CITATION: S.V.G. v. V.G., 2023 ONSC 3206
COURT FILE NO.: FC 1133/18
DATE: May 31, 2023

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
S.V.G.	Applicant	Joanne F. Guarasci for the Applicant
– and –		
V.G.	Respondent	Nida Hussain and Sarah McMahon, for the Respondent
		HEARD: January 18, and 19, 2022; February 28, 2022; March 1, 3 and 4, 2022; May 25, 26 and 27, 2022; July 26, 27 and 28, 2022; November 21, 22 and 23, 2022

The Honourable Madam Justice Deborah L. Chappel

REASONS FOR JUDGMENT

PART 1: INTRODUCTION

I. OVERVIEW OF DECISION

[1] The Applicant S.V.G. and the Respondent V.G. began a relationship in 2004 and were married on December 12, 2009. There are two children of their relationship, both girls. Ch.G. was born in March 2011 and is now 12 years of age. C.G. was born in July 2014 and she will be 9 years old in July 2023. In these Reasons for Judgment, I refer to the Applicant as "the mother" and the Respondent as "the father" for ease of reference.

[2] The parties separated on July 17, 2018 after approximately 8.5 years of marriage. The Applicant commenced this application on August 19, 2018 and brought an urgent motion on the same day in which she sought comprehensive relief respecting parenting and

financial issues, including a request for authorization to relocate with the children from Stoney Creek, Ontario to Woodbridge, Ontario. The court did not permit this relocation. The parties proceeded to a further motion to address parenting issues in late November 2018. Lafrenière J. heard this motion on November 22, 2018. On December 19, 2018, she made a detailed temporary order which included terms granting the parties joint decision-making responsibility respecting the children and equal parenting time according to a 2-2-3 schedule, with parenting exchanges to occur every Monday, Wednesday and Friday afternoon.

[3] Since December 19, 2018, the parties have resolved almost all of the Family Law issues arising from their separation, including their respective property and support claims and the issues of regular and holiday parenting time. They also reached agreement about several other parenting issues, including decision-making responsibility respecting Ch.G. and C.G. in regard to religion and spirituality and significant extracurricular activities. The sole issue that proceeded to trial before me was decision-making responsibility in respect of the children's health and education. The question to be determined is what decision-making framework regarding the children's health and education is in their best interests? The mother seeks an order for sole decision-making responsibility in these areas, whereas the father requests an order for joint decision-making responsibility. The father's alternative position is that the court should order joint decision-making responsibility in these areas, with the proviso that the parties must continue to retain a parenting coordinator who they have been using, Ms. Mary Jo Franchi-Rothecker, with such services to include both mediation and binding arbitration authority to assist them in reaching decisions if they are unable to do so on their own.

[4] While the issue to be determined in this case is fairly limited in scope, it is exceedingly important to the parties as evidenced by the fact that it required 15 days of trial. The case has also been unusually difficult to decide because as I discuss in further detail below, it is abundantly clear that both parties are extremely loving, devoted and competent parents who are motivated in all of their actions by their genuine beliefs as to how Ch.G.'s and C.G.'s best interests can best be served and supported. Reaching a decision therefore involved several vigilant reviews of the extensive evidence led at trial against the various factors relevant to the children's best interests.

[5] For the reasons that follow, I have concluded that neither of the decision-making frameworks proposed by the parties is in the best interests of Ch.G. and C.G. I have decided that the children's best interests require that the parties make all reasonable efforts and take all reasonable steps to attempt to reach decisions respecting the children's health and education jointly. I have structured a detailed framework for the parties' decision-making regarding these issues. I am ordering that if the parties remain unable to reach a consensus after following this framework, they are to engage in either mediation or parenting coordination to try to resolve the issue. Based on the evidence that I have heard in this case, I am confident that the parties will be able to reach agreement on almost all health and education issues jointly without difficulty through this process. I have found that although the existing joint decision-making framework has resulted in some delays in the past in addressing parenting issues, it has also in many

situations yielded the best possible overall outcomes for the children. I have also concluded that parenting coordination has been an effective tool for the parties in their attempts to co-parent Ch.G. and C.G., and that it has assisted them in achieving the best possible results for the children in terms of their decision-making. However, I have concluded that on the rare occasions when the parties are unable to reach agreement through the decision-making process that I am ordering, including mediation or parenting coordination, then one party should be given the right to make the final decision so that further court intervention is not required. After much deliberation, I have concluded that it is in Ch.G.'s and C.G.'s best interests that the mother ultimately have final say on health and education matters. In addition, I am ordering that the detailed decision-making framework and the requirement of mediation or parenting coordination services do not apply in the case of urgent health-related situations involving the children. In those circumstances, the mother will have straight sole decision-making responsibility, unless she cannot be reached in sufficient time to make an urgent decision of the time required to reach her would place the child at risk of harm, in which case the father will have the right to decide the appropriate course of action.

II. INITIALIZATION OF NAMES

[6] While preparing these Reasons for Judgment, I considered whether it would be appropriate to initialize the names of the parties, the children, extended family members, family friends and all non-professional witnesses in order to protect the privacy interests of the parties and the children. In *M.A.B. v. M.G.C.*, 2022 ONSC 7207 (S.C.J.), I outlined in detail the principles that apply in determining whether an order restricting the operation of the open courts principle, including orders authorizing initialization in Reasons for Judgment, is appropriate. I have considered those principles in determining whether the initialization of names is justified and appropriate in this case, and I conclude that it is for the following reasons:

1. As I will discuss in further detail in these Reasons, the facts of this case include highly sensitive information about the parties. The mother has made numerous allegations of family violence against the father towards herself and the children, and there have been several child protection and police interventions due to these allegations. The historical allegations include reports by the mother of concerns about sexual abuse of the child Ch.G. as well as sexual assault towards her.

2. The information in these Reasons also includes highly personal and sensitive details about counselling that the parties received in the past to address the problems in their marriage.

3. The facts of the case include highly personal information about the children as well, including their special needs and challenges in the school setting. In particular, these Reasons include extensive details about medical and other assessments of Ch.G. that have been carried out to assist in determining the nature of her difficulties and her needs.

4. I am satisfied that the public airing of the information described above could cause significant mental or emotional harm to the parties and the children. The information involves highly personal, intimate and sensitive details about the parties' and children's experiences and about the children's personal and educational struggles. The publication of this information would in my view constitute a serious affront to the dignity of the parties and the children and to the parties' reputation in the community. Accordingly, I conclude that the protection of their privacy interests is an important public interest, and that publicly identifying the children and the parties would actually present a serious risk to these interests.

5. The young age of the children renders them particularly vulnerable and susceptible to harm from the public disclosure of their private and sensitive information, and the protection of their privacy is therefore particularly important.

6. Initializing the names of extended family members, friends and all non-professional witnesses is in my view necessary, since failing to do so would in all likelihood result in the identification of the parties and the children.

7. There are in my view no less constraining measures on court openness that would be sufficient to prevent the risk to the privacy interests at stake. As I emphasized in *M.A.B.*, initialization is a minimal intrusion upon the open courts principle.

8. The restrictions that I am imposing on court openness will not limit the ability of the press or members of the public generally to report and comment on the case, to understand the important issues and to gain insight into the operations of the court. Accordingly, I find that the benefits of the measures that I am taking to restrict court openness far outweigh the potential negative effects.

9. I do not consider it necessary to give notice to the media before making an order for initialization of names in this case, given that initialization represents a limited restriction on openness and that it would not impede in any material way upon public comment or debate on the issues.

10. While I have not heard submission from the parties as to whether they agree to initialization in these Reasons for Judgment, I am quite confident that they would support this measure. However, in order to protect the integrity of the open courts principle, I am ordering that either of them may bring a motion to request that I reconsider my decision on this issue upon hearing submissions from both parties.

PART 2: CREDIBILITY AND RELIABILITY ASSESSMENT

[7] In *M.A.B. v. M.G.C.*, I summarized in detail the relevant legal principles that apply in assessing the overall credibility and reliability of parties and other witnesses who testify at trial. I have considered those principles in reviewing and weighing the evidence in this case. I address my impressions regarding the credibility and reliability of non-party witnesses below when I discuss their evidence in these Reasons for Judgment.

[8] In regard to the parties, my overall impression was that overall, they were both reasonably credible and reliable witnesses. They were responsive to questions that were put to them, although at times, both of them demonstrated some reluctance in acknowledging points that were not supportive of their positions. However, there were other occasions when each of them acknowledged points that supported the other party's case. They did not attempt to digress inappropriately to unrelated issues when difficult questions were put to them. The mother had an excellent recall of events, and her recollection was consistent with that of other witnesses. The father had greater difficulty recalling the specifics of past events, but I conclude that this was due to a genuine inability to recall facts rather than an attempt on his part to avoid difficult questions or mislead the court. The evidence of both parties was generally consistent with documentary evidence that was adduced at trial.

[9] Notwithstanding these positives, there were some areas in which I have concluded that each party was not credible. I address these credibility concerns in further detail below in these Reasons. However, in general terms, the important point to emphasize is that the concerns in these areas were equally balanced as between the mother and the father. As a result of these considerations, I have not generally preferred one party's evidence over that of the other. Rather, when their evidence conflicted, it was necessary to assess their credibility on an issue by issues basis, which I have done in these Reasons for Judgment.

PART 3: BACKGROUND AND HISTORY OF COURT PROCEEDINGS

I. THE PARTIES' PERSONAL AND EMPLOYMENT BACKGROUNDS

[10] The mother was born in 1982 and is now 41 years of age. She was raised in Woodbridge, Ontario and has two brothers. She has always been close with her parents, who continue to live in Woodbridge. I will refer to the mother's parents as the maternal grandparents in these Reasons for Judgment.

[11] The mother completed high school in Woodbridge and then attended York University, where she took courses in Communications and English. After a year of post-secondary studies, she decided to pursue a career in Interior Design, and she obtained a diploma in this field from the International Academy of Design and Technology in 2004. Upon the completion of her studies, she established her own Interior Design business. In 2017, she partnered with an architect to start another Interior Design enterprise. She has continued to work as a self-employed Interior Designer to date.

[12] The father was born in 1976 and is now 46 years old. He was born in Hamilton and moved to the Stoney Creek area when he was six years old. He continued to reside in Stoney Creek until the parties married, when he moved to Woodbridge. The father has always had a close and loving relationship with his parents, who I refer to as the paternal grandparents in these Reasons, and his two sisters. His parents and one of his sisters reside in the Stoney Creek area. The father is a heavy equipment mechanic by trade and has worked for the paternal grandfather's business throughout his adult life.

[13] As I have indicated, the parties' relationship began in 2004, and they were married on December 12, 2009. The father moved to Woodbridge following the marriage, and the parties moved into a home that they believed was owned solely by the maternal grandfather. They paid the mortgage on the home for approximately 7 years, and the father's understanding was that the maternal grandfather had gifted the home to them. Ch.G. was born during this period, in March 2011. The mother took approximately one month off work after Ch.G.'s birth and then resumed her self-employment as an Interior Designer. She carried out her business primarily from home and arranged her work hours around her parenting responsibilities. She had extensive support from the maternal grandmother, who lived close to the parties.

[14] C.G. was born in July 2014, and the mother took approximately 6 months off work following her birth. When the mother resumed work, she continued to operate primarily from home and to arrange her schedule around the children's needs. She testified that she worked outside of the home for only 2 or 3 hours each week. The maternal grandmother continued to be a major source of support for her in parenting the children. Ch.G. started Junior Kindergarten at St. Margaret Mary Catholic Elementary School in Woodbridge in September 2015.

[15] As I discuss in further detail below, the parties have very different perspectives respecting the quality of their relationship during their marriage. The mother found the father be emotionally distant, neglectful and abusive towards her. The parties participated in counselling when they resided in Woodbridge. The father felt that the marital problems during most of the parties' relationship were minor and were essentially resolved after the counselling sessions.

[16] The parties agree that they began to experience greater challenges and stress in their relationship in 2015. They had a brief separation that year, and their relationship difficulties increased after they learned that the mother's brother owned an interest in the home that they were living in. The maternal grandfather and the brother decided to sell the home, and the parties therefore had to vacate the premises. The parties received $100,000.00 from the net sale proceeds to compensate them for the money that they had incurred on the mortgage, and they lived with the maternal grandparents in Woodbridge for approximately six months after vacating the home. The parties explored the option of purchasing a home in Woodbridge at that time. The father testified that they could not afford a home in the Woodbridge area, and that this caused stress in the parties' relationship because the mother wished to remain close to her family.

[17] While the parties resided with the maternal grandparents, the paternal grandparents offered to gift the parties a parcel of land that they owned in Stoney Creek ("the Second Rd. East property"), and to provide them with the sum of approximately $600,000.00 to build a new home on the property where they could eventually live rent-free. The parties ultimately decided to accept the paternal grandparents' offer. In March 2016, they purchased a townhome in Stoney Creek ("the matrimonial home") to live in pending the completion of the new house, and they moved with the children to Stoney Creek shortly thereafter.

[18] Following the move to Stoney Creek, the parties enrolled Ch.G. in school to continue her Junior Kindergarten year at St. Francis Xavier Catholic Elementary School in Stoney Creek ("St. Francis Xavier"). The mother took some time off work following the move, but she had to resume work in relatively short order because the father experienced a pay reduction. The parties enrolled C.G. in a daycare associated with St. Francis Xavier. The mother continued to work primarily from home and to arrange her work commitments around her parenting obligations and the children's needs. The father continued to work on a full-time basis for the paternal grandfather's business.

[19] In or around July 2017, the parties received approximately $600,000.00 from the paternal grandparents to begin construction of a home on the Second Road East property. The mother believed that this sum of money was a gift, whereas the father understood it to be a loan to the parties. Unfortunately, the process of building this home became a major source of conflict and tension between the parties, as well as between the mother and the paternal grandparents. There were differences of opinion regarding the building plans and design, and the father and his parents felt that the mother was too indecisive and demanding about these issues. The mother wished to call off the building plans, but the father refused to do so.

II. EVENTS SURROUNDING THE PARTIES' SEPARATION

[20] The conflict between the parties reached a crisis point during the evening of July 12, 2018. I find that on that date, the parties had an argument in their bedroom about issues in their relationship, including the challenges regarding the construction of the home on the Second Avenue East property. As I discuss in detail later in these Reasons, the mother subsequently claimed that the father grabbed her arm and shook her during this argument, which the father has adamantly denied. The parties both remained in the matrimonial home after this argument. On C.G.'s birthday two days later on July 14, 2018, they had another argument in the family vehicle after going out for dinner for a birthday celebration. The mother insisted on leaving the vehicle, and she became extremely emotional at the side of the road. The parties eventually called the maternal grandparents to provide support to the mother.

[21] The parties both remained in the matrimonial home following the incident on C.G.'s birthday. However, three days later, on July 17, 2018, the mother called 911 from the matrimonial home to report that the father had grabbed and shaken her during the argument in the parties' bedroom on July 12, 2018. The police contacted the father to

discuss the mother's report, and he agreed not to attend the home and to reside with the paternal grandparents on a temporary basis pending the outcome of the investigation. The police contacted the Catholic Children's Aid Society of Hamilton ("the Society") due to concerns that Ch.G. and C.G. were being exposed to domestic conflict, and the Society opened a file respecting the family. The mother and children remained in the matrimonial home, and the father followed through with his undertaking to police to reside with the paternal grandparents. The parties did not resume cohabitation after July 17, 2018.

[22] The mother attended the Hamilton police station on July 20, 2018 to give a recorded statement further to the report that she had made on July 12, 2018. As I address later in these Reasons, she made several additional allegations of assault by the father towards her during her police statement. The police interviewed the father on July 25, 2018 and took a recorded statement on August 3, 2018. The police did not lay any criminal charges against the father in relation to any of the mother's claims of assault, as they determined that there was insufficient evidence to proceed criminally.

[23] The father continued to have liberal unsupervised parenting time with Ch.G. and C.G. after the mother's report to the police on July 17, 2018, at the home of the paternal grandparents. He testified that the parties enjoyed roughly equal parenting time during the first couple of weeks following their separation. The mother's original legal counsel, Ms. Bortolussi, wrote to the father during this period on July 23, 2018 confirming the mother's wish to separate, raising allegations of family violence by the father during the relationship, and requesting that the father consent to the mother retaining exclusive possession of the matrimonial home. She suggested that the parties engage in negotiations through the Collaborative Family Law process to resolve the issues arising from their separation. No mention was made in this correspondence of any wish on the mother's part to relocate with Ch.G. and C.G. to Woodbridge.

[24] The parenting time arrangements changed dramatically on July 31, 2018. On that date, the mother contacted the Society to report that she had noticed bruising on Ch.G.'s arm while giving the child a bath. She relayed that upon questioning Ch.G. about the bruising, Ch.G. stated that her father had pinched her arm at the end of his visit that day. At the Society's direction, the mother contacted the police the following day to report her concerns. A joint police and Society investigation ensued, and the Society directed that the father's contact with Ch.G. and C.G. be restricted to FaceTime calls only, monitored by the mother, until the investigation was completed. The children were seen by a pediatrician, Dr. Ranganathan, of the Child Advocacy and Assessment Program at McMaster Children's Hospital on August 2, 2018. Dr. Ranganathan's opinion was that Ch. G.'s disclosure and the nature of one of the bruises on her arm raised concern for inflicted harm compatible with her disclosure. The police did not lay any charges against the father in connection with this allegation. However, the Society verified concerns that the father had inflicted physical harm on Ch.G.

[25] On or around August 9, 2018, the Society directed that the father could have face-to-face parenting time, but it required that it be supervised by one or more third parties agreed

upon between the parties and approved by the Society. The parties had great difficulty reaching a consensus on parenting time supervisors, but they eventually agreed upon the father's brother-in-law V.U., and his friend A.S. The father did not have any in-person parenting time from July 31, 2018 until August 26, 2018 as a result of this investigation and the problems reaching agreement on supervisors. Commencing August 26, 2018, he had supervised visits generally twice per week for two hours on each occasion, as well as regular FaceTime calls with the children.

[26] On or around August 1, 2018, one day after making the report to the Society about the mark on Ch.G.'s arm, the mother took the children from the matrimonial home and began to reside with her parents in Woodbridge. She did not request or obtain the father's consent before doing so. In addition, on August 16, 2018, approximately one week after the Society directed that the father could begin in-person parenting time, she called the police again to allege that the father was outside of the matrimonial home watching her from his vehicle while she was in the home. This report was concluded as non-criminal, as the father explained that he had attended the home to give the family dog food and water, because he had learned that the mother and children were residing in Woodbridge and that the mother had left the dog in the home.

III. COMMENCEMENT OF COURT PROCEEDINGS

[27] The mother was actively engaged with her Family Law counsel Ms. Bortolussi and another lawyer of the same law firm, Ms. Julie Zimmerman, throughout all of these events. Ms. Zimmerman attempted unsuccessfully to connect with the father's lawyer by phone on August 20 and 21, 2018, and finally wrote to her on August 22, 2018. She confirmed in this letter that the mother had relocated with the children to Woodbridge, that they were residing with the maternal grandparents, and that the mother was seeking the father's consent to remain in Woodbridge with the children on a permanent basis. Ms. Zimmerman alleged that the father "continues to stalk and taunt Ms. G." and asked if the father would consent to a restraining order being issued against him. She relayed that her office had been preparing materials for an urgent case conference, which she intended to schedule for August 28, 2018 if the parties could not reach an amicable resolution.

[28] The father and his legal counsel at the time, Ms. Heather Cassels, did not receive the correspondence from Ms. Zimmerman until late in the evening on August 22, 2018. Ms. Zimmerman and Ms. Cassells spoke on August 23, 2018, and during that call Ms. Zimmerman relayed that the mother's intention was to bring an urgent motion on August 28, 2018. Ms. Cassells confirmed in correspondence to Ms. Zimmerman dated August 24, 2018 that she was not available on that day, and that in her view, the issues should be case conferenced prior to bringing any motions. However, on August 24, 2018, Ms. Zimmerman served Ms. Cassells with the mother's unissued application and urgent motion materials with a return date of August 28, 2018, including 5 lengthy affidavits from the mother and various family members. On August 27, 2018, Ms. Cassells again confirmed the father's position that the issues should first be conferenced, and that the father would require an adjournment of the motion. She indicated that the father consented to the mother having temporary exclusive possession of the matrimonial home,

and to a temporary order granting him parenting time twice per week for two hours supervised by either the father's aunt and uncle S.M. and J.M., the father's brother in law V.U. or the father's friend A.S., all of whom either the mother or the Society had approved as supervisors. In addition, she indicated that the father agreed to a temporary order requiring that all communications between the parties occur through counsel. Ms. Cassells confirmed that the father did not consent to the proposed relocation of the children to Woodbridge.

[29] Notwithstanding the father's efforts to avert an urgent motion, the mother proceeded to schedule her motion on an urgent basis and prior to a case conference. In her application, she advanced claims for a divorce, sole decision-making responsibility respecting the children, primary residence, supervised parenting time for the father, authorization to relocate with the children to Woodbridge, a restraining order against the father, and an order for exclusive possession of the matrimonial home. She also requested child support, spousal support, an order for equalization of the parties' net family properties, and an order requiring the father to pay half of the carrying costs relating to the matrimonial home. The mother named the paternal grandfather A.G. as a second Respondent, because she also advanced claims that either she and the father, or the father alone, had a proprietary interest in the Second Road East property based on trust principles. In her urgent motion, the mother sought comprehensive relief including orders for sole decision-making responsibility respecting Ch.G. and C.G., primary residence of the children, supervised parenting for the father at a supervision centre, authorization to relocate with the children to Woodbridge and to register the children in school there, an order dispensing with the father's consent to enroll the children in counselling, a restraining order in relation to herself and the children against the father and exclusive possession of the matrimonial home if she was not permitted to remain in Woodbridge. She also sought an order for child support and requiring the father to contribute to the children's section 7 expenses.

[30] Pazaratz J. presided at the first appearance of the mother's urgent motion. He agreed with Ms. Cassells that the issues should proceed to a case conference prior to the hearing of the motion. He scheduled an urgent case conference for September 6, 2018 and adjourned to motion to September 7, 2018, noting that the judge hearing the motion would need to determine if it required a long motion hearing date.

[31] Madsen J. conducted the case conference on September 6, 2018. The parties were unable to resolve any issues, and therefore Madsen J. referred to case to the Office of the Children's Lawyer ("the OCL") and scheduled a settlement conference on December 5, 2018. The OCL initially declined to accept the referral, but it later reconsidered its position and confirmed on November 1, 2018 that it would carry out a section 112 report. The case was assigned to a Clinical Investigator, Ms. Karen Bridgman-Acker, to carry out an investigation into the parenting issues and to make recommendations to the court.

[32] The mother's urgent motion returned before Brown J. on September 7, 2018. At that time, Brown J. concluded that the motion should have been scheduled for a long motion hearing time and that the Respondent required further time to respond. She adjourned the

motion to a long motion hearing date on the trial sittings. Finally, in order to stabilize the parenting arrangements, Brown J. ordered as follows on a temporary temporary without prejudice basis:

1. She denied the mother's request on that date to relocate the children's residence to Woodbridge and to enroll the children in school in that jurisdiction. The mother was therefore required to return with the children to the Hamilton area.

