by Ms. Casino why he sometimes refused to see his Father for parenting time, the Child said that he misses his Mother, and also reflected on the pattern of family violence in his parents' relationship:

- [The Child] said, "Sometimes I'm scared of my dad". Asked about this, he recalled that he once saw his father twist his mother's arm: "I'm scared he might do that to my mom again". "Mom told me she's not scared my dad will twist her arm again." He said he also feels safe at his father's and is not worried his father would hurt him.

- [The Child] said he is afraid his father might keep him and not drop him back off at my his [*sic*] mother's or pick him up at school before his mother can pick him up. "Mom says she is a little worried that might happen too". [The Child] also said that when he tells his mother he doesn't want to go to his father's, his mother says "But you have to go or I'll get in trouble' and if she gets in trouble too many times because I don't go or do make up time, I might get taken away from my mom to go to live with my Dad and never see my mom. I'm worried about this".

[50] As discussed above, “family violence” is defined broadly in both the *Divorce Act* and *CLRA.* Based on the Mother’s evidence and the OCL report, I am satisfied on a balance of probabilities that between 2012 and 2013, the Father was violent, threatening, and financially controlling in relation to the Mother and the Children. This included physical violence against the Mother and Children (choking, grabbing, pushing, intimidating), threatening the Child with physical violence, threatening the Mother’s parents with death, name-calling and minimizing the Mother’s disability, threatening to abduct the Child, and threatening to stop financially supporting the family. The Father exploited the Mother’s extreme economic vulnerability as a disabled single mother who was in receipt of social assistance to exercise the coercive control that characterized the marriage. Ultimately, the Father’s violence caused the Mother, the Older Sister, and the Child to fear for their own and each other’s safety. This is most tellingly illustrated by the Older Sister’s call to police during the final violent incident on May 28, 2017, and the Child’s ongoing desire to “protect” his Mother from future harm at the hands of his Father. When viewed in this context, the Father’s conduct was not only domestic violence but also a form of child abuse.

[51] As will be discussed below, both the Mother and Child have developed serious anxiety on account of the Father's pattern of violence during the marriage. The Mother and Child's experiences of family violence are intimately intertwined because of their shared experience of abuse, and because of the Child's strong attachment to the Mother. The OCL Report makes clear that the Child has internalized the Mother's fear and anxiety on account of the Father's violence. To be clear, the Mother has not "alienated" or "poisoned" the Child against the Father, rather, the Child's feelings about his Father are a direct result of the Father's own abuse.

[52] Most troublingly, the Father consistently minimizes the nature and extent of his violent behaviour and shows no real insight into how it has impacted the family dynamics and, ultimately, the Child. Throughout the trial, the Father never acknowledged the seriousness of his pattern of violence nor the impact that it had on the Mother and Child, instead focusing his concerns on how the Mother was projecting her own anxiety onto the Child. The Father showed no insight into how his violence during the relationship might have caused or contributed to the Mother's anxieties post-separation, including some of her hyper-vigilant behaviour in relation to the Child (*i.e.,* demanding regular check-ins during vacations, initiating a wellness check when the Child was vacationing with the Father, etc.). The Father's significant lack of insight is illustrated by his testimony

wherein he repeatedly cast himself as the victim, blamed the Mother for past and ongoing difficulties in his relationship with the Child, and called her his “abuser.” I am concerned that the Father does not seem to have internalized any of the lessons from the PAR program.

The Child’s needs, views and preferences

[53] The Child is loving, social and affectionate with both of his parents. He loves both of his half-siblings. He likes videogames, board games, watching TV, playing practical jokes, hanging around with his friends, and cuddling with his pets. The Child is an average student who is steadily improving in language and social studies, and who excels at math. He has sometimes struggled in the past to complete classroom work that he finds challenging, though he is currently doing well in school.

[54] The Child’s education has been repeatedly disrupted—first by the pandemic, then by the Mother’s decision to homeschool, and then by a court-ordered change in school. To summarize: the Child was engaged in informal, at-home learning for most of kindergarten, was partially homeschooled in Grade 1 and 2, was fully homeschooled during the first term of Grade 3, and began attending public school full-time pursuant to court order in the second half of Grade 3.

[55] Reflecting on his schooling, the Child told Ms. Casino the following as reflected at p. 14 of her Report:

> [The Child] said that before [attending the private Christian school], he was doing homeschool for a long time and starting at [the public Catholic school] was hard for him as "I missed my mom". He said, "School's okay now. I've gotten used to it. I like my teacher and my friends". He added, "If I could do homeschool, I would or if I could do half regular and half homeschool so I could be with my mom more". He was asked about telling his mother at the observation visit, that he doesn't do any schoolwork and they just watch videos at school: [the Child] said he does do school work and he feels he is learning at school. However, he feels he is not learning as well in regular school as in home school because he doesn't have the teacher all to himself. [The Child] said the best thing about regular school is "you get to have friends" and "you get to have gym". The best thing about home school is "you get the teacher all to yourself and sometimes you can go out and do stuff with co-op friends". Asked how his parents feel about school, he said "Mom doesn't mind if I'm in regular school or in homeschool, but she would rather I be in home-school". Asked why he thinks she prefers this, he said "She gets to see me and feels I can learn better". He said his mother was homeschooled until grade 5 and then she wanted to go to regular school in grade 6 "because she didn't really have any friends". He said his father doesn't want him homeschooled. Asked why he thinks his father wants this he said: "he doesn't think I'm learning and thinks school is better because he doesn't know anything about homeschool."

[56] I do not take issue with the Mother’s decision to homeschool the Child in junior and senior kindergarten, as the Child was young and had recently experienced significant family violence and turmoil, and because it was important for him to develop a strong attachment to his Mother. The principal from the Christian private school testified that kindergarten is generally considered optional and that many parents choose not to send their children for junior kindergarten at all or have them participate in a half-time program. I also accept that the Mother took her educational responsibilities seriously, followed the Ontario curriculum, and provided enriching educational activities that were

primarily play-based. The Father admitted that he did not inquire much into the content of the lessons she was providing at the time.

[57] I am also not overly troubled by the Mother's decision to homeschool the Child during pandemic-related school closures in Grade 1 and 2, only *in lieu* of the online learning offered by the private Christian school. In my view, this was a reasonable decision in light of the Mother's past experience with homeschooling, the COVID-19 protocols in place at the school, the Child's age, and his ongoing difficulties with online learning. There was simply no optimal solution for children who suffered through pandemic-related school disruptions. In my view, parents' decisions during this time deserve a degree of deference. Indeed, the Child himself told the OCL that he sees benefits to both homeschooling and community schooling but indicated that he did not like online learning.