2. She granted the mother exclusive possession of the matrimonial home.

3. She directed that the parties were not to contact each other directly.

4. She ordered that the Respondent was not to attend the matrimonial home, the mother's place of employment or the children's school.

5. She also directed the parties to take all reasonable steps to attempt to ensure that their family members did not speak negatively to or about the other party.

[33] The mother ultimately abandoned her urgent motion following the decision of Brown J. on September 7, 2018, as the parties worked out temporary temporary arrangements respecting the pressing issues. The mother returned to Stoney Creek with the children, and they resumed occupation of the matrimonial home. The father continued to reside with the paternal grandparents in Stoney Creek. As I have indicated, the parties worked out temporary arrangements for the father to have supervised parenting time with Ch.G. and C.G. twice per week for two hours on each occasion, with supervision being carried out by V.U. or A.S.

[34] The father served and filed his Answer and Claim in late September 2018. He requested a divorce, joint decision-making responsibility and equal parenting time respecting the children, a dismissal of the mother's request to relocate with the children to Woodbridge, various property claims and a dismissal of the mother's trust claims in relation to the Second Road East property.

[35] On October 12, 2018, the Society advised the parties that based on the father's cooperation with its investigation and recommendations and the positive feedback from the parenting time supervisors, it supported the commencement of unsupervised parenting time for the father. It encouraged the parties to implement a predictable parenting time schedule and to carry out parenting exchanges through a third party or at a neutral public location in order to avoid further conflict. The father requested through his counsel at that time that an equal parenting time arrangement be implemented, according to a 2-2-3 schedule, with exchanges to occur every Monday, Wednesday and Friday afternoon. The mother responded by proposing supervised parenting time for the father every Sunday for a few hours, which actually represented a reduction of the frequency of the father's weekly parenting time with the children. The parties arranged for the father to have parenting time with the children every Sunday for 4 to 5 hours, with exchanges to occur at a local gas station, but the mother insisted that the parenting time continue to be supervised.

IV. THE FATHER'S PARENTING TIME MOTION

[36] The father did not consent to these limited parenting time arrangements, and therefore he brought a motion originally returnable on November 16, 2018, seeking equal, unsupervised parenting time with Ch.G. and C.G. according to a 2-2-3 schedule. Lafrenière J. heard the motion on November 22, 2018. As of that time, the father's parenting time continued to be limited to a few hours every Sunday, supervised by either A.S. or V.U. At the hearing of the motion, the mother agreed to a gradual increase in the father's parenting time, contingent on the father completing anger management and parenting courses, and she requested an order precluding the father from attending at the children's school except for the purposes of pick-up and drop-off of the children for his parenting time periods. Lafrenière J. released her Reasons for Judgment on December 19, 2018. By way of overview, she made a temporary order that included the following parenting terms:

1. The parties were granted joint decision-making responsibility respecting Ch.G. and C.G., and both were granted the right to receive information directly from any professionals involved with the children.

2. The parties were precluded from arranging any medical, dental, psychological, counselling or any other treatment appointments or extracurricular activities for the children without each other's consent in writing.

3. Both parties were authorized to attend all appointments, school functions and extracurricular activities respecting the children.

4. The parties were required to share all information about the children though a communication book.

5. The parties were granted equal parenting time with Ch.G. and C.G., according to a 2-2-3 schedule, with parenting exchanges to occur every Monday, Wednesday and Friday afternoon. In addition, they were granted equal time with the children during the 2018 Christmas school break.

6. The parties were granted FaceTime parenting time when the children were not in their care for 15 minutes per day, at an agreed upon time.

7. The parties were granted a right of first refusal to care for the children in the event that either of them was unable to care for them for a period of more than 4 hours.

[37] Lafrenière J.'s decision respecting the parenting issues was based on the following general considerations:

1. She noted that she could not determine whether the father had injured Ch.G., but she was satisfied that the child had perceived the father's pinch to her arm as a form of discipline.

2. Notwithstanding this point, the Society had carried out a thorough investigation and was satisfied that the interactions between the father and the children were positive. Both parties had acknowledged to the Society and the police that they had used physical discipline towards the children, and they both undertook to refrain from doing so in the future.

3. She found that the mother had commenced the litigation in a very aggressive manner and had demonstrated through her litigation conduct that she did not prioritize the children's relationship with their father. Her impression was that the mother had taken active steps to marginalize the father's role in the children's life, first by moving the children to Woodbridge without the father's advance knowledge or consent, and second by placing roadblocks in the way of reasonable and meaningful parenting time for him.

4. Lafrenière J. also noted that the mother had acted as if she had sole decision-making responsibility following the separation, as reflected in the fact that she had enrolled the children in the LEAF counselling program without the father's knowledge or consent.

5. Finally, she was persuaded by the evidence that the mother would continue to marginalize the father's role in the children's lives if she were granted sole decision-making responsibility and primary residence of the children.

[38] The parties have abided by the terms of the temporary order dated December 19, 2018 since it was issued. The mother remained in the matrimonial home until the house was sold in the summer of 2019, and the father continued to reside with the paternal grandparents.

V. THE OFFICE OF THE CHILDREN'S LAWYER REPORT

[39] The OCL Clinical Investigator, Ms. Bridgman-Acker, completed her section 112 report respecting this family in early 2019 and held a disclosure meeting with the parties on February 27, 2019. The parties did not call Ms. Bridgman-Acker as a witness at trial, but they consented to her report being admitted as evidence without the need for cross examination.

[40] I find that Ms. Bridgman-Acker carried out a thorough and comprehensive assessment of the family situation as of early 2019. Neither party filed a Dispute in response to her report, nor did they raise concerns at trial regarding the quality of Ms. Bridgman-Acker's work.

[41] By way of general summary, the mother raised the following issues and concerns during her interviews with Ms. Bridgman-Acker:

1. She stated that the father had not been significantly involved in parenting the children during the relationship, and that he had continued to have a limited role in addressing the children's significant needs since the separation.

2. She had concerns that the father lacked parenting skills and reported that he had difficulty managing his anger.

3. She alleged that the father was controlling, volatile and emotionally abusive during the relationship, and claimed that he had grabbed and shaken her on July 12, 2018.

4. She claimed that the father watched pornography and communicated with other women on a dating app during the marriage.

5. She believed that the father had been monitoring her since the separation, including hiring a private investigator to watch her, installing surveillance cameras, removing safety locks from the home and entering the matrimonial home when she was not present.

6. The Society had verified that the father had caused bruising to Ch.G.'s arm.

7. She had concerns regarding extended family conflict with the paternal grandparents due to the issues relating to the Second Street East property, and she worried that the grandparents were saying negative comments about her within earshot of the children.

8. She felt that the father did not engage with her in a timely and meaningful manner regarding issues about the children, and that he often did not relay important information to her in the communication book.

9. In addition, she alleged that the father was not purchasing necessities for the children during his parenting time, and that he insisted that she send items to his house but then failed to return the items at the end of his parenting time.

10. Finally, it was her impression that the father was not consistently ensuring that Ch.G. did her homework or helping her to prepare for tests.

[42] The father's main issues and concerns that he raised with Ms. Bridgman-Acker were as follows:

1. He believed that the mother had influenced Ch.G. into alleging that he had pinched her arm, and he adamantly denied having done so.

2. He felt that the mother had made numerous false claims that he had been physically and emotionally abusive and neglectful towards her and the children.

3. His impression was that the mother was intent on marginalizing his role as a parent and minimizing his parenting time with Ch.G. and C.G.

4. He denied having played a minimal role in parenting the children during the relationship and claimed that he was an active and engaged father when he was not working.

5. He had concerns about the mother's mental health, based on her alleged history of making false allegations, her erratic presentation at times and her aggressive conduct towards him on several occasions.

6. He denied the mother's allegations that he did not communicate in a timely and responsive manner with her about parenting issues.

[43] Ms. Bridgman-Acker's general impressions, conclusions and recommendations following the completion of her investigation were as follows:

1. Both parents loved Ch.G. and C.G. and had positive and mutually affectionate interactions with the children. They also both appeared to be responsive to the children's needs during the observation visits in the parties' respective homes.

2. Ch.G. and C.G. both presented as healthy, energetic and happy children. They had both adjusted quite well to the shared parenting schedule and were progressing well at school.

3. The mother continued to be a very involved parent at the children's school, with medical appointments and in meeting the children's needs, whereas the father seemed to be in the process of adjusting to his role as a single, equal caregiver.

4. Although the father denied having been abusive or having anger management issues, he had followed through with the Society's recommendations to participate in counselling and a parenting course.

5. Both parties appeared able and willing to meet the children's basic needs and to prioritize the children's needs above their own.

6. The parties both had significant support from family members in carrying out their parenting responsibilities.

7. Notwithstanding these positives, Ms. Bridgman-Acker had serious concerns about the level of conflict between the parties both during the marriage and following their separation.

8. Ms. Bridgman-Acker also had concerns that the father was falling short in terms of monitoring completion of the children's schoolwork, engaging with the mother about parenting issues in a timely and responsive manner, and ensuring that the children had all of the clothing and other necessities that they required during his parenting time.

9. Ms. Bridgman-Acker felt that the age and developmental needs of the children were such that they required a stable, structured, consistent and predictable routine without long gaps away from either parent.

10. She felt that the existing joint decision-making arrangement was not working well and was not conducive to the children's best interests, based on the parents' past and present conflict, and their disagreements and difficulties in communicating, sharing information and making decisions together.

11. Ms. Bridgman-Acker concluded that it was in the children's best interests that the mother be granted sole decision-making responsibility respecting Ch.G. and C.G., but that she be required to consult with professionals involved with the children and with the father before making a decision.

12. She recommended that the parties be required to advise each other in advance of any medical, dental or other treatment appointments and plans.

13. She also concluded that the existing equal parenting time arrangement was in the children's best interests, and she recommended that it continue on a final basis. She made several recommendations respecting holiday time sharing, travel with the children, and the parties' communications with each other.

VI. RESOLUTION OF THE PROPERTY, SUPPORT, PARENTING TIME AND OTHER MISCELLANEOUS ISSUES

[44] The parties were able to resolve most of the Family Law issues arising from their separation following the completion of the OCL investigation. On March 4, 2019, they obtained a consent order requiring the father to pay the mother child support in the amount of $1,497.00 per month commencing October 1, 2018. The Applicant retained Ms. Guarasci soon thereafter, and the parties embarked upon intense settlement negotiations with the assistance of a mediator. On June 25, 2019, the parties appeared before me for a settlement conference. I did not give opinions, as the parties had resolved the property, child support and spousal support issues on a final basis and they were actively attempting to reach an agreement respecting the parenting issues. I made a final order on June 15, 2019, on consent of the parties, which included the following terms:

1. The father was ordered to pay the mother the sum of $30,000.00 in full satisfaction of all property and trust related claims.

2. The mother was to reimburse the father in the amount of $15,000.00, which represented 50% of the funds that were in the children's savings and RESP accounts at the date of separation.

3. The matrimonial home was to be listed for sale immediately.

4. The father's obligation to pay the mother child support was terminated, and there was to be no child or spousal support payable by either party.

5. The parties were to share the children's section 7 expenses equally.

6. Both parties were required to maintain the children as beneficiaries under any health and dental benefits plans available to them through their employment, and under their life insurance policies.

7. The parties were ordered to reimburse the paternal grandfather on account of the funds that he had transferred to them for the construction of the home on the Second Avenue East property.

[45] The matrimonial home sold soon after this order was made, and the mother moved into a new residence in Stoney Creek. The father moved out of the paternal grandparents' home and secured his own residence for himself and the children, which is located just down the road from his parents' home.

[46] The case proceeded to a trial scheduling conference on September 21, 2021, and the parties estimated that the time required for trial was 5 to 6 days. This estimate was highly inaccurate, as the trial in fact took 15 days to complete. The trial began before me on January 18, 2022. Unfortunately, there were numerous delays in completing the trial for various reasons, including COVID-19 illness, scheduling challenges with the court due to the parties' inaccurate time estimate for the trial, and problems coordinating available dates for counsel for the continuation of the trial when the trial went longer than the allocated time. At the outset of the trial, counsel advised that the parties had resolved most of the outstanding issues between them, with the exception of decision-making responsibility respecting health and education matters. The parties resolved additional issues during the course of the trial. On November 22, 2022, I granted the parties a divorce. In addition, on the final day of trial on November 23, 2022, I made a final order on consent of the parties addressing all of the issues that they had resolved, as follows:

1. The children Ch.G. and C.G. were to continue to attend Catholic schools.

2. The children were to continue to be raised in the Roman Catholic religion.

3. The parties were precluded from changing the children's names without the other's written consent.

4. Both parties were granted the right to receive information about the children from any professionals involved with them.

5. The parties were granted decision-making responsibility respecting day-to-day decisions involving the children during their respective parenting time periods.

6. The parties were to continue to communicate with each other through Our Family Wizard, or by text message and email if necessary. They were to respond to communications from each other within 48 hours.

7. The parties were required to advise each other immediately in the event that any emergency involving the children occurred during their parenting time.

8. They were granted the right of first refusal to care for Ch.G. and C.G. in the event that the other was unable to care for the children for a period of more than 4 hours.

9. The parties were both granted the right to register the children in age-appropriate extra-curricular activities during their parenting time. However, they were precluded from enrolling them in any extracurricular activities or events occurring during the other party's time without the party's advance consent.

10. The parties were ordered to maintain clothing and equipment for the children's activities during their time, so as to avoid the children having to transport such items between their respective homes.

11. The parties were also ordered to inform each other of any extracurricular activities and events that the children were involved in during their parenting time, so that both parties could attend or participate in them.

12. The parties were granted equal parenting time with Ch.G. and C.G. on a final basis. The regular schedule was to continue according to the 2-2-3 arrangement, with parenting exchanges occurring on Monday, Wednesday and Friday each week after school or at 4:00 p.m.

13. The order provided for an equal sharing of parenting time on holidays, according to a detailed holiday residence schedule.

14. The order also included detailed terms regarding possession and sharing of the children's government-issued identification and documents, the sharing of those documents when necessary, travel with the children, and requiring the parties to maintain life insurance as security for child support.

15. Finally, the order provided that the parties shall each pay their own costs associated with the issues addressed in the order.

VII. OVERVIEW OF THE PARTIES' CHALLENGES IN ADDRESSING PARENTING ISSUES SINCE 2019

[47] While the parties have been able to resolve most of the Family Law issues resulting from their separation, they have continued to have some challenges addressing and resolving several issues respecting the children together in a timely and cost-efficient manner. I discuss these challenges in detail below, but I summarize the significant areas of concern and events that have occurred since 2019 at this point in my Reasons to provide a general framework for the discussion of the problems that have unfolded over the past several years.

[48] First, the parties have experienced problems in carrying out their joint decision-making responsibilities in respect of C.G.'s educational needs. As I will discuss in further detail below, the mother initially reached out to the father in early April 2019 to discuss and problem-solve around issues respecting C.G.'s communication and reading skills. The father initially agreed to contribute to the cost of tutoring for C.G. with Oxford for a six month period. However, he did not contribute financially for this full period, and the mother was unable to secure his agreement to bring C.G. to tutoring or contribute to the cost again until September 2022.

[49] The parties have also had difficulties since 2019 in addressing concerns that school professionals raised regarding Ch.G.'s behaviour and attention problems at school, and the possibility that she may be suffering from either ADHD or some learning disabilities. As I elaborate upon in detail below, several educational and medical professionals became involved to assess these issues, support Ch.G. and identify solutions to assist her in resolving the problems. The father had great difficulty accepting that Ch.G. was experiencing any issues, and the parties were unable to reach agreement regarding an appropriate response to the concerns even after obtaining the input of numerous educational and medical professionals. The children's pediatrician, Dr. Profetto, recommended that the parties access co-parenting counselling to assist them in carrying out their joint parenting responsibilities, and the father reached out to Ms. Franchi-Rothecker in March 2020 to inquire about such parenting counselling. The parties did not proceed with Ms. Franchi-Rothecker's services at that time, as the father did not agree with the course of action that Ms. Franchi-Rothecker proposed. However, when they continued to have difficulties navigating Ch.G.'s behaviour and attention issues and her eventual ADHD diagnosis, they eventually decided to retain Ms. Franchi-Rothecker to provide mediation and arbitration services for them. Ms. Franchi-Rothecker was still involved with the parties to support them in attempting to co-parent Ch.G. and C.G. as of the conclusion of the trial. The parties were unable to reach a consensus as to whether Ch.G. should take medication as part of her ADHD treatment, and the issue eventually proceeded to arbitration with Ms. Franchi-Rothecker in July 2021 for a resolution.

[50] In attempting to address the reported problems pertaining to Ch.G.'s attention and behaviours, various professionals recommended that Ch.G. undergo a psycho-educational assessment to rule out the possibility that she was suffering from any learning disabilities. As I will discuss, the parties also experienced struggles in reaching a consensus as to whether such an assessment should occur, and if so, in identifying the assessor to carry out the task.

[51] Another issue that posed problems for the parents in carrying out their temporary joint decision-making mandate was whether Ch.G. and C.G. should be vaccinated against COVID-19. Again, the parties were not able to reach agreement on this issue, and they turned to Ms. Franchi-Rothecker for arbitration on the question in December 2021.

[52] Finally, the parties have experienced some challenges in attempting to coordinate extracurricular activities for the children, dealing with the children's belongings and managing a situation that arose between Ch.G. and the father's friend M.S.

[53] The parties' difficulties in addressing various parenting concerns and issues resulted in further intervention by the Society from December 2019 and into 2021. In late 2019, the mother reported concerns to the Society that C.G. had disclosed being hit by the father with a hairbrush. This concern was not verified. In early 2020, the mother reported additional concerns to the Society that the father was taking the children to work with him, and that he was creating roadblocks to the resolution of Ch.G.'s behaviour and attention problems. The parties did not adduce any evidence from Society staff or any Society records to provide full details respecting the Society's involvement. However, they both acknowledged that the Society was sufficiently concerned about the dynamics between the parties and their ability to cooperatively meet the children's significant needs that it remained involved with the family to monitor the children's wellbeing and progress for over a year.

PART 4: POSITIONS OF THE PARTIES

I. THE APPLICANT MOTHER'S POSITION

[54] The mother seeks an order granting her sole decision-making responsibility in respect of Ch.G.'s and C.G.'s health and education needs, as well as enrolment in extracurricular endeavours and programming that support the children's health and educational needs. She acknowledges that the parties have been able to reach agreement on many issues since their separation. However, she submits that they have experienced great difficulty reaching agreement on many important health and education matters, and that they have been completely unable to reach consensus at all on others including the need for medication to treat Ch.G.'s ADHD and whether the children should receive the COVID-19 vaccination. Her position is that the temporary joint-decision-making order has caused a great deal of stress for the parties as they have grappled with important issues, and that it has contributed to inappropriate delays in implementing supports and services which Ch.G. and C.G. have required.

[55] In support of her position, the Applicant underlined the longstanding difficulties in the parties' relationship since early on in their marriage, and the father's inability to acknowledge and appreciate the seriousness of their marital problems. She highlighted the evidence respecting her concerns during the marriage about the father's inattention to her emotional needs, his frequent absences from the home and limited involvement in parenting the children, his frequent viewing of pornography, attendances at strip clubs and online connections with other women, and his emotional volatility during the relationship. The conflict was exacerbated by the parties' unfortunate experiences with the maternal grandparents respecting their housing situation in Woodbridge, and their subsequent challenges in addressing issues with the paternal grandparents respecting the new house build in Stoney Creek. Counsel for the mother noted that the parties attended counselling to address the mother's stress and unhappiness, but that the father nonetheless felt that the issues between them were inconsequential and essentially whitewashed the problems that contributed to the mother's distress.

[56] The mother submitted that the father's failure to recognize and appropriately respond to the problems in the parties' relationship was reflective of a more general pattern on his part of being unable to recognize and address problems in an effective and timely manner. She argued that this pattern of behavior has carried over into his parenting of the children, with the result that he often either denies the existence of any problems or minimizes the seriousness of them. According to the mother, these dynamics highlight a fundamental fault-line in the parties' court-imposed co-parenting arrangement, which is the father's basic inability to process, appreciate and respond appropriately to her legitimate concerns about the children. Her position is that the father's tendency to minimize the seriousness of issues that have developed respecting Ch.G. and C.G. has resulted in unnecessary complications in addressing the children's important needs, including medication for Ch.G.'s ADHD issues and tutoring to address C.G. 's reading and communication delays.

[57] The mother acknowledges that she has in the past engaged in conduct and had a mindset about the father that demonstrated insufficient respect for his role in the children's lives. In particular, she accepts that she took an overly aggressive approach to the litigation at the outset of these proceedings and was not as supportive of the father's parenting time with the children as she should have been. She appreciates that the high conflict that developed during the relationship and intensified around the time of the parties' separation created major trust issues between the parties. However, she submits that although the judgment of Lafrenière J. on December 18, 2018 was shocking to her, it also opened her eyes to the need for change on her part, and she claims that she has successfully altered her behaviour towards the father and her attitude about his role in the children's lives since that time. She notes that Ms. Franchi-Rothecker's involvement has assisted her in developing the skills required to parent with the father more respectfully and effectively. By contrast, her position is that the father has persisted in having little to no trust in her as a mother.

[58] The mother's position is that decision-making regarding the children's health and education issues must rest with one parent due to the difficulties that have arisen under the existing joint decision-making framework since 2019. Her view is that it is in the children's best interests that she be granted this right, as she was clearly their primary caregiver in the past, she is more proactive and attentive than the father in identifying issues and problems at an early stage, and she is more accepting of advice and input from professionals involved in dealing with the children's health and education matters.

[59] With respect to the father's request for an order requiring the parties to continue to retain a mediator or parenting coordinator to assist them in co-parenting, with such services to include both a mediation and arbitration component, the mother submits that the court does not have the jurisdiction to make such an order. She argues that although the court may require parties to participate in parenting coordination services during the course of an ongoing proceeding to assist the parties in addressing parenting issues, it cannot grant a final order imposing a permanent obligation on the parties to engage in such services to resolve issues, and particularly an order that delegates the ultimate right to decide issues in the event of disagreement to the parenting coordinator through arbitration. Her

position is that this type of order amounts to an impermissible delegation of the right to determine parenting issues to a third party professional and blocking of a party's fundamental right to have parenting matters resolved by the courts.

II. THE RESPONDENT FATHER'S POSITION

[60] The father seeks an order granting the parties joint decision-making responsibility on issues relating to Ch.G.'s and C.G. 's health and education needs. His position is that the children's best interests will be most fully supported by requiring that significant decisions about health and education matters be reached through active efforts by the parties to fully discuss the issues, exchange and obtain all relevant information and reach a consensus on the issues. His view is that the mother has at times been too quick to simply accept the views of professionals involved in addressing the children's needs, and that his involvement as a joint decision-maker to date has ensured that all important information has been obtained and all possible options considered before a final course of action has been pursued.