[58] That being said, like Justice Dennison, I am concerned about the Mother's decision to homeschool the Child in Grade 3: see *A.C. v. K.C*, 2022 ONSC 1844. The Mother explained her decision-making process as follows. She said that she remained concerned about possible school closures in 2021-2022, knew that the Child had struggled with school-related protocols such as masking, and anticipated increased school absences due to strict "return to school"

protocols after illness. The Mother also noted that the private Christian school was requiring that the Child undergo a psychoeducational assessment prior to re-enrollment, and that the Father would not consent. The Mother knew that the educational supports the Child likely required would not be available to him immediately upon enrolment in public school and decided that she could better accommodate his learning needs through homeschooling.

[59] I accept the Mother's reasoning to some extent. I agree that there remained a great deal of concern amongst parents about further disruptions in learning because of the pandemic. The Mother was rightly and genuinely concerned about the Child's ability to cope and adapt to online learning given all the upheaval in his life. Moreover, pandemic aside, the public education system is hardly a panacea for young children with complex emotional, mental health, and learning challenges. I accept the Mother's assessment that obtaining a Board-funded psychoeducational assessment, creating an Independent Education Plan ("IEP") with the school, and implementing the necessary accommodations would have taken many months or even years, especially given the backlog created by the pandemic. The Child himself acknowledged that he preferred the individualized attention offered by homeschooling.

[60] With the benefit of hindsight, however, I think it would have been better for the Mother to have enrolled the Child in Grade 3, full-time at the public Catholic school. Since regularly attending school pursuant to Court order, the Child's separation anxiety and his refusal to attend has largely abated. He has made strong friendships and his academic performance has been steadily improving. The school is no longer recommending that the Child have a psychoeducational assessment, which suggests that his earlier problems have largely subsided. Given the lack of stability in his homelife, including his past experiences of family violence and his Mother's own mental health challenges, it would have been preferable to have commenced the Child's school attendance in September rather than January. This would have allowed him to begin the year with a cohort of peers, be exposed to different people and pedagogical approaches, and begin to spend longer periods of time away from the Mother. This would have also likely helped the Mother to cope with her own anxiety around separations from the Child.

[61] The parents have differing opinions on the Child's mental health needs. Fundamentally, they disagree on the nature and extent of the Child's emotional dysregulation and behavioural difficulties, as well as the proper course of action in light of the same. The Father says that the Child is "normal" and has never been formally diagnosed with a mental health, intellectual, learning, or

other disability. He believes that the Child's behavioral challenges are "caused" by the Mother. He says that the Mother has burdened the Child with her own emotional problems. The Father believes that the Child's emotional dysregulation and behavioral issues will subside once he has a stable and predictable parenting schedule that allows him to spend equal time with both parents, and if the Child were to come live with him more permanently.

[62] The Mother's concerns about the Child run deeper. She says that the Child has always been strongly attached to her and has had significant difficulties separating from her care since birth. In the past, he would cry, yell, kick, scream, and vomit when required to go to school or for parenting time with his Father. When the Child started going to public school pursuant to the 2022 court order, he initially refused to attend unless the Mother brought him his lunch, which she obliged for a period. The Mother believes that the Child will feel more positive about separating from her as he gets older, especially if he has some control over the parenting schedule and if he is able to communicate freely and independently with both parents during their respective parenting time.

[63] The Mother says that the Child worries about angering or upsetting his Father, for example, when he wants to call her during his parenting time, or if he has received a bad mark or gotten in trouble at school. On one occasion, the

Child expressed very specific concerns about the Father “killing him with a camping knife.” A subsequent Children’s Aid Society (“CAS”) investigation did not verify any risk of physical or emotional harm. The Child admitted to the OCL that he has said these things to his Mother but could not explain why he had done so. The Mother believes that the Child would benefit from ongoing counselling as recommended by the OCL. She says that the Father has never been willing to consent to counselling for the Child. The Father told the Court that he feels counselling to be premature and unnecessary.

[64] In Ms. Casino’s opinion, the Child very likely suffers from a serious anxiety disorder. Despite there being no formal diagnosis, I agree with Ms. Casino that there is evidence that corroborates her informal assessment. For example, the Child has long displayed symptoms consistent with serious anxiety, including recurring and unexplained stomach issues, an early fascination with violence, a preoccupation with protecting his Mother, bathroom accidents, tantrums and meltdowns during transitions, refusing to attend school and parenting-time with his Father, and refusing to follow COVID-19 protocols.

[65] As to the source of the Child’s anxiety, Ms. Casino identifies various stressors in the Child’s life: fear after witnessing his Father hurt his Mother in 2017, his Mother’s anxiety, being overburdened by messaging from both parents,

and the lack of a structured routine in his home and school life. Ms. Casino emphasized in her evidence before me that the parents must work together to address the Child's anxiety so that he is able to attend school regularly and begin to see his Father more often. This would involve stabilizing the Child's school attendance, facilitating regular parenting time with the Child, and minimizing negative messaging. She has also suggested that the Child undergo a psychological assessment, and that he and his parents be engaged in counselling to address their family dynamic so as to minimize stress on the Child. To date, despite the Mother suggesting names of potential counsellors for the Child, the Father has refused to consent.

The Child's relationship with his Mother

[66] The Mother and the Child have a very strong and loving bond. The Mother does not have any intentions to change the Child's home environment, which is rightly described by the OCL as loving and healthy. As the primary parent, the Mother has been responsible for the Child's day-to-day care since birth. The Mother has been solely responsible for establishing the Child's day-to-day routines, obtaining regular medical care, as well as for ensuring school attendance.

[67] The Mother has always made decisions regarding the Child's healthcare and education on her own. While she has usually sought the Father's input and consent, where this has resulted in conflict or where a resolution has not been forthcoming, she has made decisions on her own. While the Father takes issue with this, I find that the parental decision-making after separation was consistent with the pattern established during the marriage. For example, the Father admitted that he acquiesced to the Child being homeschooled for junior kindergarten while the parties were still cohabiting. Beyond that, the parties only lived together for less than 19 months during their eight-year marriage. This fact supports my finding that the Mother has made most major decisions for the Child since birth—including both before and after separation.

[68] Regarding healthcare, I accept the evidence of Ms. Casino, who reviewed extensive medical records, to conclude that the Mother has made sound healthcare decisions for the Child. This has included seeking medical advice and following it, obtaining specialist referrals when necessary, and advocating for the Child's mental health. While the Child's medical issues have sometimes required him to be absent from school, I accept the Mother's evidence that these absences increased when he started attending school due to his contraction of regular childhood illnesses and because during the pandemic the Mother was required to abide by COVID-19 screening protocols before sending the Child to school.