[61] The father acknowledges that there is a history of conflict between the parties in addressing parenting issues, and that this is a relevant factor in determining whether joint decision-making responsibility is in the children's best interests. However, he submits that the past conflict was primarily attributable to the mother's actions and personal issues rather than any wrongdoing on his part. He adamantly denies having been abusive towards the mother or the children at any point during the marriage or engaging in inappropriate conduct, including viewing pornography and communicating with other women. He claims that the mother experienced numerous personal challenges unrelated to issues in the parties' relationship that caused her stress and anxiety, and that this was the major source of her unhappiness and distress during the marriage. The father states that the high conflict that arose around the time of the separation was entirely attributable to the mother, as she made numerous unsubstantiated allegations of abusive and threatening conduct by him towards her and the children to both the Society and the police. In any event, his view is that the conflict between the parties has been largely resolved since the issuance of the December 18, 2018 order. His perspective is that the parties are respectful and appropriate in their communications with each other, that they are able to attend appointments together with professionals without any difficulties, that they have been able to resolve almost all parenting and other issues in this proceeding with the guidance of their counsel and other professionals, and that all of these considerations support the joint decision-making order that he is requesting.

[62] The father also submitted that an order granting the mother sole decision-making responsibility on educational and health issues respecting the children would result in the mother marginalizing his role in the children's lives and eliminating his ability to provide valuable input into important decisions. He emphasized that the mother has a history of inappropriately excluding him from decisions, disregarding or dismissing his views in other situations and placing inappropriate restrictions on his contact and relationship with the children. By contrast, he stated that he has never engaged in such behaviour towards the mother, and that he has always demonstrated considerable respect for her parenting

role and her relationship with Ch.G. and C.G. He states that he has demonstrated a history of excellent parenting, consistency and reliability in the children's lives and a commitment to being actively involved in parental decision-making, and that these are additional considerations that support a joint decision-making framework.

[63] With respect to his alternative request for the inclusion of a term requiring the parties to continue working a mediator or parenting coordinator under a mediation/arbitration contract to resolve any future disputes if joint decision-making responsibility is ordered, counsel for the father submitted that the court now has the clear jurisdiction to make such an order by virtue of section 16.1(6) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp), as amended. That section stipulates that subject to provincial law, a parenting order may direct the parties to attend a family dispute resolution process. Counsel argued that the definition of "family dispute resolution process" in section 2(1) of the *Divorce Act* is not exhaustive, and that it is sufficiently broad to include the parenting coordination process. The father argues that an order requiring the parties to participate in ongoing mediation and parenting coordination services with Ms. Franchi-Rothecker, including an arbitration component, would not amount to an improper delegation of decision-making responsibility about parenting issues from the court to the parenting coordinator, as an arbitrator does not have authority pursuant to the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended to vary a court order. Accordingly, Ms. Franchi-Rothecker's role if arbitration was invoked would be to simply "fill in the gaps" of a parenting order; she would not have the authority to change the parenting time schedule or the order respecting parental decision-making as between the parents as set out in any final order. Counsel for the father argued that the ability to order parties to participate in parenting coordination services is not limited to interim orders, since section 16.1(6) of the *Divorce Act* refers to the court's ability to make an "order," and not simply an interim order.

[64] The father submitted that a final order requiring the parties to continue with parenting coordination services with Ms. Franchi-Rothecker would be appropriate based on the evidence in this case. In this regard, he emphasized that both parties have consented to this service to date, that they have both benefitted from the education and advice that Ms. Franchi-Rothecker has provided to them, that they have both worked well with her and that she has been of great assistance in helping them to resolve important issues to date.

PART 5: THE LAW

I. RELEVANT LEGISLATIVE PROVISIONS

A. Application for a Parenting Order

[65] The parties have advanced their parenting claims in the context of a divorce proceeding, and therefore the governing legislation is the *Divorce Act*. The legislative provisions relating to parenting issues under that Act focus on parental responsibilities for children rather than rights, and the key legal terms relating to parenting issues are "parenting orders," "decision-making responsibility," "parenting time," and "contact orders." The concept of contact orders applies to individuals who are not spouses and who seek an

order to have contact with a child (section 16.5). It is therefore not relevant in this proceeding.

[66] Sections 16.1(1) to (3) of the *Divorce Act* set out the court's jurisdiction to make an original parenting order at first instance:

> **Parenting order**
>
> 16.1 (1) A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by
>
> a) either or both spouses; or
>
> b) a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent.
>
> **Interim order**
>
> (2) The court may, on application by a person described in subsection (1), make an interim parenting order in respect of the child, pending the determination of an application made under that subsection.
>
> **Application by person other than spouse**
>
> (3) A person described in paragraph (1)(b) may make an application under subsection (1) or (2) only with leave of the court.

[67] A review of section 16.1(1) indicates that a parenting order encompasses the two key concepts of "decision-making responsibility" respecting children and "parenting time." Section 2(1) of the *Divorce Act* defines the terms "decision-making responsibility" and "parenting time" as follows:

> ***decision-making responsibility*** means the responsibility for making significant decisions about a child's well-being, including in respect of
>
> a) health;
>
> b) education;
>
> c) culture, language, religion and spirituality; and
>
> d) significant extra-curricular activities
>
> ***parenting time*** means the time that a child of the marriage spends in the care of a person referred to in subsection 16.1(1), whether or not the child is physically with that person during that entire time.

[68] Section 16.2(2) of the *Divorce Act* elaborates upon the meaning and scope of the concept of "parenting time by stipulating that unless ordered, the term encompasses the exclusive authority to make day-to-day decisions affecting a child during a person's allocated time with the child:

> **Day-to-day decisions**
>
> 16.2(2) Unless the court orders otherwise, a person to whom parenting time is allocated under paragraph 16.1(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the child.

[69] This provision clarifies that a party who has not been granted decision-making responsibility for "significant decisions about a child's well-being" within the meaning of section 2 of the *Divorce Act* nonetheless plays an important role in the child's life and retains a decision-making role in regard to daily issues that can be equally important to the child's overall well-being. The section protects children and parents who have parenting time with each other from attempts by the party who has been granted decision-making authority respecting significant matters to intrude upon or marginalize the role of the other parent.

[70] Section 16.4 of the *Divorce Act* further expounds upon the meaning and scope of the concepts of decision-making responsibility and parenting time under the Act by establishing that unless otherwise ordered, they encompass the entitlement to obtain information about the child's well-being:

> **Entitlement to information**
>
> 16.4 Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws.

[71] Section 16.4 further safeguards the influence and involvement of a parent who has been allocated parenting time but not any aspects of decision-making responsibility by protecting against the development of informational asymmetry between parents respecting a child's wellbeing.

B. Contents of a Parenting Order

[72] Sections 16.1(4) to (9) of the *Divorce Act* outline the general powers of the court in an application for a parenting order under section 16.1(1), and the types of provisions that

the court can include in a parenting order. These provisions give the court very broad powers to craft an order that will most fully promote the child's needs and best interests:

Contents of parenting order

16.1(4) The court may, in the order,

a) allocate parenting time in accordance with section 16.2;

b) allocate decision-making responsibility in accordance with section 16.3;

c) include requirements with respect to any means of communication, that is to occur during the parenting time allocated to a person, between a child and another person to whom parenting time or decision-making responsibility is allocated; and

d) provide for any other matter that the court considers appropriate.

Terms and conditions

(5) The court may make an order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate.

Family dispute resolution process

(6) Subject to provincial law, the order may direct the parties to attend a family dispute resolution process.

Relocation

(7) The order may authorize or prohibit the relocation of the child.

Supervision

(8) The order may require that parenting time or the transfer of the child from one person to another be supervised.

Prohibition on removal of child

(9) The order may prohibit the removal of a child from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.

[73] Section 16.1(4)(a) referred to above directs that in making an original parenting order, the court may "allocate parenting time in accordance with section 16.2." Section 16.2(1) provides that parenting time may be allocated by way of a schedule.

[74] Section 16.1(4)(b) set out above specifies that in making a parenting order, the court may "allocate decision-making responsibility in accordance with section 16.3." Section 16.3 provides as follows:

> **Allocation of decision-making responsibility**
>
> 16.3 Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse, to both spouses, to a person described in paragraph 16.1(1)(b), or to any combination of those persons.

[75] Section 16.1(6) of the Act referred to above authorizes the court to direct parties to attend a "family dispute resolution process," which is defined in section 2(1) of the Act as follows:

> ***family dispute resolution process*** means a process outside of court that is used by parties to a family law dispute to attempt to resolve any matters in dispute, including negotiation, mediation and collaborative law

[76] Section 16.6(1) of the *Divorce Act* provides that if the parties submit a parenting plan for the court's consideration in making a parenting order, the court must include the parenting plan in its order, unless it is of the opinion that the terms of the plan are not in the child's best interests:

> **Parenting Plan**
>
> 16.6 (1) The court shall include in a parenting order or a contact order, as the case may be, any parenting plan submitted by the parties unless, in the opinion of the court, it is not in the best interests of the child to do so, in which case the court may make any modifications to the plan that it considers appropriate and include it in the order.

[77] Section 16.6(2) defines the term "parenting plan" as "a document or part of a document that contains the elements relating to parenting time, decision-making responsibility or contact to which the parties agree." The Act does not set out any formal requirements regarding the execution and witnessing of such plans, or their specific form. However, the court must satisfy itself that the parties have voluntarily agreed to the terms of the plan.

C. Legislative Factors and Considerations in Making a Parenting Order

[78] Section 16 of the *Divorce Act* sets out the factors and considerations that the court must consider in making a parenting order or a contact order. Section 16(7) establishes that references to a parenting order and a contact order in section 16 include interim parenting and contact orders and to orders varying parenting and contact orders. Section 16(1) directs that the court shall take into consideration "only the bests interests of the child of the marriage in making a parenting order or a contact order." Section 16(3) sets out a number of factors that the court must weigh in carrying out the best interests analysis. In considering those factors, the court is required by virtue of section 16(2) to "give primary consideration to the child's physical, emotional and psychological safety, security and well-being." The primary consideration articulated in section 16(2) recognizes that there may in some cases be conflicts in attempting to weigh the enumerated best interests criteria. The courts have been given a clear direction that any such difficulties in attempting to carry out the analysis should be resolved in favour of ensuring that the child's physical, emotional and psychological safety, security and well-being are promoted.

[79] Section 16(3) of the Act sets out the following factors that the court must consider in determining the child's best interests:

> **Factors to be considered**
>
> 16(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
>
> a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
>
> b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
>
> c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
>
> d) the history of care of the child;
>
> e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
>
> f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
>
> g) any plans for the child's care;
>
> h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;

i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[80] Section 16(3)(j) specifically highlights the occurrence of "family violence" and the impact of such violence as important considerations in determining where the best interests of a child lie in making parenting and contact orders. Section 2 of the Act defines the term "family violence" very broadly as follows:

> ***family violence*** means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes
>
> a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
>
> b) sexual abuse;
>
> c) threats to kill or cause bodily harm to any person;
>
> d) harassment, including stalking;
>
> e) the failure to provide the necessaries of life;
>
> f) psychological abuse;
>
> g) financial abuse;
>
> h) threats to kill or harm an animal or damage property; and
>
> i) the killing or harming of an animal or the damaging of property

[81] The definition of violence refers to conduct by a "family member" towards another family member. Section 2(1) of the Act defines the term "family member" broadly as follows:

> ***family member*** includes a member of the household of a child of the marriage or of a spouse or former spouse as well as a dating partner of a spouse or former spouse who participates in the activities of the household

[82] Section 16(4) of the Act dictates that in considering the impact of family violence pursuant to section 16(3)(j), the court must take into account several factors relating to family violence:

> **Factors relating to family violence**
>
> 16(4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
>
> a) the nature, seriousness and frequency of the family violence and when it occurred;
>
> b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
>
> c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
>
> d) the physical, emotional and psychological harm or risk of harm to the child;
>
> e) any compromise to the safety of the child or other family member;
>
> f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
>
> g) 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; and
>
> h) any other relevant factor.

[83] Section 16(5) of the *Divorce Act* addresses the relevance of a person's past conduct in conducting the best interests analysis as follows:

Past conduct

16(5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

[84] Section 16(6) of the Act must also be considered in determining the parenting time arrangements that are in the child's best interests. It recognizes that children should have as much time with each parent as is consistent with their best interests:

Parenting time consistent with best interests of child

16(6) 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.

D. The Legislative Duties of Parties

[85] The *Divorce Act* imposes several duties on parties to a parenting proceeding, which are aimed at ensuring that their parenting remains focussed on the child's best interests, that children are safeguarded against unnecessary conflict, and that parenting issues are addressed in an orderly manner, with all relevant information being provided to the court. First, section 7.1 requires them to keep the best interests of the child at the forefront of their minds at all times in carrying out their parenting responsibilities and privileges:

Best interests of child

7.1 A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.

[86] Second, section 7.2 of the Act imposes a clear duty on parties to take all reasonable measures to protect children from conflict:

Protection of children from conflict

7.2 A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.

[87] Third, section 7.3 requires parties to try to resolve the issues in a proceeding through a family dispute resolution process:

Family dispute resolution process

7.2 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.

[88] Finally, sections 7.4 and 7.5 require parties to provide complete and updated information to the court, and to comply with orders made under the Act:

Complete, accurate and up-to-date information

7.4 A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.

Duty to comply with orders

7.5 For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

II. DETERMINING THE CHILD'S BEST INTERESTS: ELABORATION UPON THE RELEVANT FACTORS AND CONSIDERATIONS

A. General Principles Respecting the Best Interests Analysis

[89] In cases involving parenting issue, all parties bear the evidentiary onus of demonstrating where the best interests of the child lie, and there is no legal presumption in favour of maintaining the existing parenting arrangements (*Persaud v. Garcia-Persaud,* 2009 ONCA 782 (C.A.)*; A.E. v. A.E.,* 2021 ONSC 8189 (S.C.J.), at para. 89; *K.M. v. J.R.,* 2022 ONSC 111 (S.C.J.), at para. 71).

[90] The assessment of the child's best interests must take into account all of the relevant information regarding the child's needs and the ability of the parties to meet those needs (*Gordon v. Goertz,* [1996] 2 S.C.R. 27 (S.C.C.)). As the Supreme Court of Canada highlighted in *Barendregt v. v. Grebliunas*, 2022 SCC 22 (S.C.C.), at para. 8, the inquiry "is a heavy responsibility, with profound impacts on children, families and Society. In many cases, the answer is difficult - the court must choose between competing and often compelling visions of how to best advance the needs and interests of the child." The best interests inquiry is highly contextual in nature because of the numerous factors that may impact the child's well-being. The considerations that the court should focus on in carrying out the assessment, and the weight that should be accorded to each factor, will vary depending on the unique features of every child and case. (*Van de Perre v. Edwards,* 2001 SCC 60 (S.C.C.), at para. 13; *Barendregt,* at para. 97; *B.J.T. v. J.D.,* 2022 SCC 24 (S.C.C.), at para. 55). The wide array of factors relevant to the best interests analysis

under the *Divorce Act* allows for a uniquely tailored analysis of the parenting issues, woven from the particular condition, means, needs and circumstances of the child whose well-being is under consideration.

[91] The list of considerations relevant to the best interests analysis set out in section 16 of the *Divorce Act* is not exhaustive. For instance, a parent's history of conduct in relation to the child's financial needs is not specifically enumerated, but the courts have held that a party's failure to financially support their children regularly in a responsible manner is a relevant consideration in assessing where the child's best interests lie (*Jama v. Mohamed*, 2015 ONCJ 619 (O.C.J.); *L.B. v. P.E.*, 2021 ONCJ 114 (O.C.J.)). The court is not required to specifically enumerate and analyze all of the criteria set out in section 16 of the Act, but rather must consider all of the relevant information in the particular case before it (*Walsh v. Walsh*, [1998] O.J. No. 2969, 39 R.F.L. (4th) 416 (C.A.); *Phillips v. Phillips*, 2021 ONSC 2480 (S.C.J.), at para. 47; *A.E. v. A.E.*, at para. 89).

[92] The Supreme Court of Canada has emphasized that the analysis of the child's best interests in the context of parenting disputes must be undertaken from the lens of the child rather than the parents' perspectives; parental preferences and rights do not play a role in the analysis except to the extent that they are necessary to ensure the best interests of the child (*Young v. Young*, [1993] 4 S.C.R. 3 (S.C.C.), at paras. 74 and 202*; Gordon*, at pp. 50, 54, 68; *F. v. N.* 2022 SCC 51 (S.C.C.), at para. 61). As the Supreme Court of Canada stated in *King v. Low*, [1985] 1 S.C.R. 87 (S.C.C.), at para. 101, the ultimate aim of the courts in resolving parenting disputes is "to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult." However, the court has also recognized that "a child's best interests are furthered by a well-functioning and happy parent" and that this symbiotic connection must therefore be considered as part of the best interests assessment (*Barendregt*, at para. 169). As the court stated in *Barendregt:*

> 173 It is often difficult to disentangle the interests of a parent from the interests of a child. Indeed, "the reality that the nurture of children is inextricably intertwined with the well-being of the nurturing parent" is far from novel: *Pelech v. Pelech*, [1987] 1 S.C.R. 801, at p. 845; see also *Willick v. Willick*, [1994] 3 S.C.R. 670 (S.C.C.), at pp. 724-25, per L'Heureux-Dubé J. A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances.

[93] In carrying out the best interests analysis, the court should not apply a standard of perfection to parents. As Megaw J. stated in *Prime v. Prime*, 2020 SKQB 326 (Q.B.), at para. 59:

> I am mindful the determination of the best interests of the children is not based on a picture of perfect parenting by either party. The course of family life is such that specific incidents, which do not actually endanger or adversely affect children, do not impact the final decision. The court must consider the entirety of the situation involving the children. Parents are not

> expected to be free of mistake or misstep. They are expected to have the best interests of their children in mind. And, they are expected to parent in accordance with these best interests.

B. Family Violence

1. General Principles

[94] As discussed above, section 16(3)(j) of the *Divorce Act* requires the court to consider any family violence and the impact of such violence on any matter relevant to the child's best interests. Section 16(4) outlines specific factors that the court must take into account in considering the impact of family violence. Section 16(2) of the Act also highlights the need for courts to consider family violence issues by specifically directing that the court must give primary consideration to the child's physical, emotional and psychological safety, security and well-being when determining their best interests. The mother has made serious allegations of family violence during the course of these proceedings, and it is therefore necessary to consider in more detail the scope of these family violence provisions. The *Children's Law Reform Act*, R.S.O. 1990, c. C-12, as amended (the *"CLRA"*) now includes similar provisions relating to family violence, and therefore the caselaw respecting those provisions is also relevant.

[95] Concerns about family violence have always been a significant consideration in conducting the best interests analysis in parenting cases. However, the family violence provisions of the *CLRA* and the *Divorce Act* provide much-required guidance to the parties, counsel and the courts to ensure that decision-making about parenting issues reflects the current knowledge about the full impact of family violence on children and other family members. The definition of "family violence" in the *Divorce Act* is far-reaching, and the list of examples of conduct that fall within its scope in section 18(2) of the Act is non-exhaustive; it simply catalogues some of the most prevalent forms of family violence. The definition goes far beyond acts of physical aggression towards individuals or objects and extends to actions that undermine a person's physical, emotional and financial autonomy or their general psychological or emotional wellbeing. The broad definition recognizes the many insidious forms that domestic violence can take and accords each equal weight in the best interests assessment. The broad definition of "family member" is also significant, as it highlights the reality that family violence is not limited to acts committed by full-time members of the household, but also encompasses abusive conduct committed by dating partners who are invited into the home to participate in household activities.

[96] Significantly, the expansive scope of the family violence provisions also reflects the many ways in which children may be victimized by such violence, and the importance of appreciating the various forms that child victimization may take in carrying out the best interests assessment. The definition of "family violence" in section 2 of the *Divorce Act* clarifies that in the case of a child, family violence includes both *direct and indirect exposure* to the violence. Accordingly, children may suffer family violence in the following ways:

1. The child may be the ***direct victim*** of family violence if the abusive conduct is inflicted specifically towards them.

2. The child may also be victimized by ***direct exposure*** to family violence towards another family member, if they observe the violence or are close by when it occurs and are able to see or hear what is happening.

3. The child may also be ***indirectly exposed to and victimized*** by family violence towards other family members in many ways. For instance, they may experience the aftermath of the violence. This can include observing the family member's physical injuries or emotional distress following the violence, hearing about the violence after it has occurred, seeing changes in the victim's behaviour due to the violence, and becoming embroiled in a police or child protection investigation relating to the violence. Where the directly victimized family member is a parent, the child can also suffer indirect consequences of the violence if the parent's physical, emotional and psychological well-being are compromised, since these consequences in turn often negatively impact their ability to meet the child's physical and emotional needs.

[97] The comprehensive and far-reaching nature of the family violence provisions in the *Divorce Act* represents a statutory recognition of the profound direct and indirect destructive effects that family violence in its many forms can have on children. The Supreme Court of Canada recently commented on these consequences in *Barendregt*, stating as follows (at para. 143):

> [143] 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: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 *I.J.C.Y.F.S.* 493, at p. 497.

[98] Having regard for the damaging impacts of family violence, the courts must construe family violence provisions in a broad and purposive manner so as to maximize the protective scope of the provisions for children and their family members who are facing family violence in its many forms. This approach is mandated by the general principles of statutory interpretation that legislative provisions must be construed in their entire context and grammatical and ordinary sense, and in a fair, large and liberal manner that best ensures the attainment of their objects (*Michel v. Graydon*, 2020 SCC 24 (S.C.C.), at paras. 21, 40, 54 and 69). In *Michel*, the Supreme Court of Canada held that child support legislation should be interpreted in a manner that is most favourable to children,

which dictates that the best interests of the child is at the heart of any interpretive exercise (at para. 102). This principle applies equally to the interpretation of legislation relating to parenting issues. A broad, liberal and purposive interpretation of the family violence provisions is also mandated by the general principle that legislation must be construed in a manner that supports compliance with our international law obligations (*Michel*, at para. 103). The Supreme Court of Canada has emphasized that the principles embodied in international Conventions to which Canada is a party help inform the contextual approach to the interpretation of Family Law legislation (*Michel*, at para. 103). In this regard, Article 19 of the United Nations *Convention on the Rights of the Child, 1989*, Can T.S. 1992 No. 3 requires that states who are party to the convention take all appropriate legislative, administrative, social and educational measures to protect the child 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 parents or others who have care of the child. Article 3 stipulates that in all actions concerning children, including those of the courts, the best interests of the child shall be a primary consideration.