While the Mother testified that the Child did not receive the COVID-19 vaccinations, he is otherwise up to date on all his vaccinations and regularly sees a doctor.

[69] While I accept the Ms. Casino's opinion that the Mother has projected her own anxieties about the Father onto the Child, I also note that the Mother has consistently sought counselling and therapy to resolve the issues arising from her relationship with the Father. In her testimony before me, the Mother was emphatic that she has taken Ms. Casino's findings to heart and made more of an effort to shield the Child from this litigation and her own anxieties. I am confident that with this litigation behind her, the Mother will be able to address some of her lingering worries and make a greater effort to shield the Child from her own mental health issues so that he has the space to address his own struggles.

The Child's relationship with his Father

[70] The Father and the Child have a close relationship despite the Child largely seeing his Father on weekends (or alternating weekends) for most of his life. The Father emphasizes that he initially remained in Canada so that he could have a relationship with his son, and that post-separation he has consistently wanted 50/50 parenting time in order to deepen that relationship. The Father has endeavoured to create memorable experiences for the Child during special

holidays, and by traveling with the Child to visit family and friends in Australia and British Columbia. While the Father did not seriously challenge the Mother's evidence regarding her experience of family violence, he says that CAS has not verified a risk of current harm, and that the Child is generally comfortable during his parenting time.

[71] The Father and his new partner provide for the Child's basic needs during his parenting time. The Father has also always tried to be present for school events and for medical appointments and emergencies. That said, the Father has generally been unburdened by the routine aspects of parenting, such as facilitating online learning and school attendance, addressing routine medical issues, or dealing with the Child's emotional dysregulation and behavioral struggles.

[72] According to Ms. Casino, the Child has complicated and unresolved feelings about his Father that stem from the instability and family violence he experienced in his early life. He reported sometimes being "scared" of the Father because of witnessing his Father assault his Mother and being "afraid that his Father might keep him and not drop him back off at his Mother's." According to the OCL, the Child has also formed the strong impression that his Father "doesn't like" his Mother and that he would prefer that the Child live with him. The Child's

impressions were born out in the Father's testimony before me. He repeatedly characterized the Mother as lazy, as someone who only pursued a relationship with him for the purposes of receiving financial support for herself and her Children, and who has not been a particularly good mother to the Child. As discussed above, the Child has also come to believe that the Father does not care about his feelings, acknowledge his separation anxiety, or respect his views and preferences.

[73] In Ms. Casino's opinion the Child's contradictory feelings towards his Father are the result of his Father's anger, his exposure to family violence, his feelings of abandonment and grief following his parent's final separation, his Mother's anxious parenting style, and concerns that his Father might try to disrupt his relationship with his Mother or hurt her. Ms. Casino believes that the Child and the parents will require therapy to unpack these overlapping and complicated family dynamics that have clearly impacted the Child deeply.

Willingness to facilitate a relationship and ability to communicate with the other parent

[74] Both parties agree that they have struggled with communication before, during and after the marriage. Before the marriage, the parties were in a long-distance relationship that was challenging because they were not always on

the same page in terms of where the relationship was going. After the Mother became pregnant and during the marriage, the parties fought often over finances and parenting and never developed any reliable communication strategies. Since the marriage, the parties have largely communicated about major decisions by email, with long strings going back and forth, but with very little accomplished by way of true joint decision-making. When they have tried to talk, they have argued.

[75] In relation to facilitating a relationship with the other parent, the parents have largely been following an alternating weekend schedule since the Child's birth. The only exceptions were a period of about 18 months where the parties were co-habiting, and three instances when the Mother refused to facilitate parenting time post-separation. The first time the Mother refused the Father's parenting time was in April 2019. This refusal lasted for three months. The Mother said that she needed time to prepare the Child for the new family dynamics after the birth of the Child's Younger Sister. The Mother says that the Father had never told her or the Child about the pregnancy, and that she felt the Child would need some time to process the change in his family. The parenting time was only reinstated after the Father brought a motion. While the Father showed no insight into how a Child with serious anxiety might react to a "surprise" sibling, I find that parenting time should have resumed within a few weeks by mutual consent such that a motion could have been avoided.

[76] The second time was in March 2020, immediately after the onset of the pandemic. Again, the Mother blocked the Father's access for three months because she was concerned that the Father was going to abscond to Australia with the Child. Again, parenting time only started again after the Father brought a motion. While I accept that the Father had threatened her in the past to leave with the Child, these threats occurred years previously and did not justify breaching court orders and unilaterally withholding parenting time. The proper course of conduct would have been to apply to this court for relief, which the Mother never did. Moreover, the CAS never verified a risk of harm to the Child in the years since the parties separated.

[77] Most recently, after receipt of the OCL Report in January 2023, the Mother stopped facilitating the overnight Tuesday visits. She says that the Child simply refused to go anymore and she could not "physically force him to go." Although the Father did not resort to the courts to enforce the mid-week visits and has largely acquiesced to the new arrangement, he says that he is still hopeful that the weekday overnights would resume. He says that he had not forced the issue because he is aware of the Child's views and preferences.

[78] Clearly, I have serious concerns about the Mother's willingness to abide by court-ordered parenting time post-separation. Even in the trial before

me, I had to emphasize to the Mother the importance of facilitating the Tuesday overnight access irrespective of the recommendations in the OCL report. Court orders are not suggestions, they are directions. In no uncertain terms, the Mother's actions in denying the Father's parenting time have been wrongful. Temporary parenting orders are presumed to be in the best interests of the child, and the child's right to maintain an attachment to both parents should not be forfeited except in the most extreme and unusual circumstances: *Jennings v. Garrett,* 2004 CarswellOnt 2159 (S.C.), para. 128. To the extent that the Mother has had lingering concerns about the Child being exposed to violence or otherwise harmed, the proper course of action would have been to proactively apply to this court for relief and not to engage in self-help measures.

[79] Finally, I note that over the years the Father has brought multiple motions to obtain extended summer parenting time, and to travel overseas with the Child. These motions were often resolved on consent after being filed. The fact that the Father was required to bring motions to secure increases in parenting time does not count against the Mother. There was no status quo established during or after the marriage for the Father having extended parenting time over summers or travelling overseas with the Child. Given the patterns established in the relationship, I find that it was prudent for the Mother to insist on gradual increases in parenting time in the years post-separation.

The Child's best interests re: parental decision-making

[80] In this case, both parents love the Child very much and want him to have a strong and positive relationship with both of his parents, his half-siblings, and his extended family on both sides. On parenting, the parties disagree about decision-making in the realms of education and healthcare, and about whether I should order equal parenting time or primary parenting time to the Mother. To make these determinations, I must consider the factors set out in the *Divorce Act* and *CLRA t*o determine the Child's best interests in light of his physical, emotional and psychological safety, security and well-being.

[81] In my view, it is in the Child's best interest for the Mother to have sole decision-making authority, subject to the discussion below regarding school enrolment. The Mother's proposal that the parties use a parenting coordinator to resolve disputes (with her having final say) is not realistic since the parties do not have a track record of being able to make decisions jointly. The Father's counterproposal that they resort to binding arbitration in the event of disagreement is outside my jurisdiction to make unless it is on consent: *S.V.G. v. V.G.*, 2023 ONSC 3206, paras. 123-134. Both proposals risk prolonging the acrimony between the parties. Moreover, the financial imbalance between the parties weighs against making such an order. The Father makes a profitable living

in finance, was represented by counsel in multiple pre-trial parenting motions, and was represented by two lawyers at trial. In contrast, the Mother is in receipt of public assistance, is not currently employed, and represented herself at trial. In my view, these factors weigh against requiring the parties to engage in expensive processes to resolve parenting disputes. This money is better spent on the Child himself.

[82] The Mother having sole decision-making authority in most areas is in the Child's best interests for these reasons. First, this is consistent with the status quo established since the Child's birth. In general, the Mother has always made major decisions about the Child for the most part in consultation with the Father. This is largely because the parties do not have a successful track record of making joint decisions. The fact is, these parties barely knew each other before having the Child, they lived apart for most of their marriage, and they lead very different lives today. In this context, it is not surprising that they do not agree on important aspects of the Child's upbringing. Second, I note that, beyond the areas of medical care and education, the Father does not have any significant concerns with the Mother's past decision-making in relation to the Child.

[83] Finally, I have serious concerns about the Father's ability to make parenting decisions that are in the best interests of the Child given his

minimization of the serious family violence the Child experienced. As discussed above, the Father has minimized the family violence and its impact on the Child throughout the proceedings before this court, and with the OCL as well. He has refused to take seriously interventions by family members and church leaders. He has learned very little from past criminal charges and court-mandated programming. He does not consent to therapy for the Child, despite it being recommended by a social worker. This all suggests that the Father has not addressed the root causes of his anger or developed proper coping mechanisms to deal with his violent tendencies. Given his extreme resentment of the Mother, I would be concerned that the Father might use his parental decision-making authority to control or punish the Mother: *S. v. A.,* 2021 ONSC 5967, at para. 24.

[84] Regarding medical decision-making, there is no evidence to support a finding that the Mother has not acted with prudence and diligence in relation to the Child's medical care. She has consistently taken his anxiety issues seriously and sought treatment, including visiting a gastroenterologist to rule out physiological causes for his ongoing stomach issues. She also sought the Father's consent to commence therapeutic counselling for the Child after receiving the OCL Report which recommended the same. The Father would not consent. On this basis, I believe it is in the Child's best interests for the Mother to make healthcare decisions for the Child after consulting with the Father.

[85] I now turn to the issue of educational decision-making. Regarding education, the Father is concerned about the Child's educational attainment to date. He notes that the Child received a grade of "incomplete" in two subjects, once in Grade 2 and once in Grade 3, because he failed to hand in his work. The Father blames the Mother for the Child's slow progress in school, citing her past decision to homeschool the Child, the Child's repeated absences and late attendances, and her permissive attitude towards assignment completion. While the Mother admits that the Child has struggled in aspects of school, she says that this is largely attributable to the pandemic and the Child's untreated anxiety and related school refusal behaviour. While the Child initially struggled to go to school after being ordered to do so by this Court, the Mother says that the Child has now adjusted well to school, in part because of his strong peer relationships and the assistance of a Child and Youth Worker. His current school principal confirmed that the Child is currently progressing well in school.

[86] In the context of this case, I agree with the OCL investigator that disruptions in education have contributed to the Child's anxiety and school-refusal behaviour. Overall, I find that it is in the Child's best interests to remain enrolled at his current Catholic school in Peel Region and to continue to attend full-time public school until high school graduation. The Mother shall continue to make all other educational decisions regarding the child. I am not prepared to give the

Father responsibility over educational decision-making because I am concerned about his future plans to have the Child attend school in Halton Region and because, as I will discuss below, I believe that the parent with primary parenting-time during the school week is best positioned to make education decisions in the best interests of the Child.

Parenting time

[87] In terms of parenting time, the parties agree that the Child should continue to live primarily with the Mother during the school year, that he should be able to travel with both of them during the holidays, that he should spend special days with both of them, and that they should both be involved in his day-to-day schooling and extracurricular activities. Their disagreement lies in the details.

[88] The Father's plan would see the Child spending his time with both parents equally almost immediately, including overnight during the school week, though much of his parenting time would occur over holidays and vacations. He says that, given the distance between the parties, his plan is more realistic in terms of moving towards equal parenting time. The Father's plan would mean that he has the Child more than 40% of the time, which he says entitles him to pay child support based on a set-off. He provides the court with detailed charts

and proposed schedules to demonstrate how his position results in equal parenting time.

[89] The Mother's parenting time proposal largely maintains the status quo that was established at birth, with some modest increases after three years. Themes that emerge from the Mother's plan are her reluctance about parenting time exchanges taking place at school, and her discomfort with the Child spending more than two weeks away from her before he turns at least 13 years old. She is opposed to mid-week overnight parenting time because the Child himself is resistant to it. Given the Child's separation anxiety and history of refusing parenting time, the Mother says that the only realistic parenting plan is one that the Child himself "buys-in" to and will respect. The Mother's proposed schedule would result in her having primary parenting time and the Father paying full table child support.

[90] The parents' draft orders in relation to parenting time are summarized here:

	Applicant/Father	**Respondent/Mother**
School year weekends	Alternating weekends from Friday after-school until Monday drop-off. To be extended if the Friday or Monday are statutory holidays or PA Days.	Alternating weekends from Friday after-school until Monday drop-off. Weekend parenting time to extend to drop-off on Monday at 8:00 p.m. on statutory holidays.