[99] The broad definition of "family violence" is multi-tiered and overlaps on many fronts. It is clear that many types of behaviour will fall into various aspects of the "family violence" definition. It is important for counsel and the courts to explain precisely the various ways in which each type of conduct complained of meets the definition of "family violence," because this assists the court and the parties in focusing in on and how precisely the violence has impacted the victims. A full appreciation of the various levels on which the violence impacted its victims is critical to the court's ability to formulate a decision-making and parenting time framework that addresses the concerns and supports and fosters the child's best interests. A clear identification of the grounds for finding that behaviour constitutes family violence is particularly critical where it forms part of a pattern of coercive and controlling behaviour or it causes family members to fear for a person's safety. This is because these two factors must also be specifically weighed in considering the impact of the family violence, by virtue of sections 16(4)(b) and (f) of the *Divorce Act.*

[100] The concept of "coercive and controlling behaviour" is distinct from other forms of family violence in that it can consist of many different types of acts occurring over time which, in isolation, do not seem abusive or significant, but which paint a picture of a very destructive relationship when viewed in their totality. Accordingly, the significance of the individual incidents can only be truly understood in the context of the larger picture. In addition, a pattern of coercive and controlling behaviour is particularly concerning because it is easier to inflict in its various forms post-separation than other types of family violence. Further to the principles of legislative interpretation discussed above, the concept of "coercive and controlling behaviour" should be interpreted in a large and liberal manner that best ensures the attainment of the objects of the family violence provisions of the legislation, which are to protect and promote the safety and wellbeing of family members. To date, the caselaw reflects such a broad and purposive approach to the scope of this type of family violence. As I discussed in *M.A.B. v. M.G.C.*, at para. 183, a general review of this caselaw indicates that "coercive" behaviour includes

conduct that is threatening, intimidating or exerts inappropriate pressure on the other person. Behaviour is broadly being considered as "controlling" if its intent or effect is to inappropriately manage, direct, restrict, interfere with, undermine or manipulate any important aspect of the other person's life, including their important relationships and their physical, emotional, intellectual, spiritual, social and financial autonomy or wellbeing. As examples of this broad and purposive interpretation, the courts have made findings of a pattern of coercive and controlling behaviour in cases where a parent has made numerous unsubstantiated allegations against the other party (*Armstrong v. Coupland,* 2021 ONSC 8186 (S.C.J.); *I.S. v. J.W.,* 2021 ONSC 1194 (S.C.J.); *K.M. v. J.R.; Ammar v. Smith,* 2021 ONSC 3204 (S.C.J.); *M.A.B. v. M.G.C.*), where a party has engaged in inappropriate litigation tactics to gain an advantage in the Family Law case (*I.S. v. J.S.,* 2021 ONSC 1194 (S.C.J.)), and where a party has engaged in behaviour that has had the effect of undermining the other parent's authority or influence and alienating the child from that parent (*E.V. v. V.-E.,* 2021 ONSC 7694 (S.C.J.); *Ammar*; *I.S. v. J.W.; S.S.G. v. S.K.G.,* 2022 ABQB 130 (Q.B.), per Devlin J.; *M.A.B. v. M.G.C.*).

[101] I have indicated that behaviour may constitute family violence within the meaning of section 2(1) of the *Divorce Act* if it causes a family member to fear for their own safety of for that of another person. It is well established in the law respecting restraining orders that that notion of fearing for one's safety or that of another person extends not only to physical safety, but also to the person's emotional and psychological safety (*Lawrence v. Bassett,* 2015 ONSC 3707 (S.C.J.), per Kiteley J.; *Tiveron v. Collins,* 2017 ONCA 462 (C.A.); *Stephens v. Somerville,* 2021 ONSC 1958 (S.C.J.), per Mitrow J.; *Reis v. Lovell,* 2022 ONSC 1201 (S.C.J.), at para. 52). In the Family Law context, it has been found that a parent's behaviour of exposing a child to conflict and constantly undermining the other parent in the eyes of the child may also constitute family violence against the other parent if it causes them to fear for the psychological and emotional safety of the children (*Tone v. Tone,* 2021 ONSC 3747 (S.C.J.), per Fowler-Byrne J.).

[102] The related notion of psychological abuse is separately identified as a form of family violence in section 2(f) of the *Divorce Act.* The Collins English Dictionary defines the word "psychological" broadly as meaning "concerned with a person's mind and thoughts." Where psychological abuse is alleged, there is often a tendency to focus on whether clear psychological harm has occurred as part of the determination of whether there has been abusive conduct. However, the first step is to determine whether the alleged actions are psychologically abusive. Evidence that the conduct has led to psychological harm to the victim is relevant in addressing the impact of the abuse and the crafting of an appropriate parenting order. In determining whether psychological abuse has caused psychological harm, expert evidence is helpful but is not required (*Tone; M.A.B. v. M.G.C.*). By way of analogy, in tort cases, where compensation is sought for mental injury, the courts have held that while mental injury may be more difficult to objectively discern than physical injury, expert evidence is not necessarily required to prove it (*Saadati v. Moorhead,* 2017 SCC 28 (S.C.C.). The caselaw relating to the concept of psychological abuse establishes that making numerous unsubstantiated allegations of abuse to police, child protection authorities and other professionals can fall within the scope of this type of family violence (*K.M. v. J.R.; Ammar; M.A.B. v.*

M.G.C.), as can engaging in behaviour that undermines the other parent and alienates a child from that parent (*E.V. v. V.-E.; Bors v. Beleuta*, 2019 ONSC 7029 (S.C.J.), aff'd 2021 ONCA 513 (C.A.); *Ammar; M.A.B. v. M.G.C.*).

2. Assessing the Credibility of Family Violence Allegations

[103] As I discussed at length in *M.A.B. v. M.G.C.*, assessing the credibility of family violence allegations is a challenging exercise that requires a solid appreciation of the overall context within which family violence occurs (*Barendregt,* at para. 183). This context includes the typical dynamics of violent relationships between family members, the impact of violence on the victims and their ability to disclose the violence, and other social, spiritual, economic and cultural considerations that may be preventing the victim from talking about the violence. Having regard for the complex social dynamics around family violence, the courts must resist assessing a claimant's credibility against stereotypical notions of what a victim should have done in similar circumstances. The reason for this is that trauma can significantly affect a victim's cognitive functioning and physiology in many ways, and therefore victims of family violence may not react or interact in ways that one may generally expect them to (*R. v. Lavallee*, [1990] 1 S.C.R. 852 (S.C.C.), at pp. 871-890; *R. v. Naslund*, 2022 ABCA 6 (C.A.), at para. 141; *A.v. A.*, 2022 ONSC 1303 (S.C.J.), at para. 63; *McLellan v. Birbilis*, 2021 ONSC 7048 (S.C.J.), at para. 72, per Tellier J.).

[104] The social context considerations around family violence are such that the typical indicators of credibility in the litigation arena are unhelpful in some situations and may in fact lead to distorted and dangerous outcomes. For example, one traditional yardstick for assessing credibility is whether the witness can provide a clear, detailed and consistent version of the events in question, with a solid recollection of the chronology of those events. However, victims of family violence often suffer from significant trauma associated with the abuse, which may affect their ability to provide a detailed, consistent and accurate recollection and timeline of the events in question (*K.K. v. M.M.*, 2021 ONSC 3975 (S.C.J.); aff'd 2022 ONCA 72 (C.A.)). In addition, as the Supreme Court of Canada emphasized in *Barendregt*, "family violence often takes place behind closed doors, and may lack corroborating evidence" (at para. 144; see also *V.M.W. v. J.Mc.-M.*, 2021 ONCJ 441 (O.C.J.), at para. 167, per Zisman J.; *W.A.C. v. C.V.F.*, 2022 ONSC 2539 (S.C.J.), at para. 396, per Finlayson J.). Furthermore, there may not be evidence of prior consistent disclosures of family violence to rebut claims of recent fabrication, as there are many reasons why victims of family violence may not disclose the violence (*V.M.W. v. J.Mc.-M,* at para. 167; *W.A.C. v. C.V.F.*, at para. 396).

[105] Notwithstanding these challenges in assessing the credibility of family violence claims, and the need for caution in relying on traditional credibility indicators, courts must remain cognizant of the reality that some allegations are in fact fabricated or exaggerated. Being closed-minded to these possibilities poses an equally serious threat to the furtherance of justice in cases where family violence claims are advanced, and the courts must therefore meticulously assess the evidence in its totality to ensure that family violence claims are credible and are not being maliciously advanced to obtain a litigation

advantage (*Wilson v. Sinclair*, 2022 ONSC 2154 (S.C.J.), per Fryer J.; *W.A.C. v. C.V.F.*, at para. 397; *Bandyopadhyay v. Chakraborty*, 2021 ONSC 5943 (S.C.J.); *Kinsella v. Mills*, 2020 ONSC 4786 (S.CJ.); *A.E. v. A.E.*, at paras. 276-281; *Lee v. Eckenwiller*, 2021 ONSC 6519 (S.C.J.), at paras. 27-29).

[106] The fact that there have been criminal investigations and charges related to allegations of family violence, and the outcome of those charges, may be relevant in addressing the family violence claims in Family Law proceedings, but they will not be determinative of whether the violence occurred (*Batsinda v. Batsinda*, 2013 ONSC 7869 (S.C.J.), at para. 41; *Matthew v. Barazmi*, 2021 ONSC 7240 (S.C.J.); *Lee*, at para. 27; *M.A.B. v. M.G.C.*, at para. 181). By the same token, the fact that criminal charges have been withdrawn is not determinative, having regard for the lower standard of proof in Family Law proceedings as compared to criminal prosecutions.

C. Considerations in Determining the Appropriate Decision-Making Framework

[107] As I have indicated, section 16.3 of the *Divorce Act* provides that the court may allocate decision-making responsibility in respect of a child, or any aspect of that responsibility, to either spouse, to both spouses, to another person authorized to seek a parenting order or to any combination of those persons. This provision gives the court a wide discretion to craft a tailor-made decision-making responsibility framework that supports and promotes the best interests of the child before the court, taking into consideration the unique facts of each case. The options available to the court include the following:

1. It may grant sole decision-making responsibility in all areas to one spouse.

2. It may grant joint decision-making responsibility in all areas to both spouses.

3. It may grant joint decision-making responsibility to both spouses in one or more areas of responsibility, but give sole decision-making authority in the other areas to one spouse or allocate those other areas of decision-making between the spouses.

4. Alternatively, it may allocate each party sole decision-making responsibility in separate specified areas, with no provision for joint decision-making in any areas.

5. Another option open to the court is to require the parties to engage in all reasonable efforts and take all reasonable steps to make some or all significant decisions jointly, but to designate which party has final say in each area of decision-making in the event of disagreement. This option typically includes a detailed decision-making framework that establishes timelines for parties to exchange their positions and information on issues and requires them to take particular steps in an attempt to decide matters jointly.

[108] With respect to option #5, it is important to emphasize that it is quite distinct from an order that is often made in Family Law granting one party sole decision-making responsibility but requiring them to consult with the other party before making a final

decision. The latter model requires the sole decision-maker to solicit and consider the other parent's input but nothing more. Option #5 requires much more of both parties, in that the expectation is that they will both "roll up their sleeves" and actively engage in all reasonable efforts to reach a consensus. While the distinction may appear subtle on its face, it is important and can yield different results for a child than an order for sole decision-making with consultation. It gives the party who does not have "final say" greater involvement in the decision-making process and more opportunity to ensure that the other parent obtains all relevant information to reach the best decision for the child. For these reasons, it is an important alternative that lies between options of a sole decision-making with consultation framework and a straight joint decision-making arrangement (*McBennett v. Danis,* 2021 ONSC 3610 (S.C.J)). The Ontario Court of Appeal recognized this as a distinct decision-making framework and upheld it on appeal in the cases of *T.J.L. v. E.B.,* 2019 ONSC 6096 (S.C.J.), aff'd 2021 ONCA 75 (C.A.) and *Bourke v. Davis,* 2021 ONCA 97 (C.A.).

[109] Section 16.3 of the *Divorce Act* and the options that it permits are reflective of what has been happening "on the ground" with respect to decision-making in Family Law cases for many years, both in the context of the *Divorce Act* and under provincial parenting law regimes. The courts have crafted these various types of decision-making frameworks in recognition of the fact that complex family situations and dynamics often require customized decision-making regimes in order to safeguard and promote the child's best interests.

[110] In deciding on the appropriate decision-making responsibility regime, the court is required to consider all possible frameworks, and not simply those proposed by the parties (*Chomos v. Hamilton,* 2015 ONSC 5208 (S.C.J.), at para. 109; *Jackson v. Mayerle,* 2016 ONSC 72 (S.C.J.); *Ruffudeen v. Coutts,* 2016 ONSC 3359 (S.C.J.)). Furthermore, as the Ontario Court of Appeal noted in *M. v. F.*, 2015 ONCA 277 (C.A.), notwithstanding the positions of the parties, the court may decline to make any decision-making designation if such an approach is considered to be in the best interests of the child.

[111] A rich body of caselaw evolved over the years regarding the factors that the courts should consider in formulating decision-making regimes that support the best interests of children. The important considerations that were identified are now generally reflected in the provisions of the *Divorce Act* discussed above in relation to the best interests analysis. However, the caselaw respecting the determination of appropriate decision-making frameworks remains relevant and should continue to guide the courts in addressing this issue. Counsel have referred me to several cases respecting parental decision-making in support of their respective positions, which I have carefully considered and which have been helpful to my analysis. While caselaw provides guidance to the courts in addressing the decision-making issue, the analysis must at the end of the day turn on the unique facts and dynamics of the case before the court. The cases that counsel have relied upon and other important parenting law cases establish that the following principles are pertinent in determining whether it is in the best interests of a child to order joint decision-making responsibility in all or some areas respecting the child's well-being:

1. There is no presumption in favour of granting joint decision-making responsibility to both parties in some or all areas (*Kaplanis v. Kaplanis*, 2005 CarswellOnt 266 (C.A.); *Ladisa v. Ladisa*, 2005 CarswellOnt 268 (C.A)).

2. Joint decision-making in some or all areas should only be considered as an option if the court is satisfied as a threshold matter that both parties are fit parents and able to meet the general needs of the children (*Kaplanis; T.E.H. v. G.J.R.*, 2016 ONCJ 156 (O.C.J.), at para. 446; *McBennett*, at para 97).

3. In order to grant joint decision-making in some or all areas, there must be some evidence before the court that despite their differences, the parties are able to communicate effectively in the areas under consideration for the sake of the child. Where there is a history of significant conflict that has impacted the functioning and parenting of the parties and the wellbeing of the child, these factors will support an order for sole decision-making responsibility (*Roth v. Halstead*, 2017 ONCJ 593 (O.C.J.), at para. 299). The rationale for this principle is that the best interests of the child will not be advanced if the parties are unable to make important decisions regarding the child under a joint decision-making arrangement (*Kaplanis; Roy v. Roy*, 2004 CarswellOnt 8591 (S.C.J.), reversed in part 2006 CarswellOnt 2898 (C.A.); *Levesque v. Windsor*, 2020 ONSC 5902 (Div. Ct.); *Brown v. Brown*, 2021 ONSC 1753 (S.C.J.)).

4. The fact that there is some evidence of communication and cooperation does not, however, dictate in and of itself that joint decision-making must be ordered. The trial judge must carefully assess in each case whether the parties' ability to cooperate and communicate about issues relating to the child is sufficiently functional to support an order for joint decision-making (*Berman v. Berman*, 2017 ONCA 905 (C.A.), at para. 5).

5. The court is not required to apply a standard of perfection in assessing the parties' ability to cooperate and communicate with each other on matters relating to the children. As Quinn J. remarked in the often-quoted case of *Brook v. Brook*, 2006 CarswellOnt 2514 (S.C.J.), "the cooperation needed is workable, not blissful; adequate, not perfect." The existence of occasional conflict does not necessarily preclude an order that involves elements of joint decision-making, and the court should consider the entire record of the parties' communication to obtain a clear sense of the nature and extent of the discord (*Grindley v. Grindley*, 2012 CarswellOnt 9791 (S.C.J.); *Sader v. Kekki*, 2013 ONCJ 605 (O.C.J.), at para. 115).

6. The fact that one party insists that the parties are unable to communicate with each other is not in and of itself sufficient to rule out the possibility of a joint decision-making order in some or all areas. The court must carefully consider the parties' past and current parenting relationship and reach its own conclusions respecting the parties' ability to communicate, rather than simply relying on allegations of conflict by one or both of the parties (*Kaplanis*, at para. 11; *Ladisa;*

Brown, at para. 83). The question to be determined is whether the nature, extent and frequency of the conflict between the parties is such that requiring them to decide issues jointly is likely to impact negatively on the well-being of the children.

7. If the evidence indicates that the parties, despite their conflict with each other, have been able to shelter the child from the turmoil reasonably well and make decisions in the child's best interests when necessary, an order involving joint decision-making may be appropriate (*Ladisa*). The issue for the court's determination is "whether a reasonable measure of communication and cooperation is in place, and is achievable in the future, so that the best interests of the child can be ensured on an ongoing basis" (*Warcop v. Warcop,* 2009 CarswellOnt 782 (S.C.J.); *Lambert v. Peachman,* 2016 ONSC 7443 (S.C.J.); *Brown,* at para. 84).

8. In addition, where there has been some conflict in reaching decisions, the court should consider whether the differences in perspectives and the sharing of information supporting those perspectives have ultimately resulted in more positive outcomes for the child. Evidence of challenges in working through parenting issues that result in better results for the child may support joint rather than sole decision-making (*Campbell v. Lapierre,* 2017 ONSC 1645 ONSC (S.C.J.), at paras. 48-50).

9. In analyzing the ability of the parties to communicate, the court must delve below the surface and consider the source of the conflict. The Ontario Court of Appeal has clearly stated that one parent cannot create conflict and problems with the other parent by engaging in unreasonable conduct, impeding access, marginalizing the other parent, or by any other means and then justify a claim for sole decision-making in their favour on the basis of lack of cooperation and communication (*Lawson v. Lawson,* 2006 CarswellOnt 4736 (C.A.)*; Ursic v. Ursic,* 2004 CarswellOnt 8728 (S.C.J.), aff'd 2006 CarswellOnt 3335 (C.A.); *Andrade v. Kennelly,* 2006 CarswellOnt 3762 (S.C.J.), aff'd 2007 CarswellOnt 8271 (C.A.)). Where the parties are both competent and loving parents, but one of them is the major source of the conflict, this factor may support an order for sole decision-making in favour of the other party (*Alqudsi v. Dahmus,* 2016 ONCJ 707 (O.C.J.); *Liu v. Huang,* 2020 ONCA 450 (C.A.)). Alternatively, judges have often opted for orders for joint decision-making rather than sole decision-making with one parent in these circumstances, where they have been satisfied that the best interests of the child require a balance of influence and authority between the parties in addressing important parenting decisions (*Bromley v. Bromley*, 2009 CarswellOnt 2210 (Ont. C.A.); *Hsiung v. Tsioutsioulas*, 2011 CarswellOnt 10606 (O.C.J.); *Sinclair v. Sinclair*, 2013 ONSC 1226 (S.C.J.); *Lonsbury v. Anderson*, 2019 ONSC 7174 (S.C.J.), at para. 16; *Saunders v. Ormsbee-Posthumus*, 2020 ONSC 2300 (S.C.J.), at para. 65).

10. However, where an objective review of the historical and more recent evidence clearly indicates that there has never been an ability to cooperate or communicate effectively, and that both parties are responsible for this dynamic, joint decision-making is not an appropriate order (*Hildinger v. Carroll,* 2004 CarswellOnt 444 (C.A.); *Kaplanis; Ladisa; Graham v. Bruto,* [2007] O.J. No. 656, aff'd 2008 ONCA 260 (C.A.)). This principle applies even where both parties are attentive and loving parents (*Izyuk v. Bilousov,* 2011 CarswellOnt 12097 (S.C.J.), at para. 504). In these circumstances, hoping that communication between the parties will improve once the litigation is over does not provide a sufficient basis for making an order that includes elements of joint decision-making responsibility (*Kaplanis; Brown*). There must be a clear evidentiary basis for believing that joint decision-making would be feasible (*Iannizzi v Iannizzi,* 2010 ONCA 519 (C.A.), at para. 2).

11. The quality of each party's past parenting and decision-making, both during the parties' relationship and post-separation, is a critical factor in determining whether an order for joint decision-making in some or all areas is appropriate (*Milford. v. Catherwood,* 2014 CarswellOnt 7879 (O.C.J.)).

12. However, the mere fact that both parents acknowledge that the other is a "fit" parent does not mean that it is in the best interests of the child for a joint decision-making order to issue. The determination of the appropriate decision-making arrangement must take into consideration all factors relevant to the child's best interests (*Kaplanis,* at para. 10).

13. A party's failure to financially support their children in a responsible manner may militate against an order for joint decision-making responsibility, as this reflects poor judgment and an inability to prioritize the child's interests and needs (*Jama; L.B. v. P.E.*).

14. In some cases, the parties are clearly able to cooperate and jointly support the best interests of the child in some areas of decision-making but have a pattern of conflict and lack of collaboration in other specified areas. In these circumstances, a hybrid type of decision-making structure that provides for joint decision-making in the areas that have never been problematic but that allocates the remaining areas out to each party for sole decision-making may be the most appropriate outcome (*McBennett*).

15. In situations involving children with special needs, the extent of the parties' involvement in addressing those needs and their willingness to consider reasonable recommendations from knowledgeable and experienced professionals involved with the child in addressing those needs are important considerations (*Roth,* at para. 306; *Duclos v. Davis,* 2018 ONSC 6088 (S.C.J.), at para. 36(d); *Keown v. Procee,* 2014 ONSC 7314 (S.C.J.), at paras. 20-25; *S.A.P. v. D.M.P,* 2020 ABQB 811 (Q.B.), at paras. 20-22).

16. In addition, in situations where there is conflict regarding a course of treatment or therapy for a child, evidence that a parent has drawn the child into the conflict by attempting to make them an ally in their position on the issue may support an order for decision-making in favour of the other party (*Gugus v. Gilodeau*, 2020 ONSC 2242 (S.C.J.), at paras. 24 and 33).

17. Another important consideration in situations involving children with special needs is the need for timeliness in decision-making. If the evidence indicates that efforts to reach parenting decisions has led to inappropriate delays in addressing the child's needs, with no positive outcomes for the child, this may support an order for sole rather than joint decision-making (*S.D.H. v. T.H.*, 2016 BCSC 380 (S.C.), at para. 145; *Roth*, at para. 305).

18. In cases involving very young children, the court must take into consideration the fact that the child is unable to easily communicate their physical, emotional, developmental and other needs. Accordingly, the need for effective communication between the parties in a joint decision-making arrangement will be particularly pressing in such circumstances (*Kaplanis*, at para. 11).

19. The wishes of the child will also be relevant to the determination of the appropriate decision-making disposition in cases involving older children. Although a child's wishes in such circumstances may not necessarily synchronize perfectly with the child's best interests, "the older the child, the more an order as to custody requires the co-operation of the child and consideration of the child's wishes" (*Kaplanis*, at para. 13).