School year mid-week	Overnight on Wednesday from Wednesday after-school to Thursday morning.	Wednesday evenings after-school until 8:00 p.m., to be extended to overnight with the Child's consent.
March Break	Alternating March Break from school pick up to school drop off.	Alternating March Break, though other parent shall retain their weekend parenting time.
Easter, Thanksgiving	Alternating Easter/Thanksgiving weekend from school pick up to school drop off.	Alternating Easter/Thanksgiving weekend, with the other parent being offered 8 hours of parenting time during the weekend.
Christmas Break	Alternating Christmas annually, from school pick up to school drop off. After age 13, the Child shall be permitted to travel with either parent for a period of three weeks.	Share Christmas so that the Child shares Christmas with one parent and New Years with the other parent, on an alternating basis. The parties shall stay in Ontario and shall make best efforts to share time on Christmas eve and day, regardless of who has the holiday. After the age of 13, the Child shall be permitted to travel to Australia for three continuous weeks, subject to make up time.
Mother's Day/Father's Day	Regardless of the regular schedule, the Child shall spend the day with the Honored parent until school drop-off.	Regardless of the regular schedule, the Child shall spend the day with the Honored parent from 9:00 a.m. to 5:00 p.m.
Summers	Shared on an 11-day rotation until the age of 13.	The Child shall have two weeks vacation time with each parent, which may be taken consecutively.

	After the age of 13, summer parenting time shall be shared equally but with the Child spending longer periods with each parent.	After the age of 13, the summer parenting time shall be expanded, subject to the consent of the parties and in accordance with the Child's wishes and best interests.

[91] Ms. Casino's report indicates that the Child is close to and enjoys spending time with all of his family members. He is able to adapt to the different routines in each parties' house with minimal difficulty but admitted that he sometimes does not want to go to his Father's house for visits. The Child wishes to spend more time with his Father, but also says that he often misses his Mother when he is separated from her for too long and especially if he cannot speak to her. According to the OCL Report, the Child would like to see his Father at times and for durations at his discretion. However, if a schedule is imposed, he would like to see his Father on alternating weekends (from Friday to Sunday) with no court-ordered mid-week parenting time.

[92] Beyond the OCL Report, I also rely on the *Parenting Plan Guide*, especially as it relates to Children who have experienced family violence: pp. 6, 10, 43-44. In summary, the *Guide* emphasizes the following:

a) Children are harmed by exposure to conflict between their parents. High conflict between parents increases children's anxiety and negatively impacts healthy child development.

b) Where there has been violence between the parents or abuse of the children by a parent, parenting plans should includes provisions to protect the child, including transitions in neutral places and limited contact between the parents.

c) Where one parent is perpetrating coercive, controlling violence over the other parent, dominating their partner or instilling fear, parenting plans should be court-mandated and include provision of support services for the victim and child, and interventions for the perpetrator.

d) Even if one parent has been abusive, in the long-term the child will often want and benefit from a relationship with that person, provided that person has acknowledged and addressed their abusive behaviour and the child's safety and well-being are protected.

[93] On the whole, I find that the Child's best interests lie somewhere in between the parties' proposals and the OCL recommendations. Given the immense turmoil in this Child's early life, his exposure to family violence, and his

serious anxiety now, I believe that stability—that is, some connection to the *status quo*—is consistent with the Child's current emotional and developmental needs. On that basis, I am not in favour of Wednesday overnights. Given the Child's need for consistency in terms of school routines and attendance, I agree with the Mother that mid-week parenting time is too disruptive to the Child's bedtime and morning routines. Given the past issues with school attendance, he should be encouraged to get more involved in after-school extracurricular and social activities. Moreover, while I do not think that a ten-year-old Child can dictate his own parenting schedule, in the context of this case, I believe that it is in the Child's best interests to honour his wishes regarding mid-week parenting time. Given his perception that his Father does not "care" about his feelings, it is important and appropriate that the Court-ordered school-year parenting schedule be perceived by the Child to acknowledge his views and preferences. This should help to minimize his refusals to attend. Therefore, I find that it is in the Child's best interests that there be no court-ordered mid-week parenting time, but that the parties make reasonable efforts to facilitate mid-week evening parenting time (after-school until 8:00 p.m.) if the Child desires it.

[94] It is also in the Child's best interests to minimize the requirement for his parents to interact with one another at exchanges. At a practical level, this strongly favours exchanges taking place at school wherever possible, including

by extending the Father's parenting time when it is adjacent to a school or statutory holiday. I also have concerns about the Mother's proposal for the Child to effectively split his special holidays with both parents. On the Mother's proposal, the Child would inevitably draw direct comparisons about the parties' respective families and holiday traditions, which is not in the Child's best interests. On this basis, I prefer the Father's proposal regarding special holidays such as Christmas, March break, Easter, Thanksgiving, Mother's Day, and Father's Day.

[95] In terms of the summer, in the long-run, I believe it is in the Child's best interests to work towards a two-week rotating schedule once the Child turns 13 years old. This will allow the Child to travel more easily and have exciting and enriching experiences with both his parents and his half-siblings. Both parents testified to the importance of family and travel, and I also accept that the Father's schedule will better allow the Child to be enrolled in summer camps, which may require a commitment of up to two weeks at a time. Moreover, I am less concerned about maintaining the status quo during the summer since the Child is likely to expect the summer to "look different" from the school year. The Child himself seems excited about the prospect of travelling with his Father to Australia so long as he is able to freely contact his Mother at his discretion.

[96] That said, given the history of family violence, the Child's anxiety, and the OCL recommendations regarding family counselling, it is in the Child's best interests to "step-up" the Father's summer parenting time only after he has participated in the recommended therapy. The OCL Investigation recommended the following in relation to the Father:

> [The Father] would also benefit from counselling support to know how to connect with [the Child] when he is upset and doesn't want to visit instead of just insisting the schedule be followed. It is also recommended that [the Father] address [the Child's] lingering anxiety that his Father may hurt his Mother. It is recommended that any assessor/counselor be able to review this report and have a family systems approach to the issues and be able to provide both individual and family treatment. Consideration should be given to attending at a Children's Mental Health centre such as Peel Children's Centre.

[97] As discussed above, the Mother is agreeable to engaging the Child in the OCL-recommended therapy and participating herself; it is the Father who has been resistant to it. Given his limited insight into the family violence and resulting dynamics, it is in the best interests of the Child for the Father to complete the recommended family systems therapy prior to making a significant increase to his summer parenting time. Ms. Casino clarified to the Court that the therapy she recommends would equire participation by the Mother, Father, and Child, but that the actual format would be determined by the treating therapist. Participation in such therapy will hopefully allow the Father to better handle the new challenges and responsibilities associated with extended caregiving obligations without

resorting to anger and violence. I have the jurisdiction to make therapeutic counselling orders related to the parties and Child where doing so is in the best interests of the Child pursuant to s. 28(1) of the *Children's Law Reform Act* and ss. 16.1(5) and 16.1(4)(d) of the *Divorce Act*: *A.M. v. C.H.,* 2019 ONCA 764, paras. 48-73; *E.M.B.,* paras. 164-165, 200-201; *Leelaratna v. Leelaratna*, 2018 ONSC 5983, paras. 40-52; *C.M.W.T. v. M.M.M*., 2021 ONSC 4809, paras. 44-54.