20. Evidence as to how an interim parenting order has worked, and in particular, whether the parties have been able to set aside their personal differences and work together in the best interests of the child, will be highly relevant to the ultimate decision regarding the appropriate decision-making regime.

[112] The caselaw has also established some valuable principles and guidelines for assisting the courts in deciding whether to make orders that divide out specified areas of decision-making responsibility to each party. These would include orders requiring the parties to attempt to make decisions jointly, but which grant each party final say in specified areas of decision-making in the event of disagreement. These types of decision-making frameworks evolved as a means of meeting the needs of children in circumstances where both parties have been active and competent parents, and the child would benefit from both having a say on important matters, but the conflict between them is such that a traditional joint decision-making order or an order for sole decision-making in favour of one parent would not be in the child's best interests. Courts have recognized there are many merits to these types of regimes in appropriate cases. They give both the child and the parents the benefit of maintaining each parent as a meaningful player in the child's life, over and above time-sharing with the child. In addition, by delineating clear areas of decision-making between the parties, these arrangements have the potential in appropriate cases to disengage the parties and reduce parental discord (*Hensel v. Hensel*,

2007 CarswellOnt 7010 (S.C.J.), at para. 30; *Jackson v. Jackson*, 2017 ONSC 1566 (S.C.J.) at para. 69). The cases highlight the following factors and considerations as being relevant in deciding whether an order that allocates separate aspects of decision-making responsibility between the parties is in a child's best interests:

1. The strength of the parties' ties with the child, and their historical level of involvement with the child are critical to the analysis. These factors are now specifically referenced in section 16(3) of the *Divorce Act.* In most cases where specified areas of decision-making have been allocated to the parties, both parents have played a significant role in the child's life on all levels (see for example *Andrade; H.(K.) v. R.(T.K.),* 2013 ONCJ 418 (O.C.J.); *B.(M.) v. T.(D.),* 2012 ONSC 840 (S.C.J.); *Hoffman v. Hoffman,* 2013 ONSC 395 (S.C.J.); *Jackson v. Jackson; McBennett*).

2. The relative parenting abilities of each parent and the quality of their decision-making respecting the child are also important considerations. Section 16(3) now specifically highlights the history of care of the child and the ability and willingness of each party to care for and meet the needs of the child as mandatory considerations in carrying out the best interests analysis. Where one parent is clearly more competent, responsible and attentive than the other, this may support an order for sole decision-making in their favour rather than an allocation of decision-making areas between them (*Ryan v. Scott,* 2011 CarswellOnt 5924 (S.C.J.); *Hajkova v. Romany,* 2011 CarswellOnt 3237 (S.C.J.); *Scervino v. Scervino,* 2011 CarswellOnt 7845 (S.C.J.); *H. (K.) v. R. (T.K.)*; *Izyuk v. Bilousov; Hoffman*; *Warner v. O'Leary,* 2014 CarswellNS 319 (S.C.); *Suchanek v. Lavoie,* 2014 CarswellOnt 1236 (O.C.J.)*; Jackson v. Jackson*).

3. A desire to ensure formal equality of influence between the parents is not in and of itself sufficient to support a claim for dividing up aspects of significant decision-making (*L.(L.) v. C.(M.),* 2012 ONSC 3311 (S.C.J.); *Jackson v. Jackson*).

4. A history of family violence or any evidence suggesting that there is a significant power imbalance between the parties are factors that must be considered before allocating specific areas of decision-making responsibility between the parties, as this type of dynamic may frustrate the objective of achieving an equilibrium of influence through such an order (*Hildinger*; *K.(V.) v. S. (T.); H.(K.) v. R.(T.K.); Docherty v. Catherwood*, 2013 CarswellOnt 11366 (S.C.J.); *L.(L.) v. C.(M.)*; *Ganie v. Ganie,* 2014 ONSC 7500 (S.C.J.); *Tiveron*; *Jackson v. Jackson*).

5. An order allocating aspects of decision-making between the parties will not be considered appropriate where the evidence indicates that one party is seeking this arrangement solely as a means of controlling the other parent, rather than as a means of fostering the child's best interests (*H.(K.) v. R. (T.K.); S.(S.) v. K.(S),* 2013 CarswellOnt 10801 (O.C.J.); *Jackson v. Jackson; L.B. v. P.E.*).

6. The extent to which each parent is able to place the needs of the child above their own needs and interests is often a compelling consideration. Evidence that a party tends to place their own wishes and needs over the child's overall best interests will often vitiate against an order separating out aspects of decision-making, even if that party is in all other respects a loving and competent parent (*Potter v. DaSilva*, 2014 ONCJ 302 (O.C.J.); *Heuer v. Heuer*, 2016 ONCJ 201 (O.C.J.); *Alqudsi; Jackson v. Jackson*).

7. The court should carefully consider all of the evidence in the case and determine whether allocating areas of decision-making between the parties is more likely to de-escalate the conflict between the parties or inflame it. Section 16(3)(i) reflects the importance of this factor by specifically listing as a mandatory consideration in the bests interests analysis the ability and willingness of each party to communicate and cooperate, in particular with one another, on matters affecting the child. If an allocation of decision-making responsibility between the parties is likely to intensify the conflict, an order granting sole decision-making responsibility to one party may be more appropriate (*H.(K.) v. R.(T.K.); S.(S.) v. K.(S.); Suchanek; Jackson v. Jackson; McBennett*).

8. The court will consider the nature and intensity of the conflict between the parties, and whether the parties are likely to at least be able to navigate basic issues such as scheduling and interpretation of the order under a regime that separates out the various aspects of decision-making. The court should be particularly vigilant in considering whether the dynamics between the parties are such that they are likely to have disputes regarding the scope of each of their areas of decision-making responsibility in situations where the dividing line may be unclear. In *H.(K.) v. R.(T.K.),* Sherr J. referred to this potential problem of unclear boundary lines between areas of decision-making as "the spillover effect." If it is unlikely that the parties will be able to manage basic issues such as scheduling and potential spillover challenges, an order that divides up aspects of decision-making will likely not be appropriate as it will simply serve as a catalyst for further parental strife (*H. (K.) v. R. (T.K.); S.(S.) v. K.(S.); Izyuk v. Bilousov; Suchanek; Jackson v. Jackson; McBennett*).

9. With respect to parental conflict, the court should also carefully consider whether one party is the major cause of discord between the parties. If this is the case, an order granting sole decision-making to the other party may be the more appropriate choice (*H.(K.) v. R. (T.K.); Graham*; *Warner*).

10. Ultimately, with respect to parental conflict, an order granting each party specified areas of decision-making will generally not be considered appropriate where it is clear from a careful review of all of the evidence that one or both of the parties will never be able to disengage from combat. In such circumstances, delineating areas of decision-making will not achieve the goal of alleviating the conflict for the sake of the child but will simply provide a further breeding ground for parental

dissonance (*Seed v. Desai*, 2014 ONSC 3329 (S.C.J.); *Nloga v. Ndjouga*, 2015 ONSC 5925 (S.C.J.); *Ruffudeen; Jackson v. Jackson*).

11. An order carving out areas of decision-making between the parties is by nature detailed and complex, and the success of such a regime will depend largely on the ability of the parties to respect the carefully crafted terms of the order. Accordingly, this type of regime will typically not be granted where one or both of the parties has a history of failing to comply with court orders or processes (*Izyuk v. Bilousov; Nova Scotia (Ministry of Community and Social Services) v. F. (B.)*, 2014 CarswellNS 202 (S.C.); *Jackson v. Jackson; McBennett*).

12. Evidence that a party is interfering with or not supporting contact between the child and the other parent, alienating the child from the other parent or marginalizing the other parent's role will often be a significant factor in determining whether an order allocating specified areas of decision-making to the parties is appropriate (*Lefebvre v. Lefebvre*, 2002 CarswellOnt 4325 (C.A.); *Chin Pang v. Chin Pang*, 2013 CarswellOnt 7824 (S.C.J.); *Rodriguez v. Guignard*, 2013 CarswellOnt 503 (S.C.J.); *Potter*). In *Rigillo v. Rigillo*, 2019 ONCA 548 (C.A.), at para. 12, the Ontario Court of Appeal emphasized that "[d]ecision-making authority assists in ensuring that a parent's relationship with his or her child is not marginalized." Section 16(3)(c) now specifically establishes that the court must as part of the best interests analysis consider each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse. Further to these considerations, the caselaw reflects the following:

    a) Where the parent with primary care has engaged in this type of conduct, but that parent is otherwise very loving and competent, the courts have often considered a reversal of decision-making responsibility as too drastic a measure and have opted for a division of areas of decision-making as a means of protecting the other parent's role and influence in the child's life. In *Grindley*, the court emphasized that the goal of this type of order in these circumstances is not to protect the interests of the parent, but rather to foster the child's respect for both parents and their sense of security in the care of both parents. (For other cases in which areas of decision-making have been divided between parties in these circumstances, see *Plugers v. Krasnay*, 2014 ONSC 7078 (S.C.J.), aff'd 2016 ONCA 279 (C.A.)*; Cox v. Stephen*, 2003 CarswellOnt 4554 (C.A.)*;Andrade; Batsinda*; *Sgroi v. Socci*, 2007 CarswelllOnt 8526 (O.C.J.); *Suchanek; McBennett*).

    b) Where the non-primary parent is loving and attentive but has engaged in undermining or alienating behavior, this is often a factor that tips the balance in favour of sole decision-making responsibility to the other parent if they are also competent (*Griffin v. Bootsma*, 2005 CarswellOnt 4702 (C.A.); *Perron v. Perron*, 2010 ONSC 1482 (S.C.J.)).

c) If both parties are involved in severe alienating and undermining conduct, the court may conclude that neither can be trusted to exercise sole decision-making responsibly. In such circumstances, if both parties are equally competent and loving parents, allocating the incidents of parental decision-making between the parties may provide an effective means of keeping both of them in check, protecting the child from exposure to damaging parental conflict and ensuring that the child benefits from the contributions that both parents can make to decision-making. The concern in these types of situations is that an award of sole decision-making responsibility to one of the parties may result in that party using their decision-making authority as "an instrument of oppression" in a manner that undermines the child's best interests (see *Hart v. Krayem,* 2016 ONSC 5754 (S.C.J.); *Desjardins v. Desjardins,* 2013 ONSC 2283 (S.C.J.)).

d) The geographical distance between the parties is another factor that may impact on whether an order dividing the various areas of decision-making responsibility between the parties is in the child's best interests (*H.(K.) v. R. (T.K.)*).

D. The Relevance of the Duties on Parties in Assessing Best Interests and Formulating an Appropriate Parenting Order

[113] The duties imposed on parties pursuant to sections 7.1 to 7.5 of the *Divorce Act* set out basic ground rules that they are expected to comply with in carrying out their parenting responsibilities and privileges. Section 16 of the Act does not specifically enumerate a party's ability and willingness to comply with these duties as best interests factors that the court must consider, but they are by necessary implication key considerations in deciding upon the most appropriate decision-making and parenting time arrangements for children. Failing to comply with these duties raises serious concerns about a parent's capacity to prioritize their child's interests above their own, to appreciate the child's need for a peaceful upbringing, and to respect the rule of law (*M.A.B.v. M.G.C.*, at para 170).

[114] Focussing specifically on section 7.2 of the *Divorce Act*, the extent of conflict between the parties, and the ability of each party to shield the child from conflict, are considerations that have been well entrenched in the best interests analysis in parenting cases for years. In *Graham*, the trial judge Backhouse J. noted that the exposure of children to high levels of conflict "is the single most damaging factor for children in the face of divorce." The duty imposed on parties by section 7.2 to protect children from conflict arising from court proceedings is a statutory recognition that children's exposure to conflict can significantly undermine their overall functioning and well-being and underscores that the parties' ability to comply with this duty must factor prominently in the best interests assessment. The caselaw has rolled this duty into the best interests analysis as a key consideration in deciding all parenting issues and crafting parenting frameworks that support the child's needs and well-being (see for example *M.A. v. M.E.*, 2021 OCJ 555 (O.C.J.), per Sherr J.; *V.M.W. v. J.Mc.-M.*, per Zisman J.; *Tone; J.L.Z. v. C.M.Z.,* 2021 ABCA 200 (C.A.); *M.A.B. v. M.G.C.*). As I emphasized in *M.A.B. v.*

M.G.C., courts deciding parenting matters have a positive obligation to lift children out of the sea of conflict that too often characterizes Family Law cases. As Pazaratz J. accentuated in *K.M. v. J.R.*, if parties are unable to safeguard children from conflict, the court must take matters into its own hands by uncovering and exposing the sources of the conflict and imposing terms targeted at eliminating those causes. Pazaratz J. emphasized that in framing the terms of a parenting order, shielding children from conflict must always take priority over parental rights, preferences and convenience, and it may be necessary for the sake of the child to impose terms that are costly and challenging for parties to accept and comply with (at para 352).

[115] The duty set out in section 7.3 for parties to attempt, where appropriate, to resolve their Family Law issues through a family dispute resolution process, coupled with the court's power set out in section 16.1(6) of the Act to direct parties to participate in such a process, reflect a general trend in Family Law away from an adversarial culture of litigation towards a culture of negotiation (*Colucci v. Colucci*, 2021 SCC 24 (S.C.C.), at para. 69). In *Colucci*, the Supreme Court of Canada emphasized that in the absence of family violence or significant power imbalances, parents should be encouraged to resolve their disputes themselves outside of court. It stressed that reaching a negotiated settlement of Family Law issues "not only saves resources but also reduces the need for future court applications by setting up a less acrimonious relationship between the parties" (at para. 69). Similarly, in *Meloche v. Meloche,* 2021 ONCA 640 (C.A.), the Ontario Court of Appeal referred to the provisions in the *Divorce Act* relating to participation in family dispute resolution processes, noting that they reflect a trend towards strongly encouraging parties to resolve their Family Law disputes either entirely outside of court or with limited resort to the courts (at para. 11). The willingness of parties to engage in family dispute resolution processes during the course of litigation to address parenting issues, and their overall conduct while participating in such processes, are relevant considerations in carrying out the best interests analysis at trial. These factors may reveal a great deal about the parties' willingness to access professional support when appropriate, their ability to cooperate with each other and professionals in relation to child-related issues and their capacity to place their children's interests above their own.

III. CAN THE COURT ORDER PARTIES TO PARTICIPATE IN PARENTING COORDINATION SERVICES WITH OR WITHOUT AN ARBITRATION COMPONENT?

A. Overview of the Issues to be Determined Respecting Parenting Coordination Services

[116] Flowing from this discussion regarding participation in family dispute resolution processes, as I have indicated, the father requests as an alternative to a simple joint decision-making order that the court add to such an order a requirement that the parties must participate in parenting coordination services, including an arbitration component, if they are unable to reach a consensus on a significant issue. This position raises the following questions:

1. What types of services does parenting coordination include?

2. Can the court make a final order requiring parties to participate in parenting coordination services, with or without an arbitration component, pursuant to section 16.1(6) of the *Divorce Act?* The analysis of this issue involves a determination of the following:

    a) Do the services that form part of "parenting coordination" fall within the definition of "family dispute resolution process" within the meaning of section 2 of the Act? and

    b) Is there any provincial law that precludes the court from ordering parties to participate in parenting coordination, or that limits its ability to do so?

3. Are there any sources of authority other than section 16.1(6) of the *Divorce Act* that authorize the court to direct parties to engage in all or some of the services that fall within the scope of parenting coordination?

4. In particular, if parenting coordination services, with or without an arbitration component, are a form of therapeutic services for parties, can the court order parties to participate in them pursuant to its authority under section 16(4) of the *Divorce Act* to "provide for any other matter that the court considers appropriate" in the order, or its power under section 16(5) of the Act to impose "any terms, conditions and restrictions that it considers appropriate"?

5. If the court can order parties to participate in parenting coordination services, with or without arbitration powers, are there any special factors and considerations that it should weigh in determining whether it is appropriate to do so?

B. <u>The Purposes and Scope of Parenting Coordination Services</u>

[117] In order to address these issues, it is important to have an understanding of the purposes of parenting coordination and the types of services that are included in this process. Counsel for the mother referred me to the Association of Family and Conciliation Courts' *Guidelines for Parenting Coordination,* 2019: AFCC Task Force on Parenting Coordination (the *"AFCC Guidelines"*), which is readily available for review online. The *AFCC Guidelines* as well as the caselaw, the evidence of Ms. Franchi-Rothecker and the Agreement for Parenting Coordination Services and Arbitration that the parties executed relating to her services highlight the following important points about parenting coordination:

1. Parenting coordination is a hybrid legal-mental health service that is intended to assist co-parents who have difficulty making parenting decisions jointly to communicate effectively, comply with parenting agreements or orders and shield their children from the impact of parental conflict (*AFCC Guidelines,* at p. 2).

2. The role of a parenting coordinator is not to develop a parenting plan, but rather to assist the parties in implementing, interpreting, and applying the terms of an established plan, and in nuancing the issues in relation to that plan if agreed to and if necessary (*Ali v. Obas,* 2021 ONSC 3412 (S.C.J.), at para. 60).

3. Parenting coordination is a term that in fact combines a wide variety of functions to achieve the overall objectives set out in paragraph 1. These functions include the following:

    a) Assessment services, which can include:

        i. Assessment of the appropriateness of ongoing parenting coordination;

        ii. Assessing and advising on the need for referrals for family members to other professional services, including evaluation, treatment, and second opinions;

        iii. Assessing the safety of family members and the parenting coordinator;

        iv. Evaluating the efficacy of techniques and interventions that are being used for the family members; and

        v. Assessing if there has been compliance or breaches of a parenting plan, agreement or court order addressing parenting issues.

    b) Educational assistance regarding parenting-related issues, including:

        i. Child development;

        ii. Separation and divorce and their impact on family members;

        iii. The effects of conflict and the impact of parents' behaviour on children; and

        iv. Parenting, communication and conflict management and resolution skills. The parenting coordinator may model or teach parents these skills and support them in acquiring and applying them in their daily lives.

    c) Coordination and case management assistance services. This assistance involves working with professionals and systems involved with the family, including mental health, health care, social services, education and legal professionals, to assist the parties in addressing the needs of the family members. The services can also include liaising with extended family members and other significant people involved with the family. This aspect of the role can extend to monitoring and facilitating compliance with court ordered intervention services if authorized to do so.

d) Conflict management assistance and guidance. These services focus on helping parents to resolve or manage child-related conflict.

e) Communication services. This assistance involves acting as a conduit for communication between parents and facilitating respectful and child-focussed interactions between the parents.

f) Parenting plan assistance. This involvement includes helping parents to interpret and apply decision-making responsibility and parenting time provisions of an existing agreement, parenting plan or order.

g) Mediation services to assist the parties in resolving parenting issues arising in connection with an existing parenting plan, agreement or court order.

h) Parent-child support services, to facilitate the child's relationship with each parent.

i) Decision-making services. Parenting coordinators can by agreement make reports to the court and assume a decision-making role in the event that the parents cannot agree on issues, including arbitral powers.

4. The nature, scope, cost and powers associated with parenting coordination are issues for negotiation between the parties and the proposed parenting coordinator. The services can include all or some of the roles set out above. The parties and the parenting coordinator should enter into a written agreement at the outset of the process in order to clarify expectations and responsibilities.

[118] It is apparent from the list of functions set out above that parenting coordination encompasses a vast range of roles, including therapeutic assistance, conflict management support, mediation services respecting disputes that arise under an existing parenting plan, agreement or order, and final decision-making powers if the parties cannot agree on issues. As Audet J. commented in *Jirova v. Benincasa,* 2018 ONSC 534 (S.C.J.), at paras. 11-12, parenting coordination as a dispute resolution model includes two main components, namely the "non-decision-making" portion and the "decision-making" component of the process:

> [11] This resolution model includes two components: the non-decision-making component and the decision-making component. During the non-decision-making component of the process (the mediation phase), the PC *assesses* the family dynamics to obtain a better understanding of the parenting issues and challenges, *educates* the parties about child development matters and the impact of parenting conflict on the children, *coaches* them regarding communication skills and parenting strategies, and *mediates* disputes as they arise.
>
> [12] During the decision-making portion of the process (the arbitration phase), which is triggered when resolution through mediation is not

> possible, the PC makes a binding decision on the issue in dispute after having provided both parents with an opportunity to be heard. During both phases of the process, the PC is generally given expanded investigative powers to assist in his or her mandate to mediate or adjudicate on the issue, such as the ability to speak with professionals involved with the family as well as the ability to interview the children, when he or she deems it necessary and in the children's best interest to do so. Parenting Coordination is a way for parents to settle parenting disputes with cost-efficiency, procedural flexibility and expeditiousness.

[119] Any court order or consent agreement for parties to access parenting coordination services should clearly and specifically define the professional's scope of authority and responsibilities (*AFCC Guidelines,* at p. 8). The dispute resolution role is central to parenting coordination. Having regard for this focus, parenting coordination will likely be inappropriate if there is a history of family violence by one party towards the other or evidence of a power imbalance between them for any other reason (*AFCC Guidelines,* at p. 2).

C. Judicial Recognition of the Benefits of Parenting Coordination for Families

[120] The services of parenting coordinators have been widely accepted by Family Law professionals and the courts as being an integral part of the Family Law system and highly beneficial for parents and children. As the court stated in *Sehota v. Sehota,* 2012 ONSC 848 (S.C.J.), at para. 24:

> [T]he court values the work of such professionals for the vast potential it holds for easing many of the difficulties litigants face. In particular, the court usually sees the children being benefitted by the help of a parenting coordinator because that person can help the parents to put their children's interests first, to understand how conflict hurts children and to cooperate in spite of their past sorrows and hurts.

[121] In regard to the mediation and decision-making components of parenting coordination, including the possibility of arbitral powers for the parenting coordinator, the Ontario Court of Appeal has weighed in on the integral and important role that both mediation and arbitration play in the Family Law system. In *Petersoo v. Petersoo,* 2019 ONCA 624 (C.A.), it commented as follows, at para. 35:

> Mediation/arbitration is an important method by which family law litigants resolve their disputes. Indeed, the courts encourage parties to attempt to resolve issues cooperatively and to determine the resolution method most appropriate to their family. The mediation/arbitration process can be more informal, efficient, faster and less adversarial than judicial proceedings. These benefits are important with respect to parenting issues, which require a consideration of the best interests of children. The decision of an arbitrator, particularly in child related matters, is therefore entitled to

significant deference by the courts: see *Patton-Casse v. Casse*, 2012 ONCA 709, 298 O.A.C. 111, at paras. 9, 11.

[122] The use of these parenting coordination services should be encouraged where appropriate in furtherance of the direction that has been given by both the Supreme Court of Canada and the Ontario Court Appeal regarding the overall benefits of Family Law litigants resolving issues outside of the court process. The determination of whether the court may order parties to participate in parenting coordination services, including an arbitration component, absent consent from both parties must be undertaken keeping these overall considerations in mind.