[98] Assuming the Father participates in and completes the recommended family systems counselling, once the Child reaches the age of 13, the Father's summer parenting time shall be expanded such that the Child spends two consecutive weeks with each parent on a rotating basis for the entire summer vacation.

CHILD SUPPORT

[99] The Father shall pay child support consistent with the Line 150 income, the *Child Support Guidelines*, SOR/97-175 ("*Guidelines*"), and with my order granting the Mother primary parenting time. As an aside, I note that, even if the Father had been successful in his claim for 40% or more of the parenting time with the Child, I would not have allowed his claim for set-off child support pursuant to s. 9 of the *Guidelines*. Section 9(c) gives me wide discretion to consider the "condition, means, needs and circumstances of each parent" when

determining the amount of child support to be paid in such circumstances: see *Contino* v*. Leonelli-Contino*, 2005 SCC 63, para. 16. On the Father's own proposed schedule, the Child would spend the majority of his day-to-day life in the Mother's care, with the Father's parenting time largely taking place over holidays and vacations. In my view, this parenting schedule while technically shared, would not significantly decrease the costs to the Mother of caring for the Child. On the flip side, the cost to the Father would be more marginal since he is already caring for another minor child, the Younger Sister.

[100] The Father's 2022 Line 150 income was $100,285 and there is insufficient evidence to impute any further income to him. He was able to explain all of the business expenses that he incurred and was not seriously challenged on much of this evidence. The Mother could not point to any other sources of unreported income. I also reject the Mother's claim that the Father was purposefully under-employed post-separation such that $65,000 in income should be imputed to him pursuant to s. 19(1) of the *Guidelines*. The Father's uncontroverted evidence was that he was studying to be a priest when the parties first met in Australia, and that he decided to retain as an investment advisor after immigrating to Canada. I accept his evidence that retraining as an investment advisor and building his client base took a few years post-separation such that

he was not intentionally under-employed: *Guidelines,* s.19(1)(a). This is reflected in his steadily increasing income post-separation.

[101] The Mother seeks retroactive section 7 expenses for the Child's early education at the private Christian school. She argues that this expense was necessary because of the Child's severe anxiety and the benefits of a private Christian school, including small class sizes, high parent involvement and warm, trusting student-teacher relationships. She also noted that the Older Sister was attending the private Christian school at this time. It is the Father's position that private school is not a reasonable and necessary expense in light of the parties' respective incomes, and also that he never consented to the expense, or was ever requested to contribute prior to trial.

[102] Weighing the factors set out in *Williamson v. Rezonja*, 2014 ONCJ 72, paras. 50-54, I agree with the Father that private school education was not a reasonable and necessary expense. The parties' combined income was meagre, neither party had ever attended private school, there was no agreement between them about it, and there was no concrete evidence to suggest that the Child was receiving accommodations that would not have been available to him in the public school setting. Indeed, the principal of the private Christian school testified before me that they were concerned about being able to meet the Child's high needs in

the absence of a formal diagnosis and “Individual Education Plan” (“IEP”) and in light of their small size. Therefore, I find that the Father does not have to contribute towards the retroactive s. 7 expenses for the Child’s private school education. Finally, I note that the parties came to an agreement on the first day of trial as to the proportional payment of ongoing s. 7 expenses.

SPOUSAL SUPPORT

[103] In her Amended Answer, the Mother makes a claim for spousal support under both the *Divorce Act* and *Family Law Act*, R.S.O. 1990, c. F.3 (“*FLA*”). The Father resists paying any support; he says that the Mother cannot show entitlement. If I order support, he says that I should impute income to the Mother, that the quantum of support should be at the low range, and that it should be for a short duration on account of the short periods of cohabitation. To determine the claim for support, I must consider both entitlement, and quantum and duration.

[104] Both s. 15.2(6) of the *Divorce Act* and s. 33(8) of the *FLA* emphasize that a spousal support order will generally be appropriate where it accomplishes one of the following overarching goals, namely to:

- Recognize the economic advantages and disadvantages to the spouses arising from the marriage or its breakdown;

- Apportion any financial consequences arising from the care of any child, above any obligation for the support of any child;

- Relieve any economic hardship arising from breakdown of the marriage; and

- As far as is practical, promote the economic self-sufficiency of each spouse within a reasonable period.

[105] Against this backdrop, to determine the appropriate support order, I must take into consideration the "condition, means, needs and other circumstances of each spouse," including: the length of cohabitation, the functions performed by each spouse during co-habitation, and any agreement or arrangement relating to support of either spouse: s. 15.2(4)(a)-(c). Section 33(9) of the *FLA* is more exhaustive, stating that I should consider "all the circumstances" of the parties, and enumerates various factors to be considered: s. 33(9)(a)-(m). The following factors are relevant to his case: current/future assets and means (s. 33(9)(a)(b)); relative capacity to contribute to or provide support (s. 33(9)(c)(d)); age and physical and mental health (s. 33(9)(e)); relative need in light of the accustomed standard of living (s. 33(9)(f)); any legal obligation to provide support for another person (s. 33(9)(h)); the desirability of a parent remaining at home to care for a child (s. 33(9)(i)); the length of time the dependant

and respondent cohabited (s. 33(9)(l)), any child care performed by the spouse for the family (s. 33(9)(l)(v)).

[106] The Supreme Court of Canada in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, paras. 15, 37, summarized that there are three conceptual bases to establish entitlement to spousal support: compensatory, contractual, and non-compensatory. The Court noted however that the routes to entitlement are not mutually exclusive:

> It is critical to recognize and encourage the self-sufficiency and independence of each spouse. It is equally vital to recognize that divorced people may move on to other relationships and acquire new obligations which they may not be able to meet if they are obliged to maintain full financial burdens from previous relationships. On the other hand, it is also important to recognize that sometimes the goals of actual independence are impeded by patterns of marital dependence, that too often self-sufficiency at the time of marriage termination is an impossible aspiration, and that marriage is an economic partnership that is built upon a premise (albeit rebuttable) of mutual support. …It is not a question of either one model or the other. It is rather a matter of applying the relevant factors and striking the balance that best achieves justice in the particular case before the court.

The Court noted at para. 50 that, while I should determine entitlement before quantum, the factors relevant to entitlement will have ultimately have an effect on quantum. At paragraph 36, McLachlin J. noted that, when balancing the various factors, “There is no hard and fast rule. The judge must look at all the factors in the light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown.”