D. Can the Court Mandate Parenting Coordination Services In a Final Order Pursuant to Section 16.1(6) of the *Divorce Act?*

[123] The father provided me with two cases in which the courts have ordered parties to participate in parenting coordination services, namely the cases of *Brennan v. Lander*, 2020 ONSC 1696 (S.C.J.) and *Misiuda v. Misiuda*, 2021 ONSC 5258 (S.C.J.). In the latter case, MacLeod J. ordered the parties to jointly retain a parenting coordinator "to resolve any disputes between the parties concerning the children and the interpretation of the Parenting Order," thereby giving the parenting coordinator decision-making powers. However, the issue of the court's jurisdiction to make such an order was not raised or discussed in those cases.

[124] As I have stated, one of the questions that must be addressed in determining the court's authority to order parties to participate in parenting coordination is whether the wide-sweeping services that fall within the umbrella of this process constitute a "family dispute resolution process" within the meaning of section 2(1) of the *Divorce Act*, which the court can order the parties to attend pursuant to section 16.1(6) of the Act. Specifically, is this combination of services "a process outside of court that is used by parties to a family law dispute to attempt to resolve any matters in dispute, including negotiation**,** mediation and collaborative law?" It is significant that this definition references processes to "attempt" to resolve any matters in dispute between the parties. This wording reflects that the definition encompasses processes that involve the parties trying to reach a consensus *between themselves* regarding issues in dispute with the assistance of third parties and processes other than court. If the intent had been to include processes that involve third parties making final binding decisions about family law disputes, the word "attempt" would not in my view have been included. Accordingly, on a plain reading of the definition of "family dispute resolution process," I conclude that this concept does not encompass the functions of the parenting coordination roles that involve the parenting coordinator making final binding decisions regarding parenting disputes between the parties, including the arbitration component of the role. By contrast, the other functions listed above are either clearly geared towards assisting the parties to reach agreement between themselves regarding parenting disputes, or they are functions that support the parties in attempting to resolve such disputes. Accordingly, I conclude that parenting coordination services that include the functions set out in paragraph 117

subparagraphs 3(a) to (h) above fall within the definition of a family dispute resolution process in section 2(1) of the *Divorce Act.*

[125] The caselaw supports my conclusion that the court cannot order parties to participate in the binding decision-making aspects of parenting coordination in the absence of consent. The Ontario Court of Appeal has held on many occasions that the court should not make orders that deny parties their fundamental right to access the court by delegating decision-making to third parties (*Strobridge v. Strobridge* (1994), 18 O.R. (3d) 753 (C.A.), at para. 39); *M.(C.A.) v. M.(D.)* (2003), 67 O.R. (3d) 181 (C.A.), at paras. 20-24; *D.v.D.*, 2015 ONCA 409 (C.A.), at para. 92). The Alberta Court of Appeal held as well in *Durocher v. Klementovich*, 2013 ABCA 115 (C.A.), at para. 15, that absent the agreement of the parties or statutory authority, a judge cannot order parties to submit their disputes to arbitration. Counsel for the father argued that I should not give any weight to the *Durocher* case, since it was decided prior to the implementation of sections 7.3 and 16.1(6) of the *Divorce Act* in March 2021. However, the Alberta Court of Appeal revisited this issue in 2022, after those provisions came into effect. In *S.S.G. v. S.K.G.*, 2022 ABCA 379 (C.A.), the court specifically addressed whether a judge can order parties to engage in the binding decision-making aspects of parenting coordination services without consent, and it concluded that they cannot. It endorsed the same reasoning that it had applied in *Durocher*, stating as follows:

> 14 Absent the agreement of the parties or statutory authority, a judge does not have jurisdiction to order parties to submit their disputes to arbitration. As stated by this Court in *Durocher v Klementovich*, 2013 ABCA 115 at para 15:
>
> > ... it is a principle of access to justice that the parties can bring any dispute they may have to the Court. The Court has the jurisdiction to resolve those disputes, and it would be extraordinary to decline to decide, much less to compel the parties to submit to a private adjudicator: *Zacks v Zacks* 1973 CanLII 137 (SCC), [1973] SCR 891 at pp. 906-7; *Mainfroid v Mainfroid*, 1926 CanLII 232 (AB CA), [1926] 3 WWR 617 at p. 618, [1926] 4 DLR 1060 (Alta SC, App Div). The power to grant corollary relief given by the *Divorce Act*, RSC 1985, c. 3 (2nd Supp.) to a "court of competent jurisdiction", does not permit the delegation of that power to private arbitrators. An obligation to submit to arbitration must be founded in a statute or an agreement: *Sport Maska Inc. v Zittrer*, 1988 CanLII 68 (SCC), [1988] 1 SCR 564 at p. 588.

[126] This same reasoning has been applied by this court on several occasions to refuse requests for orders requiring parties to participate in binding decision-making processes outside of court to determine Family Law disputes in the absence of consent from all parties (see *Michelon v. Ryder*, 2016 ONCJ 327 (O.C.J.), per Kurz J.; *Ali v. Obas*, per Shelston J.; *K.M. v. J.R.*, per Pazaratz J.).

[127] I have considered whether the power under section 16.1(6) of the *Divorce Act* to order parties to attend a family dispute resolution process is limited to interim orders. In other words, is the power only available where there is an ongoing court proceeding and the goal is to encourage the parties to resolve the issues that remain in dispute in the litigation? I conclude that the court's authority is not limited to such situations, and that section 16.1(6) also permits the court to make a final order requiring parties to attend a family dispute resolution process in the future to assist them in resolving disputes that may arise relating to issues addressed in the order. Section 16.1(6) is specifically included in the section of the Act called "Parenting Orders," which outlines the various terms that can be included in parenting orders. Clearly, a parenting order can be either interim or final in nature. I note that section 16.1(2) of the *Divorce Act* specifically sets out the court's authority to make an interim parenting order, but that section 16.1(6) which falls right on the heels of that section is specifically **not** limited in scope to interim orders. Accordingly, the power in 16.1(6) is not limited to requiring participation in a family dispute resolution process during the life of the court proceeding. This broad interpretation is the one most consistent with the best interests of children, as it grants the court greater discretion to craft final orders that are responsive to the particular dynamics at play in the family and the unique needs of the child before the court. It also accords with the general policy evident in the *Divorce Act* and in the caselaw in favour of encouraging parties to engage in collaborative family dispute resolution processes outside of the court setting to the extent that it is appropriate to do so.

[128] The analysis does not end here, however. The power in section 16.1(6) of the *Divorce Act* to direct parties to attend a family dispute resolution process is "subject to provincial law." It is therefore necessary to consider whether there is any Ontario law that either precludes the court from making the order contemplated by section 16.1(6) of the *Divorce Act* or places any limits on the court's ability to do so. Turning to this issue, section 33.1(3) of the *CLRA* imposes a duty on parties to a proceeding to try to resolve the matters that may be the subject of an order under Part III of the Act dealing with parenting issues through an "alternative dispute resolution process, such as negotiation, mediation or collaborative law." The *CLRA* does not include a provision similar to section 16.1(6) of the *Divorce Act* specifically authorizing the court to order parties to attend an alternative dispute resolution process. However, it does not preclude the court from making such an order either, and authority to make such an order can be found in section 28(1)(c) of the Act, which grants the court the broad power in the context of an application for a parenting order to make "any additional order the court considers necessary and proper in the circumstances."

[129] Section 31 of the *CLRA* addresses the court's powers to appoint a mediator during the course of an ongoing proceeding in which a parenting or contact order has been requested. This provision must be considered as part of the analysis, since parenting coordination may include mediation services when necessary to assist the parties. Section 31 provides as follows:

Mediation

31 (1) Upon an application for a parenting order or contact order, the court, at the request of the parties, by order may appoint a person selected by the parties to mediate any matter specified in the order. R.S.O. 1990, c. C.12, s. 31 (1); 2020, c. 25, Sched. 1, s. 9.

[130] Section 31(1) clearly establishes that the court can only order the appointment of a mediator at the specific request of all parties in the case. The question is whether this requirement of consensus for mediation from all parties applies where the court makes a final parenting order under the *Divorce Act* and is considering including a term requiring the parties to participate in mediation relating to parenting issues that may arise in the future. I conclude that it does not. Section 31 is included under the heading in the *CLRA* entitled "Decision-Making, Parenting Time and Contact- Assistance to the Court." Its location in this particular section reflects that the purpose of appointing a mediator under section 31 is to assist the parties and the court in reaching a resolution of the issues that remain to be determined as part of the ongoing court case. This point is reinforced by the fact that the parties are required to decide before the mediation begins whether the mediation will be open or closed, and that the mediator must file their mediation report with the court in the form decided upon by the parties (section 31(5)). In *M. v. F.*, the Ontario Court of Appeal held that the court cannot in a final parenting order made under the *Children's Law Reform Act* include a term requiring parties to participate in mediation/arbitration in the future to resolve their Family Law issues in the absence of consent from all parties (at para. 43). However, that case was decided before the amendments to the *CLRA* and the *Divorce Act* respecting the duty of parties to participate in alternative dispute resolution and family dispute resolution processes were enacted, and the proposed order in that case included an arbitration component. The new duty on parties pursuant to section 7.3 of the *Divorce Act* to attempt to resolve Family Law disputes through a family dispute resolution process where appropriate, coupled with the introduction of section 16.1(6) of the *Divorce Act*, reflect a policy shift that mediation can be ordered by the court regardless of consent. The comments of the Supreme Court of Canada in *Colucci* and the Ontario Court of Appeal in *Meloche* encouraging parties to resolve their Family Law disputes outside of court wherever possible support this principle. There is in my view no basis now in policy for inferring that the consensus of parties required under section 31(1) of the *CLRA* for court-ordered mediation in an ongoing parenting proceeding under that Act should be extended as a blanket rule to the context of a final order under the *Divorce Act* directing parties to attempt to mediate future parenting disputes before returning to court. Moreover, there are sound policy reasons for requiring consensus to mediation regarding parenting issues during the course of ongoing court proceedings which do not apply to an order requiring the parties to engage in mediation to attempt to resolve parenting disputes after a final parenting order is made. In the context of ongoing litigation, the parties are on the path towards resolution of the issues on a final basis, and mediation has the potential of creating further delay and cost if it is unsuccessful. By contrast, where there is no current court proceeding, the option of mediation offers a much more realistic possibility of the parties

being able to resolve the issues in dispute more quickly than through court proceedings that have not yet even begun.

[131] I have also considered the *Family Law Act,* R.S.O. 1990, c. F.1, as amended and the *Arbitration Act, 1991* to determine if there are any provisions in either Act which preclude or limit the court's authority to make a final order requiring parties to participate in parenting coordination services. The *Family Law Act* includes provisions that are relevant to the analysis of this issue in relation to the arbitration aspect of parenting coordination services. Section 59.1(1) of the Act stipulates that family arbitrations, family arbitration agreements and family arbitration awards are governed by the *Family Law Act* and by the *Arbitration Act, 1991*. Section 59.4 provides that a family arbitration agreement and an award made under it are unenforceable unless the family arbitration agreement is entered into *after the dispute to be arbitrated has arisen.* The order that I am making in this proceeding will resolve all outstanding issues between the parties, and therefore section 59.4 precludes me from making an order requiring the parties to enter into a parenting coordination agreement at this time that includes an arbitration component. The arbitration provisions of any such agreement would be unenforceable in the absence of a current dispute requiring immediate arbitration.

[132] As I have noted, many of the functions of a parenting coordinator are therapeutic in nature. Sections 16(4)(d) and (5) of the *Divorce Act* grant the court a broad discretion to craft a parenting order that addresses the needs and best interests of children. They stipulate that the court can include terms and conditions in a parenting order to provide for any matter that the court considers appropriate. Section 28(1)(c) of the *CLRA* grants the court a similar broad discretion to include any terms in a parenting order made under that Act that the court considers "necessary and proper in the circumstances." The caselaw relating to these provisions establishes that they should be given a large and liberal interpretation so as to permit the court to include terms in parenting orders that support the best interests of the children who are the subject of the order. The court's discretion pursuant to these provisions of the *Divorce Act* and the *CLRA* has been found to include the right to make orders requiring parties and children to engage in therapy, counselling or other therapeutic services aimed at resolving any problems that may be impacting upon the child's health, safety and overall well-being (*Leelaratna v. Leelaratna,* 2018 ONSC 5983 (S.C.J.); *A.M. v. C.H.*, 2019 ONCA 764 (C.A.); *M.P.M. v. A.L.M.*, 2021 ONCA 465 (C.A.), at para. 35). In *A.M. v. C.H.*, the Ontario Court of Appeal clarified that a party's or a child's ultimate refusal to participate in any therapeutic intervention that a court may order will not necessarily determine whether the court can make the order in the first place. Based on this caselaw, I conclude that sections 16.1(4)(d) and (5) of the *Divorce Act* provide further authority for the court in making a final parenting order to require parties to participate in the non-decision-making components of parenting coordination to attempt to resolve any future parenting disputes before seeking relief from the court. As Audet J. emphasized in *Leelaratna,* at para. 52, "[t]herapeutic orders can be very effective tools to help the family move forward, reduce the parental conflict, and help children transition through the emotional turmoil if their parents' litigation in a healthier way." In that case, Audet outlined the following non-exhaustive list of factors that the court may wish to consider in determining whether to

order parties or children to participate in counselling, therapy or other types of community services (at para. 69):

1. Whether the cause of the family dysfunction is clearly based on expert evidence or otherwise. If not, whether this matters in light of the type of the therapy proposed.

2. Whether there is compelling evidence that the service being proposed would be beneficial to the child.

3. The stage of the proceeding at which the relief is requested, and in particular, whether the request is being made at trial with the benefit of a complete evidentiary record.

4. Whether the party or child in relation to whom the order is sought is likely to voluntarily and meaningfully engage in the services.

[133] To summarize then, my conclusion is that the court has jurisdiction to include in a final parenting order made under the *Divorce Act* a term requiring the parties to participate in parenting coordination services that include the functions set out in paragraph 117(3)(a) to (h) above, regardless of consent from all parties. However, the court cannot require parties to participate in the aspects of parenting coordination that grant the parenting coordinator authority to make final binding decisions about parenting issues. These conclusions strike a fair and reasonable balance between the desirability and importance of encouraging parties to resolve Family Law issues between them through processes and appropriate therapeutic interventions outside of court on the one hand, and the fundamental right of individuals to have access to the court system to resolve their Family Law disputes.

[134] While the court can include a term in a final parenting order requiring parties to participate in parenting coordination services to attempt to resolve future parenting disputes, the term should always be subject to the right of either party to bring a motion at the relevant time for an order that the requirement should not apply based on the prevailing circumstances at that time. The decision as to whether it is appropriate to order parties to participate in parenting coordination services before returning to court will turn on the unique facts and dynamics of every case at the time the order is made. It involves consideration of several critical factors including the level of conflict and quality of communications between the parties in the past and at the time of the order, the nature of their past interactions with professionals, whether there has been any family violence between the parties or towards other family members, whether there are any concerning power imbalances between the parties, and practical considerations such as whether the parties can afford the services. Changes in circumstances over time may render the use of parenting coordination services inappropriate or impractical for any number of reasons. Accordingly, the interests of justice dictate that the parties should be granted a quick and cost-efficient means of revisiting the requirement to participate in parenting coordination services as a precondition to accessing the court in the future, based on the circumstances at the relevant time.

PART 6: ANALYSIS

I. OVERVIEW

[135] As I stated at the outset of these Reasons, upon considering the relevant legal principles outlined above and weighing the extensive evidence adduced at trial, I have concluded that neither of the parties' proposals respecting educational and health-related decision-making in regard to Ch.G. and C.G. completely supports the children's best interests. My view is that the parties should be required to make all reasonable efforts and take all reasonable steps to make educational and health-related decisions respecting the children jointly. They require a clear framework for this decision-making process which provides for reasonable time frames for them to exchange information and their positions on issues. If they remain unable to reach agreement, they will be required to engage the services of a mediator or parenting coordinator, without arbitration powers, to assist them in reaching a consensus.

[136] I am satisfied that the decision-making framework that I am ordering will yield joint decisions that fully support the children's best interests in all but the most exceptional and difficult situations. However, in the rare event that the parties are still unable to reach consensus with the input of a third party professional, I conclude that the mother should ultimately have final say as she has continued to play the leading role in identifying issues, making appointments and communicating with professionals, and she tends to be more open-minded and responsive to the recommendations of professionals involved in addressing the children's needs. I am also ordering exceptions to this decision-making framework in urgent medical situations respecting the children when an immediate decision regarding treatment is required.

[137] I outline below the main factual findings and considerations that have informed my decision on the decision-making issues in this case.

II. THE PARTIES' PARENTING AND CARE OF THE CHILDREN AND THEIR ABILITY TO MEET THE CHILDREN'S DAILY NEEDS

[138] In reaching my decision in this matter, I have considered the history of the parties' parenting and care of Ch.G. and C.G. I heard evidence from the parties, the children's family physician Dr. Profetto, and a teacher from St. Francis Xavier, Ms. Carla Persia, respecting this issue. The collateral information set out in the report of Ms. Bridgman-Acker was also helpful.

[139] I find that until the order of December 18, 2018 was granted, the mother was the primary caregiver of Ch.G. and C.G. Although she only took brief periods of time off work following the birth of each child, she was self-employed, worked from home and was able to arrange her schedule around the children's needs. She was only away from the home a few times a week for work-related appointments. By contrast, the father worked on a full-time basis throughout the parties' relationship. Prior to the move from Woodbridge to Stoney Creek in March 2016, he typically left for work by approximately

7:30 a.m., returning home at approximately 3:30 p.m. He also worked overtime on some evenings. The father was the main financial provider for the family and contributed significantly in that regard, but this role limited his ability to play as significant role as the mother in the children's daily care.

[140] As the children's primary caregiver until mid December 2018, the mother was the parent who typically made all necessary medical, dental, educational and other appointments for the children and who arranged their extracurricular activities. She was the primary contact for Ch.G.'s school and C.G.'s daycare, and she participated extensively in volunteer work and other activities in both settings. She provided excellent care for Ch.G. and C.G., and the children progressed well during the parties' relationship. Although the father spent much less time with the children than the mother did, I find that he participated in their care when he was not working. He was a responsible parent who provided well for his family and did his best to engage in as much hands-on parenting care as he could.

[141] The December 18, 2018 order placed the parties on an equal footing in terms of daily caregiving roles. This transition was challenging for both of them, but I find that overall, they managed quite well. The mother has had the support of the maternal grandparents, who remain very involved in the children's lives to date. The father has also benefitted from the ongoing support of his parents, with whom he lived for a period of time. Both parties have provided the children with safe and stable housing, have worked hard to meet the children's financial needs and have provided excellent daily care for Ch.G. and C.G. They have both engaged Ch.G. and C.G. in enjoyable and fulfilling recreational activities and have ensured that they maintained connections with important family members. As I discuss below, the mother reported concerns regarding the father's interactions with the children and those were investigated by the Society. Although the Society verified concerns that he had harmed Ch.G. on the arm during a visit on July 31, 2018, it was satisfied within a couple of months that he had addressed those issues and there is no evidence that the Society verified any further concerns about the father's interactions or relationship with the children during the remainder of its involvement. My conclusion respecting the events of July 31, 2018, as discussed in further detail below, is that Ch.G. in all likelihood sustained the bruise as a result of the father's efforts to manage her behaviour at the end of the visit that occurred that day.

[142] Upon carefully considering all of the evidence, I find that despite the equal parenting time arrangement that was in effect as of mid December 2018, the mother has continued to be primarily responsible for initiating and maintaining contact with professionals involved with the children and arranging appointments for them. As I will discuss below, she has typically been the first parent to appreciate and begin dealing with challenges that the children have experienced or needs that have had to be addressed. This was evident in her dealings with the father about Ch.G.'s behavioural and academic issues and C.G.'s reading and communication delays. However, the father has also maintained contact with professionals involved with the children, including the children's teachers. While the mother has typically taken the lead in identifying and addressing issues relating to the children, both parties have demonstrated a commitment to researching and understanding

the issues and attempting to resolve them. As I discuss below, they have had different opinions and perspectives on several issues, but they have both responded to them in a dedicated manner according to their genuinely held opinions as to how to best support the children's best interests. Since December 2018, the father has missed occasional appointments for the children due to work commitments, but otherwise he has attended along with the mother for all significant sessions with educational and health professionals.

[143] All of these considerations support both parents having a meaningful part in parental decision-making respecting medical and educational issues. However, the mother's history of primary care and her tendency to respond earlier and more proactively to issues pertaining to the children are factors that weigh in support of her having the ultimate final say on these issues.

III. THE HISTORY OF PARENTAL CONFLICT DURING THE MARRIAGE

[144] Section16(3)(j) of the *Divorce Act* identifies the ability and willingness of the parties to communicate and cooperate with each other and others on matters affecting the child as factors relevant to the best interests analysis. Their ability to cooperate and communicate generally on other issues is not specifically listed in section 16(3)(j), but it is also relevant as it provides evidence as to their capacity to appreciate each other's perspectives and to problem-solve on a general level with each other without conflict

[145] Unfortunately, the parties' relationship during their marriage and for a period of time following the separation was fraught with conflict due to various factors, and they had very little trust in or respect for each other when this proceeding commenced. The mother found the father to be verbally abusive and detached from her during the marriage. She reported to her family physician in Woodbridge, Dr. Doriana Parkin, that she had found evidence of the father visiting live pornography sites, and she worried that he was having an affair. In her application, she claimed that he connected online with other women. In her Form 35.1 affidavit sworn August 23, 2018 and during her interviews with Ms. Bridgman-Acker, she claimed that the father was often controlling and volatile during the relationship. I discuss these allegations in further detail below in discussing concerns about family violence. The father has denied all of these allegations, and he testified that although the parties had some issues during their marriage, they were not significant. Although the mother did not focus extensively on these issues at trial, the evidence when considered in its entirety supports her perspective that the parties had a very troubled relationship, that the father was inattentive to her emotional needs and that there were occasions when he had difficulty managing his anger. During the police investigation that occurred in August 2018 in relation to the bruising on Ch.G.'s arm, Ch.G. described to police having witnessed the father smashing his iPpad onto a countertop. As evidence of the problems in the parties' marriage, the mother contacted the police during the summer of 2015 stating that she was fearful of the father, and the parties had a brief separation at that point due to the seriousness of their marital issues. They attended marriage counselling with Dr. Kristen Adams due to the conflict and the mother's distress in December 2012 and January 2013, and although they did not return,

Dr. Adams felt that they required further therapeutic support due to the significance of the issues that the mother had identified. The mother also initiated psychological counselling with Dr. David Claire in 2014 due to her unhappiness in the relationship, and she had additional sessions with him in 2015 and more regularly starting in 2018.

[146] The father's apparent inability to recognize and appreciate the extent of the mother's emotional distress and unhappiness during the parties' relationship and the part that he played is of concern, as it reflects a history of being unable to fully appreciate and respond appropriately to legitimate issues that the mother has raised with him. It also raises concerns regarding his general respect for the mother and her concerns. It was clear from his evidence at trial that he attributed the mother's sadness and distress entirely to mental health problems. As counsel for the mother noted in her Closing Submissions, his approach of minimizing problems has also been evident at times in regard to issues that the mother has attempted to raise with him respecting the children. The evidence reveals a tendency on his part to respond at first to challenging issues respecting the children by either denying they exist or insisting that they are not serious. As I discuss in further detail below, these were his initial reactions in response to the mother's efforts to address issues respecting C.G. 's developmental progress and Ch.G.'s behavioural challenges at school. These are all factors that support my decision that the mother should have final ultimate decision-making responsibility on educational and health-related matters involving Ch.G. and C.G.

IV. CONCERNS RESPECTING FAMILY VIOLENCE

[147] The mother has made numerous allegations of family violence by the father towards both her and the children over the years. As I have noted, she did not focus on these allegations in her evidence at trial, but Ms. Bridgman-Acker summarized the police records and other collateral information relating to the alleged incidents of family violence in her OCL report. As I have indicated, the parties consented to this report being admitted into evidence. In addition, the father addressed some of these allegations as part of his case. By way of overview, the most significant of the mother' allegations are as follows:

A. The Mother's Concerns Regarding Possible Sexual Abuse of Ch.G.

[148] Police records indicate that in 2013, the mother contacted York Regional Police to report concerns that the father may have sexually abused Ch.G. However, she acknowledged during her interview with police regarding this situation that she had used leading questions when discussing her concerns with Ch.G., who was only two years old at the time. The investigating police officer had concerns about the mother's mental health and her reports about the father's aggression. No charges were laid as the police did not feel that there was sufficient evidence to proceed criminally. The mother made references to these concerns in her application, claiming that she once saw Ch.G. point to her privates and tell her father "tickle me here," and that Ch.G. also started using the word "pussy" during diaper changes and having trouble sleeping around the same time. She did not include in the application the fact that she had reported these concerns to the police and

that no charges had been laid. The mother did not address any concerns about possible sexual abuse of Ch.G. at trial, and therefore I find that these concerns have not been made out on a balance of probabilities.

B. The Mother's Allegation of Physical Assaults by the Father Towards Her in 2013 and 2014

[149] The mother claimed in her application that in 2013, the father became jealous when she began talking with another man while they were at a night club, and that he forcefully slammed her head against the other man's head. In addition, she claimed that in 2014, he threw Ch.G.'s child-sized bench at her during an argument they had in the bathroom of their home. The mother did not address these incidents in her examination in chief at trial, but they were addressed as part of the father's case. The father has adamantly denied the allegations. The mother did not report these allegations to police until July 17, 2018, when she called the police to report the alleged assault by the father towards her on July 12, 2018. The police investigated these allegations in July 2018 and concluded that there was insufficient evidence to lay charges. I conclude that the parties had arguments on the dates in question, but based on the limited evidence before me, I am not satisfied on a balance of probabilities that the father assaulted the mother.

C. The Mother's Allegation of Sexual Assault by the Father Towards Her During the Marriage

[150] The mother also alleged in her application that the father began pressuring her relentlessly to have a third child following the birth of C.G. She claimed in both the application and her Form 35.1 affidavit which is part of the evidence that when she resisted this pressure, he began to make non-consensual sexual advances towards her in the presence of Ch.G. and C.G., including poking her very roughly in her private areas and forcing his hands inside her pants and underwear without her consent. She described feeling shocked, terrified, humiliated and demoralized by these actions. The father has denied these claims. Again, the mother did not address these allegations at trial, and in the face of the father's adamant denial and no further evidence from the mother, I conclude that the allegations have not been proven on a balance of probabilities.

D. The Mother's Allegation of Coercion and Control Regarding the Move to Stoney Creek in 2016

[151] The mother claimed that she did not want to move to Stoney Creek in 2016, and that the father and paternal grandparents were coercive and controlling in compelling her to make the move against her will. Upon considering all of the evidence, I do not accept that she was inappropriately coerced into relocating from Woodbridge to Stoney Creek in 2016. The maternal grandparents placed the parties in an untenable situation after requiring them to leave their home, and the paternal grandparents made a generous offer to the parties to enable them to get back on their feet again financially. I conclude that the parties reached a voluntary and joint decision that the move to Stoney Creek was the most sensible solution to the financial and housing problems that they faced at the time.

E. The Mother's Allegation of Physical Assault by the Father Against Her on July 12, 2018

[152] As I have previously mentioned, the mother has claimed that the parties had an argument in their bedroom on July 12, 2018, and that during this incident, the father grabbed her left arm tightly and shook her. In her application, she alleged that this incident left her paralyzed with fear, and that she contemplated calling the police that day but she was too frightened to do so. She eventually called 911 from the matrimonial home to report this incident on July 17, 2018, despite the fact that the father was over an hour away from the home for work purposes at the time. The police began an investigation into this allegation and the two incidents discussed above that the mother alleged had occurred in 2012 and 2013.

[153] The father acknowledged to the police and at trial that the parties had an argument in their bedroom on July 12, 2018 about the construction of the new home in Stoney Creek, but he has consistently denied having assaulted the mother on that occasion. He alleges that the mother became irate and began yelling at him, stating that she was going to take him for everything that he had. He states that he left the home for a brief period, but then returned to the bedroom and began recording the parties' interactions. He testified that the mother began to yell obscenities at him, started flailing her arms towards him and tried to grab his phone when she realized that he was recording their interactions. He acknowledges that when she did this, he put a hand up to block her from knocking his cellphone out of his hand.

[154] The police records relating to this incident reveal that the police attended at the matrimonial home on July 17, 2018 to obtain information from the mother. At that time, the mother claimed that there was bruising on her arm as a result of the father's alleged assault, but the police did not observe any marks on her arm when she showed it to them. The police contacted the father to discuss the situation, and he was cooperative and agreed not to attend the home pending the outcome of the investigation. The records further reveal that shortly after the police left the home, the mother called them again to insist that they return again to observe the alleged bruise on her arm that she claimed the father had caused. The police returned to the home, looked at her arm, but once again they did not see any marks or bruising. The police also reviewed the recording that the father had made at the time of the events. They heard the mother becoming heightened and verbally aggressive, and they concluded that there was nothing to indicate in the recording that the father had assaulted her. Based on all of this evidence, the police decided not to lay any charges as there was insufficient evidence for them to proceed criminally.

[155] I conclude based on this evidence that the parties had a major argument on July 12, 2018, and that the dispute became mutually physical after the father started recording the incident and the mother attempted to grab his cellphone from him. I find that both parties are equally to blame for this incident, that neither of them was harmed during the dispute, and that they both continued to reside in the home with the children for five days

afterward. The mother's characterization of this incident as being an unprovoked one-sided assault by the father against her was not credible.

F. The Mother's Report of Physical Abuse by the Father Towards Ch.G. on July 31, 2018

[156] As I have previously noted, the mother contacted the Society on July 31, 2018 to advise that she had noticed bruising on Ch.G.'s arm during bath-time, and that Ch.G. had told her that the father had grabbed her and pinched her at the end his visit that day. The mother did not call the father to obtain his version of the events of that day before calling the Society. I note that in her application, the mother made an inconsistent statement, claiming that the father had harmed *both* children. She stated at paragraph 12 that "the Husband pinched and squeezed the children, leaving two (2) bruises on Ch.G.'s arm." A joint police and Society investigation ensued, and a pediatrician from the CAAP team, Dr. Ranganathan, assessed both of the children on August 2, 2018. Dr. Ranganathan's opinion was that the nature of one of the bruises on Ch.G.'s arm raised concern for inflicted harm compatible with Ch.G.'s disclosure.

[157] The police records relating to this alleged incident indicate that the police and the Society interviewed only Ch.G., C.G and the parents. Ch.G. disclosed that during the father's visit at the paternal grandparents' home on July 31, 2018, she and her two cousins were playing a game which involved the children running around and hiding behind a couch. She stated that when the father told her and C.G. that it was time to leave, the children continued to scream, run around and play the game, to which the father responded by grabbing Ch.G.'s arm and pinching her. She explained that her father did not lift her up or drag her to the car, and that she could not recall how her father had pinched her. In addition, she relayed that both parents spanked her and C.G. on the "arm or butt" when they misbehaved. C.G. stated during her interview that she did not see the father do anything to Ch.G. during the visit on July 31, 2018.

[158] The father has adamantly denied having pinched either Ch.G. or C.G. on July 31, 2018. He stated in his Answer and Claim that Ch.G. had fallen and hurt herself while playing with other children and running up and down a hill on July 29, 2018 during a family party, and that she had expressed concern to him at that time that the mother would be upset that she had hurt herself during his parenting time. He relayed this information to the police during his interview on August 17, 2018. He testified that the Society worker, Ms. Jessica Wright, had informed him that according to Ch.G., the alleged pinching incident had occurred when they were leaving the paternal grandparents' home, on the way to the car. He stated that he had offered to show Ms. Wright video surveillance taken from 4 surveillance cameras installed at the grandparents' home, which clearly indicated that he had not grabbed or pinched Ch.G. He also expressed concern that the Society and police had not interviewed his parents, his sister, his brother-in-law or his sister's children, who were all at the home with him and the children on July 31, 2018.

[159] The Society verified that the father had caused physical harm to Ch.G.'s arm during this alleged incident, but the police did not lay any criminal charges against the father. The

investigating officer concluded that there was insufficient evidence to proceed criminally, that the incident had occurred while the father was attempting to manage Ch.G.'s behaviour, and that there was no evidence that he had intended to inflict harm to the child. He highlighted that Ch.G. could not recall how her father had allegedly pinched her, and that C.G. did not see her father doing anything to hurt Ch.G. during that visit. He had concerns about the messaging that had been given to the girls about the incident, the mental health of both parents, the fact that the allegation had arisen during a high conflict separation, and that both parents acknowledged that they had been using physical discipline towards the children. Finally, it was his clear impression that both parents loved the children, and that the children loved both parents very much.

[160] Neither party called the investigating police officer or any Society workers to testify at trial respecting the investigation into the events of July 31, 2018. However, having carefully reviewed all of the evidence adduced at trial relating to those events, I am not satisfied that the father deliberately inflicted harm to Ch.G. on that day. Rather, the evidence supports a finding that Ch.G., C.G. and their cousins were playing a rambunctious game that day, that the father intervened to tell Ch.G. and C.G. that it was time to get ready to return to the mother's home, and that Ch.G. misbehaved as the father tried to get her ready to leave. I find that the father took her arm to redirect her so that they could leave. While this may have resulted in bruising to Ch.G.'s arm, I conclude that any such injury during the incident would have been unintended, inflicted without malice, and essentially an unfortunate outcome of the father's efforts to manage Ch.G.'s behaviour and ensure that the children were returned to the mother's care on time. In addition, I note that the father was completely cooperative with the joint Society/police investigation and that he had followed through with the Society's recommendations that he engage in counselling and participate in a parenting course.

G. The Mother's Additional Allegations of Physical, Verbal and Emotional Abuse by the Father Towards the Children

[161] The mother made numerous other allegations of physical and emotional abuse by the father towards the children in her application and Form 35.1 affidavit sworn August 23, 2018. She made general comments about the father being violent towards them and threatening to strangle them and break their arms while disciplining them. At paragraph 25 of the application, she alleged that he grabbed the children by the back of their necks and by their arms until they turned red. In addition, she claimed that in April 2018, she had observed the father bending Ch.G.'s finger backwards, and that she had seen him pour cold water on the children as a form of discipline. The mother did not raise any of these allegations during her evidence at trial. Her counsel specifically asked her if she had any disagreements with the father about parenting during their relationship, and she simply responded that they had different approaches to discipline, that he would spank the children and that he tended to threaten them more than she did. It is significant that during the joint Society/police investigation of the children that occurred in August 2018, the only disclosures that the children made about being physically disciplined by the parties related to the alleged pinching on July 31, 2018 and both parents hitting the children on the arm and the buttocks as a form of discipline. The father has consistently

denied having ever been physically, verbally or emotionally abusive towards Ch.G. and C.G. I find that the various other serious allegations that the mother raised in her application about physical, verbal and emotional abuse by the father towards the children have not been proven on a balance of probabilities.

[162] In approximately December 2019, the mother contacted the Society once again to raise concerns that the father had hit C.G. with a hairbrush. Neither of the parties called any Society workers as witnesses at trial to address the agency's response to this allegation. The mother acknowledged at trial that she had made this report to the Society without first asking the father for his version of what may have occurred. She was evasive on cross examination as to whether the Society ever verified this concern, but finally acknowledged that it did not. The evidence does not support a finding that the father ever hit C.G. with a hairbrush.

[163] The mother was cross examined about whether she had at some point made another allegation to the Society that the father had slapped C.G. on the face. She claimed that she could not recall, which I did not find to be credible at all having regard for her excellent recall on all other issues and the level of her attention to matters pertaining to the children. However, there is no evidence that the Society ever verified any concerns about the father slapping C.G.

[164] Finally, the mother contacted the Society again in 2020 to report concerns that the father was taking the children to his workplace. She also made a complaint to the Society around that time that the father was not taking appropriate steps to address concerns regarding Ch.G.'s behaviour at school and the possibility that she was suffering from ADHD. Again, she did not contact the father before making these reports to discuss the concerns about him taking the children to his work and to inquire if and how often this was occurring. I find that he only brought them to work with him on one occasion for no more than 3 hours, to address an urgent work-related matter, that he ensured that they were properly fed and supervised, and that he had taken the children to work with him in similar situations during the parties' relationship without objection from the mother. With respect to the concerns respecting Ch.G., as I discuss in further detail below, the parties had different opinions regarding this issue, but they were both actively working together with school and medical professionals at the time to address the issues.

H. <u>The Mother's Allegations of Harassment and Stalking by the Father and Others Following the Separation</u>

[165] The mother also made allegations that the father engaged in harassing and stalking behaviour towards her following the parties' separation on July 17, 2018. In her application, she claimed that she took the children to Woodridge because the father was stalking her and had recruited his friends to do so as well. She went so far as to suggest that he had arranged with one of his friends to use a vehicle other than his own so that the friend could follow her unnoticed. She also claimed that the father had entered the family home, removed all of the interior locks that she had installed to protect herself and the children from him, and had placed a large stuffed dog on the couch to taunt her. The

father has denied all of these allegations, and upon carefully considering all of the evidence adduced at trial, I find that they have not been substantiated.

[166] The mother contacted the police on August 16, 2018 while she was at the matrimonial home to report concerns that the father was outside the home watching her from his vehicle. She did not call the father to inquire as to why he attended the home that day. The police called the father to investigate the situation. I find that the mother had moved with the children to Woodbridge in early August, 2018, and that she attended the home on August 16, 2018 to retrieve some belongings. The father had concerns about the wellbeing of the family dog, because he became aware that the mother had left him in the matrimonial home. While the mother claims that she had made arrangements for the maternal grandfather to care for the dog, the father was not aware of these arrangements and was attending the home from time to time to check on the dog and give him food and water. The father attended the home on August 16, 2018 for this purpose, and noticed that the mother was present in the home. He therefore remained in his vehicle to avoid an interaction with her and circled the neighbourhood while waiting for her to leave. I find that he acted responsibly in doing so, and that he did not engage in stalking behaviour towards the mother.

I. The Concerns Regarding the Mother's Litigation Conduct and Alienating Behaviour from July to December 2018

[167] The father argues that the mother engaged in a deliberate and inappropriate course of conduct from the weeks leading up to the separation until the order of December 18, 2018 was granted with a clear goal of giving her an advantage in the Family Law litigation, supporting her plan to relocate with Ch.G. and C.G. to Woodbridge, undermining his relationship with the children and his role in their lives and solidifying her role as the permanent sole decision-maker and caregiver of the children. Counsel for the mother acknowledged in Closing Submissions that the mother had approached the litigation too aggressively at the outset of this case, had made a number of errors in the manner in which she had approached various situations and had reacted inappropriately in many ways. However, she suggested that much of the responsibility for all of this was attributable to the advice that she had received from her former legal counsel. She submitted that the decision of Lafrenière J. was an eye-opener for the mother, and that the mother has learned a great deal since that time through her work with her new counsel and the parenting coordinator Ms. Franchi-Rothecker about how to respond appropriately to issues arising from the separation and regarding the children.

[168] Having carefully reviewed all of the evidence relating to the events that occurred from July 2018 until mid December 2018, I agree with the father's characterization of the mother's behaviour during that period of time. When I consider her actions, responses to events and overall conduct during this time-frame, I find that it was psychologically abusive towards the father and the children, and that it constituted a pattern of coercive and controlling behaviour on her part towards them. The fact that the mother now acknowledges that her behaviour was in many respects inappropriate is certainly relevant to my overall analysis and conclusions regarding the decision-making framework that is

currently in Ch.G.'s and C.G. 's best interests. Furthermore, I agree with Ms. Guarasci that the mother's overall conduct in relation to the litigation and her appreciation of the father's role in the children's lives changed significantly after Ms. Guarasci became involved, and I give much credit to Ms. Guarasci's positive guidance and influence in that regard as well as the mother's good judgment in accepting that guidance. However, the significant concerns about the mother's conduct from July 2018 until mid December 2018 cannot be minimized and swept under the carpet in my analysis, because they provide a snapshot of the type of behaviour that the mother was capable of when she was left unchecked by a court order and by experienced Family Law professionals involved with the family. Furthermore, I do not accept the suggestion that her behaviour was primarily attributable to poor advice and direction from her former counsel. The mother is an intelligent woman; she was the client and had ultimate control regarding the direction that the litigation took. She had an experienced Family Law lawyer who relied on the information that she provided to her at the time, much of which has not been substantiated on the evidence. Responsibility for the mother's conduct ultimately must rest completely and squarely with her.

[169] My concerns respecting the mother's conduct from July 2018 until mid December 2018 that support my finding of family violence by her her towards the father and the children in the form of psychological abuse and a pattern of coercive and controlling behaviour are as follows:

1. She made a serious allegation of assault by the father on July 12, 2018 that I have found to be unsubstantiated. The manner in which she reported this alleged assault to the police had the effect of cloaking the claim with a heightened sense of urgency. The alleged incident occurred on July 12, 2018 and the parties both remained in the home together for five days afterward, yet she contacted the police on July 17, 2018 by calling 911 and she reported that she was immediately fearful of the father harming her again. The father was over an hour away for work purposes at the time. She went to significant lengths to have the police document the existence of bruising on her arm as a result of this incident, which the police did not see.

2. She contacted the Society right away about the bruising on Ch.G.'s arm to report concerns about abuse by the father, without first calling the father to discuss the situation with him and getting his version of what had occurred that day. This course of action resulted in a joint police/Society investigation, a one month period of no face-to-face contact between the father and the children and a significant curtailment of the father's parenting time from August 2018 until mid December 2018. I have found that the father was not physically abusive towards Ch.G. on that occasion. I also conclude that this entire unfortunate situation could have in all likelihood been averted had the mother simply obtained all of the relevant facts from the father and his family members who were present during the visit on July 31, 2018.

3. Immediately after reporting the alleged assault towards Ch.G. to the Society and the police on July 31, 2018, she relocated with the children to Woodbridge without the father's knowledge or consent, and without any legal authority to do so.

4. She contacted the police on August 16, 2018 to report concerns that the father was stalking her outside of the family home, without contacting the father to discuss the reasons for his presence. I have found that she did not have any reasonable grounds for concern about her safety at that time.

5. She commenced her application and filed her urgent motion on very short notice to the father and his counsel, for a date that her counsel had not canvassed in advance with his counsel to determine her availability. As I have indicated, this motion included comprehensive claims, including an order permitting her to relocate the children's primary residence on a temporary basis to Woodbridge. She and her counsel gave the father only one day's notice of her request to move with the children to Woodbridge before serving them with this motion. In addition, she rejected the father's request through his counsel that the case be conferenced before the urgent motion, and for an adjournment of the motion so that he could prepare, despite the fact that the father had agreed to supervised parenting time, to the mother having interim exclusive possession of the matrimonial home and to communicate with the mother only through counsel. Significantly, the mother's counsel had written to the father on July 23, 2018, suggesting that the parties participate in a Collaborative Family law process to resolve the issues between them, and she did not make any reference to the mother's intention to relocate to Woodbridge at that time. The mother's motion seeking this serious relief four weeks later, without giving the father sufficient time to respond and refusing to agree to an adjournment therefore reflected a litigation-ambush mindset at that time.

6. She made numerous inflammatory comments in her application and her Form 35. 1 affidavit. In addition, as I have discussed, she made several serious and shocking allegations of stalking and abuse by the father towards her and the children, many of which she did not even address at trial or with Ms. Bridgman-Acker during the OCL investigation. I have found that most of those allegations have not been substantiated. The contents of her application and her Form 35.1 affidavit painted a terrible picture of the father that was in my view extremely inaccurate, but which had the "shock value" effect of giving her an immediate litigation advantage in the court proceeding.

7. I find that the mother made it exceedingly difficult for the father to maintain meaningful and reasonable contact and parenting time with Ch.G. and C.G. from July 31, 2018 until mid-December 2018. In this regard, I note as follows:

    a) As I have stated, the Society directed that the father could have FaceTime calls with the children when its child protection investigation began in early

August 2018. The mother insisted that these calls be limited to once per day, and on September 27, 2018, she unilaterally ended his FaceTime calls with the children on Thursdays, without providing him with an explanation. The father later learned that the mother had enrolled the children in a LEAF program which focussed on supporting children and women who have experienced family violence, without his knowledge or consent.

b) In early August 2018, the Society advised the parties that it supported the commencement of face-to-face parenting time for the father with Ch.G. and C.G., supervised by any individuals agreed upon by the parties. I find that the mother created significant roadblocks to reaching agreement on proposed supervisors, and that her goal was to have visits supervised at an agency rather than in a more natural setting by family members or friends. I note that she specifically requested that the father's parenting time be supervised by an access centre in her application, despite the Society's support for supervision by family members or friends. Her list of proposed supervisors included only her family members and an elderly aunt and uncle of the father. She did not agree to the paternal aunt supervising visits, despite the fact that the aunt had a close relationship with the children and had been very involved with them throughout their lives. She also rejected three of the father's friends as possible supervisors. She eventually agreed to V.U. and A.S. supervising visits but initially insisted that the visits occur in Stoney Creek. This placed obstacles in the way of V.U. supervising, since he resided in Woodbridge at the time and the distance to travel to Stoney Creek was significant. The mother subsequently raised objection to A.S. acting as a supervisor in October 2018.

c) By early October 2018, the Society concluded based on the father's cooperation with the investigation and its recommendations and the positive feedback from supervisors that the father's parenting time could resume to the arrangements that had been in place prior to the investigation, without the need for supervision. The father had enjoyed reasonable and liberal parenting time, and therefore he requested equal time according to a 2-2-3 schedule. However, the mother initially responded to this request by proposing only two hours on Sunday each week, and she insisted on maintaining the supervision requirement. This proposal would have resulted in the father seeing the children less frequently each week, as he had been seeing them twice weekly prior to that time. She eventually agreed to visits every Sunday for 4 to 5 hours, but she did not alter her position regarding the supervision requirement.

d) The mother continued to resist meaningful parenting time for the father by the time of the father's parenting motion in early November 2018, despite the Society's position on the issue. She agreed to remove the need for supervision, but she took the position that the father's parenting time should

be increased on a gradual basis, and that any increase should be conditional on him attending anger management and parenting programs.

e) Finally, the mother did not communicate important information about the children during this period of time. By way of example, she did not advise the father about the date and details respecting Ch.G.'s first communion, and only learned about the timing and details of this event through his sister, whose daughter was in the same grade as Ch.G. and was having her communion at the same time.

f) Finally, I note that she was resistant to providing the father with her new address where the children would be living with her after the matrimonial home sold in 2019. The father's counsel had to send several requests to her counsel during the fall of 2019 to obtain this information. She did not provide it until November 2019, even though there were no concerns from December 2018 until November 2019 regarding the parties' interactions with each other.