[107] That all being said, under the *Divorce Act,* I am specifically directed not to take into consideration "any misconduct of a spouse in relation to the marriage" when making a spousal support order: s. 15.2(5). In *Leskun v. Leskun,* [2006] 1 S.C.R. 920, para. 21, the Court considered the proper interpretation of this provision in the context of allegations of spousal abuse:

> There is, of course, a distinction between the emotional *consequences* of misconduct and the misconduct itself. The consequences are not rendered irrelevant because of their genesis in the other spouse's misconduct. If, for example, spousal abuse triggered a depression so serious as to make a claimant spouse unemployable, the consequences of the misconduct would be highly relevant (as here) to the factors which must be considered in determining the right to support, its duration and its amount. The policy of the 1985 Act however, is to focus on the consequences of the spousal misconduct not the attribution of fault.

[108] In relation to misconduct, section 33(10) *FLA* adopts different language from the *Divorce Act*, stating that:

> The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

In general, the cases establish that "a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship" means that the conduct is exceptionally bad, could reasonably be expected to destroy the marriage, and must have persisted in the face of the other spouse's virtual blamelessness: *Smith v. Smith*, 2013 ONSC 6261, citing *B. (S.) v. B. (L.),* 1999 CanLII 35012 (ON SC).

[109] There are very few reported cases that apply s. 33(10) of the *FLA,* and those that do often revolve around allegations of extramarital affairs or parental alienation rather than family violence: *Smith v. Smith*, 2013 ONSC 6261, paras. 89-96; *Menegaldo v. Menegaldo*, 2012 ONSC 2915. In an alienation case, Chappel J. held that, in light of the overarching goals of spousal support more generally, as well as the specific prohibition in s. 15.2(5) of the *Divorce Act,* s. 33(10) of the *FLA* must be read as only referring to unconscionable conduct that has a corresponding effect on the capacity of a spouse to achieve self-sufficiency: *Menegaldo*, para. 61. In one case alleging family violence, it was the payor who sought to rely on the egregious conduct of the recipient to argue that he should not have to pay: *Sivarajah v Muralidaran*, 2016 ONSC 5381, paras. 30-31.

[110] Indeed, at first blush, it would appear that s. 15.2(5) of the *Divorce Act* and s. 33(10) of the *FLA* conflict in terms of whether unconscionable spousal misconduct will be a relevant factor when determining spousal support. However, as explained by Professor Sullivan in *Statutory Interpretation* (Toronto: Irwin Law, 2016), p. 319, “provisions do not conflict simply because they deal differently with the same factors. A conflict only arises if it would be impossible or contradictory or would defeat the legislature’s purpose if both provisions were applied. In the absence of conflict, it is presumed that the overlap is intended.” In *R. v. Ulybel Enterprises Ltd.,* 2001 SCC 56, para. 30, the Supreme Court noted that it is a

principle of statutory interpretation that there is a presumption of harmony, coherence and consistency between statutes dealing with the same subject matter. Importantly, I need only resort to the paramountcy of federal legislation where there is a conflict that cannot be resolved through proper interpretation: Sullivan, p. 327.

[111] In my view, it is possible to interpret the *Divorce Act* and *FLA* consistently with one another, as well as with the Supreme Court of Canada's decision in *Leskun* and the caselaw from this court. Taken together and interpreted consistently, the provisions lead to the following general propositions:

- Pursuant to the *Divorce Act* and *FLA,* misconduct itself cannot disentitle a spouse to receipt of spousal support. (See: *Sivarajah v Muralidaran*, 2016 ONSC 5381, paras. 30-31; *McConnell v. Finch,* 2022 ONSC 5271, para. 31.)

- Pursuant to the *Divorce Act* and *FLA,* misconduct itself cannot entitle a spouse to receipt of spousal support or to support at a higher range or for a longer duration (*Leskun*, *Menegaldo*).

- The emotional and psychological consequences of the misconduct can be considered if they are relevant to the other factors set out in s. 15.2(4) of the *Divorce Act* or s. 33(9) of the *FLA* (*Leskun*, *Menegaldo*).

- At least in Ontario, unconscionable misconduct that is an obvious and gross repudiation of the relationship can be considered when determining the *amount* of support, but only if that conduct is relevant to the economic fallout of the marriage. (See: *Menegaldo*, para. 61; *Shaikh v Shaikh*, 2016 ONSC 7400, at para. 95.)

[112] Finally, I note that both pieces of legislation grant me broad discretion to order spousal support, either as a lump sum or in period payments, as I think is "reasonable for the support of the other spouse": *Divorce Act,* s.15.2(1); *FLA,* s. 34. I may impose such terms and conditions or restrictions, including in relation to duration, as I think "fit and just": *Divorce Act,* s.15.2(3). Having set out the relevant law, I turn now to assessing the "condition, means, needs and other circumstances of each spouse," as a basis to determine entitlement, quantum, and duration.

The condition, means, needs and other circumstances of the parties

[113] The parties were married for a period of six years but only cohabited for a total of about 19 months. While the parties' only co-habited for brief periods during the marriage, as discussed at length above, I find that this was largely because of the Father's pattern of violence, as well as his outstanding criminal charges and associated release conditions. The parties both agreed in their

evidence that their intention was always to try to resolve their differences and live together as a married couple. Under cross-examination, the Father admitted that the parties had an ongoing marital relationship including intimacy until around the date of separation. As such, I cannot give much weight to the fact that the parties did not live together throughout the marriage when weighing the Mother's claim for support.

[114] In terms of the functions performed by each spouse during the marriage, I find that the marriage was largely traditional. Both parties testified that they had traditional expectations of one another from the outset. During the marriage, the Father was mostly focused on re-training, securing employment, and working outside the home. While the couple was living in Mississauga in 2017-2018, the Father was working 12-hour days to build his business as an investment advisor. Since separation, he has continued to work full-time and advance his career in the financial services industry. While the Father suffers from hearing loss, he is relatively young and in good shape. He has one other dependent child, the Younger Sister. His new partner works full-time and owns the home in which the Father lives and in which he does not pay rent.

[115] In contrast, the Mother has only occasionally worked outside the home whether before, during, or after the marriage, and her jobs have provided

minimal income (*i.e.,* bus driver, part-time outdoor education instructor, *etc*.). Despite her impressive educational achievements, the Mother was unable to work consistently after 2012 because of her disability, her childcare responsibilities, and her experiences of family violence. The fact that the Mother has been in receipt of CPP disability benefits before, during, and after the parties' separation is strong evidence confirming that the Mother suffers from a chronic disability that affects her ability to work. I accept her evidence that she was diagnosed with Chronic Fatigue Syndrome well-before meeting the Father, and that she was honest with him about it during their courtship.

[116] I also accept her evidence that her experiences of family violence during the marriage exacerbated her disability, resulted in persistent anxiety, and have made it difficult for her to work continuously or consistently during the marriage and afterwards. Even now, the Mother admitted that she requires expensive therapy to become more stable and productive. The Mother herself says that she expects to be able to work on a part-time basis again within six months, once the litigation is over, once there is a clean break from the Father, and once there is more stability in her and the Child's life.

[117] Given that the Child was only five years old at the time of separation, I also accept that the Mother has been unable to work due to her child-care

responsibilities before, during and after the marriage, including primary parenting of both the Child and his Older Sister. Whatever their disagreements about home schooling, had the Mother been working part-time, the parties would have required some amount of childcare. Indeed, the Mother relied on a friend who testified to dropping the Child off at school and picking him up when the Mother was working on a casual, part-time basis. Notably, post-separation, the Mother was responsible for childcare during pandemic lockdowns and school closures, and is responsible for all childcare during the school week. When the Child has refused to attend school, it is the Mother who must get him there. The Older Sister is now enrolled in post-secondary education but is still living with the Mother and Child.

[118] While the Father and the Mother never co-mingled finances during the marriage, I refuse to give this factor much weight in the context of the Father's financially controlling behaviour. Throughout the marriage, the Mother wished to establish a degree of economic interdependency given the fact that she was staying home with the Children, but the Father vehemently refused. Indeed, he repeatedly threatened not to support her or the Child if she did not conform to the behaviours he expected. In my view, the parties' financial independence was not an agreement between the parties but rather something that was imposed on the Mother by the Father.

[119] Finally, I note that the Mother has primary parenting time and is required to continue residing in Peel region as a result of my order regarding the Child's education. Given her modest income, the importance of maintaining an adequate standard of living for the Child is a factor that I must consider. Her Financial Statements and supporting records show that the Mother has significantly depleted her savings, including her insurance settlement proceeds, to maintain an adequate standard of living for the Child in Peel Region since separating from the Father.

Entitlement, Quantum and Duration

[120] I have no trouble concluding that the Mother is entitled to spousal support based on the nature of the parties' marriage. The Mother's role as the primary caregiver for the Child was beneficial to the Father's career as it allowed him to devote himself to retraining and to establishing himself as an investment advisor. Second, I find that the Mother has need on the basis of her pre-existing disability, as well as because of the anxiety she has developed on account of the family violence she experienced: *Bracklow, Leskun*.

[121] For the purposes of calculating spousal support, I find that the Mother's income shall be deemed to be her taxable income from August 1, 2018 through to December 31, 2023, since I am convinced that she was unable to work

during this period due to her childcare responsibilities, chronic disability, and the anxiety she acquired as a result of the family violence she experienced. However, from January 1, 2024 onwards, the Mother's income shall be imputed to be $30,000 per year, inclusive of her CPP disability benefits and any earnings from part-time employment. This is consistent with the Mother's own admission that her income for s. 7 purposes shall be deemed to be $30,000 going forward. Based on my findings above, I decline to impute income to the Father for the purposes of determining spousal support.

[122] Based on my findings about income, the following chart captures the SSAG ranges, from the date of separation onwards, using the one child formula and assuming that the Mother is claiming the disability tax credit and dependent credit:

Year	**Father**	**Mother**	**SSAG ($Low-Mid-High)**
2019	$24,024	$19,126	0-0-0
2020	$40,815	$18,074	0-0-0
2021	$56,863	$14,094	23-202-385
2022	$100,285	$14,340	987-1,292-1,613
2023	$100,285 [estimate]	$14,340 [estimate]	954-1,255-1,570
2024	$100,285 [estimate]	$30,000 [imputed]	358-741-1,121

The SSAGs indicate that the ranges are “for an indefinite (unspecified) duration, subject to variation and possibly review with a minimum duration of three years and a maximum duration of 13 years from the date of separation.” Notably, based on the parties’ respective incomes, there is no spousal support owing for 2019 and 2020, and relatively modest support owing in 2021.

[123] Given the Mother’s strong compensatory and need-based claims, I would award support at the high end of the range from the date of separation. According to the SSAG, in cases where one party has primary residency of the Children and the parties are low- to mid-income earners, spousal support should be in the mid-to-high end of the range: pp. 33, 45. This is because of the significant compensatory claims associated with children, coupled with the needs in the home of the primary care parent. The authors of the user’s guide caution that: “A simple default to the mid-point likely leaves many of these recipients under-compensated.” While I need not resort to s. 33(10) of the *FLA* to arrive at an award of support at the high end of the range, I find additional support in that provision. I have no trouble concluding that the Father’s pattern of financial abuse, violence, coercive and controlling behaviour during the marriage was an “obvious and gross repudiation of the relationship” that had a detrimental impact on the Mother’s economic circumstances, and which favours an order of support at the high end of the range.

[124] The Father owes spousal support from the date of separation onwards. I decline to set a termination date at this time because the SSAG cautions against judges making definite orders, even in short marriages, where the children are young, stating:

> Remember that there are two tests for duration under the *with child support* formula. Not just the length-of-marriage test, but also the age-of-children test. The second test is more important for shorter marriages, with a range from the time the youngest child commences full-time school to the upper end of the last child finishing high school.
>
> These are usually cases with strong compensatory claims. The compensatory claim derives less from the *past* disadvantage during the marriage and much more from the *future* disadvantage for the parent with ongoing primary care of the children, as identified in s. 15.2(6)(b) of the *Divorce Act.*

Therefore, my spousal support order shall be subject to review after three years.

FINAL ORDER AND COSTS

[125] Pursuant to these reasons, the parties shall endeavour to agree on the terms of the Final Order. The Final Order and appropriate consents shall be sent to my assistant on or before November 7, 2023 at Ryan.Chan2@ontario.ca. If the parties are unable to agree on the terms of a Final Order, they shall send to my assistant their draft order and supporting Divorce Mate calculations on or before November 7, 2023.

[126] The Mother was more successful at trial on all the most contentious issues. The parties are encouraged to resolve the issue of costs between

themselves. If the parties are not able to agree on the matter of costs, they shall each send to my assistant their Costs Outlines, any relevant offers to settle, and written costs submissions (maximum 5 pages, double-spaced, 12-point font) on or before November 7, 2023.

[127] Finally, while I had indicated to the parties at the end of trial that I expected to release my decision orally, this was not possible due to the complexity of the issues.

[128] I remain seized of this matter pending issuance of a Final Order.

Mandhane J.

Released: October 24, 2023

CITATION: A.C. v. K.C., 2023 ONSC 6017
COURT FILE NO.: FS-18-928380-00
DATE: 20231024

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

A.C.

Applicant/Father

- and -

K.C.

Respondent/Mother

REASONS FOR JUDGMENT

Mandhane J.

Released: October 24, 2023