[170] Turning to the factors set out in section 16(4) of the *Divorce Act,* I find that the mother's overall conduct as summarized above caused the father significant emotional distress, and that it had the effect of seriously undermining the relationship between the father and the children. It spanned over a period of five months, during a time when all family members were already struggling with the fallout of the parties' separation. I am satisfied that the children had a loving relationship with the father, and that the mother's actions in making many unsubstantiated allegations about him and undermining that relationship posed a significant risk of emotional harm to the children.

[171] On a positive note, as I have indicated, the mother's litigation conduct took a positive turn for the better after Ms. Guarasci and Ms. Franchi-Rothecker became involved. She has complied with the parenting time arrangement that was implemented in December 2018, and the parties have from time to time agreed to adjustments to the schedule in order to accommodate each other's needs and wishes. As I discuss in further detail below, I find that the mother's communications with the father about parenting issues have been respectful and that she has made reasonable efforts to make decisions jointly with him. Ms. Franchi-Rothecker testified that during the early period of her involvement, the mother sometimes demonstrated a dismissive attitude towards the father and inappropriate frustration in responding to issues and concerns that he raised. However, she emphasized that the mother made considerable progress in addressing these concerns as a result of her input and guidance in dealing with the father, and that this had had a positive impact on the parties' co-parenting efforts.

V. THE PARTIES' ABILITY AND WILLINGNESS TO SUPPORT EACH OTHER'S RELATIONSHIPS WITH THE CHILDREN AND THEIR ROLE IN THE CHILDREN'S LIVES

[172] Section 16(3)(c) of the *Divorce Act* directs the court to consider the ability and willingness of the parties to support the development and maintenance of the children's relationships with each party. This provision represents a legislative acknowledgement of the emotional harm that parental alienation causes for children. The discussion above addresses my concerns about the mother's ability and willingness to support the development and maintenance of the father's relationship with Ch.G. and C.G. While she has made significant progress in this area since July 2018, there is still cause for concern about her ability to maintain these positive gains in the future without ongoing professional support. In this regard, I note that during the trial, the mother presented as visibly annoyed and exasperated at various points during the father's evidence when he was attempting to explain the reasons for his approach and views on various issues. Her reactions included sighing heavily, rolling her eyes and speaking to her counsel in an agitated manner during the father's testimony. I eventually had to caution and redirect her about her conduct because it was distracting, and I was concerned that it was impacting the father's comfort level in testifying. From an objective standpoint as the trial judge, her reactions were not reasonable having regard for the nature of the father's testimony at the relevant times. In addition, on cross examination at trial, the father's counsel asked the mother if she agreed that the father cares about the children's wellbeing. The mother had great difficulty answering this question. There was an extremely long pause before she responded by stating "that is hard to respond to." After another long pause, she stated "I do at times." I found this response to be concerning, because as I elaborate upon below, the parties have agreed upon the vast majority of the significant issues that they have had to address regarding the children. The issues that have caused them challenges have been the most complex ones. Moreover, as I will discuss further, the challenges that the COVID-19 pandemic caused, including the closure of schools, in-home education and loss of socialization opportunities for the children, rendered it exceedingly difficult to obtain a solid understanding of the nature, cause and severity of the children's problems, which in turn posed special challenges in terms of parental decision-making. While the parties have had different opinions on some challenging issues, it is clear from an objective standpoint that they both genuinely care about the children's wellbeing and have always been guided in their positions and decisions about Ch.G. and C.G. by their genuinely held views about what was best for the children. The father was able to acknowledge this point in regard to the mother at trial, despite his disagreement with her on some important issues. The fact that the mother was unable to do so raises concerns that she still harbours fundamentally negative sentiments about the father's character and his motivations in regard to Ch.G. and C.G. which could impact her ability to respect his role and influence in their lives under a purely sole decision-making framework.

[173] It is important to emphasize that the mother's difficulties in this area are not in my view motivated by any malice or ill will on her part; rather, they are attributable to her strong conviction that she does a better job of assessing the children's best interests than the

father. I find that she is indeed very competent at assessing the children's best interests and taking the necessary action to meet their needs. However, the father's input and the steps that he has pressed for in relation to some issues have in my view been instrumental in achieving the best possible results, and the mother does not in my view always appreciate this point.

[174] By contrast, I find that the father is fully able and willing to support the development and maintenance of Ch.G.'s and C.G. 's relationship with the mother, as well as the mother's role and influence in the children's lives. Despite the concerning nature of the mother's conduct following the separation, he has never pursued sole decision-making or primary residence of the children, but rather has opted to advance claims for joint decision-making and equal parenting time. While he has had different views than the mother on some important issues, he has worked through those differences with her respectfully and without any evidence of disdain for her. He had no difficulty acknowledging at trial that the mother is an excellent parent who loves Ch.G. and C.G. dearly and genuinely cares about their wellbeing. I heard evidence from his friends, A.S. and M.S., and they both testified that they had never heard him make any negative comments about the mother or her parenting in their presence. There is no evidence to suggest that he has done so. These are all factors and considerations that support my conclusion that the father should have a significant role in the decision-making process respecting the children on health-related and educational matters.

VI. THE PARTIES' ABILITY AND WILLINGNESS TO COMMUNICATE AND COOPERATE WITH EACH OTHER AND OTHERS TO ADDRESS THE NEEDS OF THE CHILDREN

A. Positive Evidence Respecting the Parties' Ability to Communicate and Cooperate

[175] Section 16(3)(i) of the *Divorce Act* specifically identifies the parties' ability and willingness to communicate with each other and with others on matters affecting the child as a consideration that the court must weigh in carrying out the best interests analysis. While this factor is relevant to the court's analysis respecting both decision-making and parenting time, it is particularly important in regard to the decision-making issue.

[176] I have made references throughout these Reasons to the parties' difficulties in addressing some issues pertaining to the children's education and health, which I discuss in further detail below. However, in addressing the ability and willingness of the parties to communicate and cooperate on issues respecting the children, it is important to evaluate the issue from a "big picture" perspective to obtain a fair and balanced picture of the parties' overall track record on this front. The caselaw is clear that the existence of difficulties in addressing some issues does not necessarily preclude an order for joint decision-making if the parties' overall history of co-parenting has been generally successful. A deep-dive into the problematic areas of co-parenting, the causes of those problems and all relevant contextual factors that may be relevant to the challenges is necessary in order to craft the decision-making framework that is best suited for the

family among the numerous possibilities, from an order for sole decision-making at one end of the spectrum to an order for straight joint decision-making at the other end.

[177] In this case, the overall picture that emerges from the evidence is that the parties started from an extremely high conflict situation from July 2018 until December 2018, but from that point on they made significant progress in terms of their ability to communicate and cooperate respecting parenting issues. They have clearly had difficulties in some areas of decision-making, but these problems should not overshadow the positives. In regard to the high conflict around the period of the separation, some of the responsibility lies with the father, based on his history of difficulties during the marriage in managing his anger, his inability to maintain a positive emotional connection with the mother and his tendency to minimize and give inadequate attention to the problems in the parties' relationship. However, the lion's share of the responsibility for the exponential increase in the conflict between the parties leading up to the separation and until mid December 2018 lay with the mother, based on her conduct during that period of time which I have already discussed at great length. The mother was not focussed on cooperating and communicating meaningfully with the father about parenting issues during that time period, but rather embarked on a path of attempting to secure her role as the primary decision-maker and caregiver, with the goal of relegating the father to a marginal role in the children's lives. As for the father, I find that he was exceedingly cooperative and communicative with all professionals who became involved in response to the high conflict situation that developed. He voluntarily left the matrimonial home when the mother accused him of assault on July 17, 2018. He cooperated fully with the police in the criminal investigation that ensued as a result of the mother's allegations of assault. He also cooperated completely with the Society and police during their subsequent investigation into the allegation that he had caused physical harm to Ch.G. He was compliant with the Society's recommendations at the conclusion of its investigation regarding his parenting time and services to address the Society's concerns. When the mother commenced this application, he voluntarily agreed to give her exclusive possession of the matrimonial home, to have supervised parenting time until the Society investigation was completed and to only communicate through counsel. He also consented to a temporary order for child support, and there is no evidence that he failed to comply with that order.

[178] Notwithstanding their starting point of extreme high conflict in 2018, the parties have generally worked quite well together and with professionals since mid December 2018 to address most of the issues arising from their separation. The positives in terms of their ability to communicate and cooperate with each other and others include the following:

1. They have been using Our Family Wizard ("OFW") as the main method of communicating with each other, and this has worked well for them. They have communicated regularly and frequently about issues pertaining to Ch.G. and C.G. Many of their communications were admitted as evidence at trial. Even on the issues that posed problems for them in their efforts to co-parent the children, their communications were generally reasonable and respectful. Although they did express frustration with each other from time to time, there is no evidence that

their communications were ever marred by derogatory comments, insults, name-calling, threats, or digging up past issues to fuel the conflict. In regard to inappropriate overtones of frustration in the messages, as I discuss in further detail below, I find that this problem was overall more evident on the mother's side than with the father.

2. There has not been any further police involvement since July 2018 to address concerns about conflict between the parties.

3. Both parties have attended many appointments relating to the children together since December 2018. When one of them has been unable to attend an appointment, the other has followed up in providing information about the issues that were discussed and recommendations made during the appointments. As I will expand upon below, the father was inappropriate in his interactions with a pediatrician, Dr. Oyebola, during one medical appointment respecting Ch.G. on February 6, 2020. However, I find that the parties have both been respectful and calm with each other during the appointments they attended together. In addition, although the father did not agree with some of the recommendations that medical and educational professionals have made regarding the children, he has been respectful and appropriate during all other interactions that he has had with professionals who have been involved with Ch.G. and C.G.

4. The parties were able to resolve all of the Family Law issues arising from their separation apart from decision-making on health and educational issues with the assistance of their counsel and a mediator. These included complex property-related issues involving the paternal grandfather.

5. In relation to parenting issues specifically, they reached agreement on the difficult issues of regular and holiday parenting time, rights of first refusal regarding parenting time, child support, benefits coverage and life insurance designations to address child support needs in the event of death, the children's religious upbringing and ongoing attendance at Catholic schools, how to manage the children's extra-curricular activities, travel with the children, and possession and sharing of the children's government issued documents. They have not had any difficulty altering the parenting time schedule to accommodate special events and occasions with one party, so that the children can benefit from those special times.

6. The parties agreed to participate in counselling for Ch.G. with Dr. Chohan when the Society recommended counselling, and they attended several sessions together with Dr. Chohan during the spring of 2020. Although the Society also recommended counselling for C.G., they both agreed after consulting with Dr. Chohan in 2020 that play therapy would be the most appropriate service for C.G., but that she was too young at that point to begin that type of therapy.

7. The father has executed travel consents in a timely manner to permit the mother to travel internationally with the children several times, without any difficulty.

8. The parties have been civil and respectful with each other when they have had face-to-face contact. They have not exposed Ch.G. and C.G. to any parental conflict on those occasions.

9. The parties jointly retained Ms. Franchi-Rothecker during the course of these proceedings to assist them in navigating the challenges that they experienced in dealing with some of the parenting issues. Ms. Franchi-Rothecker has had extensive involvement with them since March 2021 in their attempts to work through parenting issues together. Her overall impressions of the parties are that they both had difficulties working together on challenging issues at the outset of her involvement, for different reasons, but that they also both made significant gains in this regard as her work with them progressed. With respect to the mother, she explained that she was initially somewhat dismissive of the father and tended to disregard his input on issues. Her impression was that this attitude was attributable to general fatigue and frustration in attempting to resolve the Family Law issues. However, Ms. Franchi-Rothecker felt that with the coaching, education and guidance that she provided, the mother's attitude towards the father improved; she became more respectful towards him, more patient in listening to his input and more willing to consider and process his views on issues before taking a firm stand on matters. In regard to the father, Ms. Franchi-Rothecker's impression was that he demonstrated a general sense of resistance towards the mother and parenting coordination services at the outset, but that this came from a place of fear. She shared her view that this fear was completely understandable based on the events around the time of the separation and leading up to her involvement, which caused him to feel diminished and marginalized in terms of his role in the children's lives. However, she emphasized that there had been positive changes in the father's attitude towards the mother and the idea of parenting coordination as well. In particular, she felt that he acquired a sense of trust in the parenting coordination process, engaged meaningfully and appropriately with her including responding to her and providing necessary information in a timely manner, and was able and willing to consider the mother's views in an effort to reach consensus on difficult parenting issues. She noted that the father was at times unable to pay invoices when they became due, but that she worked out payment arrangements with him. On one occasion, the mother paid the father's portion of an invoice so that she could continue with her services, but I find that the father reimbursed the mother for this amount when he was able to secure the funds to do so.

10. Although the issues of ADHD medication for Ch.G. and COVID-19 vaccination for the children proceeded to arbitration with Ms. Franchi-Rothecker, and the arbitral awards were in favour of the mother's position, both parties worked cooperatively, respectfully and diligently with Ms. Franchi-Rothecker in addressing the issues. The father accepted the arbitral decisions and cooperated in implementing them.

11. As I discuss further below, notwithstanding the father's initial resistance to Ch.G. taking medication to address her ADHD issues, he agreed in the fall of 2022 to a slight increase in the dosage of her medication when Dr. Profetto made this recommendation.

12. In addition, both parties agreed and consented to Ch.G. working with a Child and Youth worker at St. Francis Xavier to receive support in addressing her challenges.

13. Finally, as I discuss in further detail below, although the father has in the past resisted contributing to the cost of Oxford tutoring for C.G., he committed in the fall of 2022 to contributing equally to this expense for one year after receiving guidance from Ms. Franchi-Rothecker on the issue.

[179] The mother raised some examples of problems regarding the parties' ability to cooperate and communicate on issues regarding the children which I conclude do not raise significant concerns in this area. First, she claimed that the father did not cooperate with her during the fall of 2019 in attempting to address problems that C.G. was experiencing at the time with skin irritation in her private areas. The parties both addressed this issue with Dr. Profetto during an appointment with him, and further to Dr. Profetto's recommendations, the mother had purchased special soap for C.G. She claimed that the father did not follow suit, and that she believed he was not using the soap that she had packed in C.G. 's bag. However, I find that the father also purchased several sensitive skin soaps for C.G., and that he used the soap that the mother sent as well but sent it back to her home on the understanding that she expected him to return it for her parenting periods.

[180] The mother also raised concerns that the father did not communicate with her when the children were not well during his parenting times. I have considered the evidence respecting these concerns, and I find that the father responded promptly when the mother messaged him about health-related issues and that his explanations were reasonable. For instance, with respect to concerns that the mother raised with him on October 22, 2019 that C.G. had returned to her care with a rash, fever and runny nose, he explained that he had noticed the rash, that C.G. had told him it was due to her having played on some swings on her stomach, and that he had not observed any other concerns regarding C.G.'s health during his parenting time. The mother responded to the father's message curtly and insisting that the father had sent C.G. to school ill. On November 9, 2019, the mother messaged the father claiming that he had returned C.G. to her care without advising her that she was ill and was suffering from diarrhea. She alleged that C.G. had told the father that she had diarrhea during his parenting time, and that someone had directed Ch.G. to help clean her up when she had an accident. Again, the father responded promptly to this message and explained that C.G. had been fine during his parenting time and had not in fact had any diarrhea accidents. Once again, the mother replied to the father in a short and frustrated manner, insisting that C.G. had been returned to her ill multiple times with no communication from the father. I am not satisfied that she has made out this serious allegation on a balance of probabilities. The

father testified that the parties were usually able to work through medical issues pertaining to the children in a respectful and effective way. In support of his perspective on this issue, he adduced as evidence several messages that the parties exchanged on September 25, 2020, which demonstrate that the parties were able to communicate and cooperate very well in responding to concerns that the father raised about a lump that had developed on Ch.G.'s finger.

[181] The mother raised concerns with the OCL Clinical Investigator Ms. Bridgman-Acker and at trial that the father failed to purchase some necessities for the children for his parenting time, including school uniforms, sporting equipment and clothing. I find that there were some challenges in this area early on when the shared parenting time regime was implemented, because the father felt that items that the parties had purchased together during the marriage should be shared in order to minimize expenses. However, the parties were able to work through issues relating to the children's belongings reasonably well after that point. With respect to school uniforms, the father purchased separate uniforms for his parenting time, but some conflict arose respecting the return of uniforms from one home to the other. At trial, the father clarified that this only became an issue on Professional Activities Days ("PA days") and "civies days," meaning Thursdays and Fridays when the children were not required to wear a uniform at school, and the children therefore transitioned into his care without the uniforms that the mother purchased for them. He would therefore return the children to school on the following school day with uniforms that he had purchased, which he claimed the mother was not subsequently returning to him, and this resulted in him being down a set of uniforms. The parties obtained helpful input and guidance from Ms. Franchi-Rothecker around those issues. Although they continued to have some challenges in implementing the recommendations that Ms. Franchi-Rothecker made, the difficulties in this area are in my view fairly typical of those that arise in shared parenting situations and do not give rise to significant concern about inappropriate parental conflict.

[182] The mother raised additional concerns that the father frustrated her attempts to arrange extra-curricular activities for the children in early 2020. Having carefully considered the evidence respecting this issue, I find that the father responded promptly to her messages on this issue, and that he raised legitimate practical concerns about the timing of the proposed activities during the week as well as concerns about the children needing to focus on completing their homework on week nights. In regard to weekend activities, he advised the mother that he engaged the children in many activities during his weekend time with them including skiing, rock climbing, ice skating, bowling and taking them to activity centres. With respect to her request to enroll them in gymnastics classes that would occur in part on weekends, he asked whether there were any day passes available for the gymnastics program. The mother did not respond to this request and replied simply by stating that the girls wanted to participate in an extracurricular activity as they always have, and that it was about team and building skills. The mother's attempt at trial to characterize the father as uncooperative on this issue was in my view unjustified. The perspectives of both parties were entirely child-focussed and had merit. However, the father's concerns about organizing formal extracurricular activities during the week were particularly well-founded having regard for the difficulties that Ch.G. and C.G. were

experiencing at the time at school, as I discuss in further detail below. I am satisfied that the father was engaging the children in a wide variety of enjoyable activities that supported the children's overall development during his weekend time, and that he attempted to reach a reasonable compromise with the mother regarding her proposal that they engage in gymnastics by suggesting that they do so on a day-pass basis. The mother's frustration with the father respecting these issues reflect her inability at times to accept the father's input on parenting issues, and to persist in seeing him as being self-focussed rather than child-focussed when his positions have been based on his honestly held views respecting the children's best interests.

[183] All of these considerations have influenced my decision that both parties should have a meaningful role in making significant parenting decisions on health and educational related issues.

B. The Parties' Difficulties in Addressing Issues Respecting C.G. 's Developmental Progress and her Educational Needs

[184] The parties have experienced problems under the joint parenting arrangement in reaching consensus regarding the extent of difficulties that C.G. has experienced with reading and communication, and in responding in a collaborative manner to concerns that arose in these areas. I find that these concerns first began to surface at school in late 2018, when C.G. was in Junior Kindergarten at St. Francis Xavier. C.G. 's teacher at the time, Mr. Matthew Reid, advised the parties during the winter of 2018/2019 that C.G. was talking and behaving in a baby-like manner, and that she required support in recognizing letters and their sounds. The mother followed up with Mr. Reid about these concerns by email on April 9, 2019, and she described in detail the various learning tools and strategies that she had been using to support C.G. in addressing the concerns at home. However, she relayed that C.G. appeared to be experiencing ongoing difficulties in identifying letters and sounds, and she inquired as to whether Mr. Reid was noting any improvements, whether C.G. was keeping up with her peers and whether C.G. would benefit from additional programming such as tutoring.

[185] Mr. Reid responded to the mother by email on April 10, 2019. He confirmed that C.G. was still experiencing difficulties in these areas and that she was not keeping up with the other students in her class. In particular, he noted that she was still having problems recognizing and remembering letters and their sounds other than on a very short-term basis, and that she was still using single words to communicate rather than starting to form more complex sentences. With respect to the mother's inquiry about whether additional programming such as tutoring through Kumon would be beneficial for C.G. at that point, he responded:

> Will C.G. benefit from the extra help that a program like kumon would give her. Any extra help C.G. can get will only help her in the long run. So yes it would.

[186] The parties communicated with each other about C.G. 's challenges at school in the spring of 2019, and they both attended a meeting at St. Francis Xavier with Mr. Reid and an educational assistant, Ms. DiVincentis, on May 7, 2019. The parties learned during this meeting that C.G. was receiving additional support during class time from another teacher, Mrs. Lovasic, to assist her in developing her letter and sound recognition and speech. The mother testified that Mr. Reid reinforced during this meeting that C.G. would benefit from tutoring services, such as Kumon or Oxford Learning, to ensure that she progressed well in these areas. The father denied that Mr. Reid made these comments during the meeting, and stated that he simply recommended that the parties read with C.G. every night. I prefer the mother's evidence over that of the father on this issue, given that Mr. Reid had specifically indicated in his email dated April 10, 2019 that C.G. would benefit from additional programming through an agency such as Kumon.

[187] As a result of the concerns regarding C.G.'s academic progress, the parties agreed following the May 7, 2019 meeting at the school to enroll her for tutoring with Oxford Learning for six months. This tutoring occurred twice per week on Wednesday and Thursday evenings. Both parties contributed equally to the total cost of approximately $404.00 per month. However, the mother reached out to the father on June 4, 2019 to make arrangements for C.G. to continue with tutoring twice weekly throughout the summer. She followed up with him on June 10, 2019, asking for a response because the tutor's schedule was getting booked up and Oxford had already sent her three follow-up emails. The father replied on June 10, 2019, simply stating that tutoring in the summer would be a problem for him if the sessions were during the week or in the evenings. This essentially left only Saturday and Sunday during the day as options for tutoring sessions. There were difficulties scheduling tutoring for C.G. during the summer of 2019, because Ch.G. had soccer two evenings each week at that time. The father ultimately declined to take C.G. for tutoring during his parenting time during the summer of 2019 due to these scheduling challenges, but the mother made the arrangements for C.G. to continue with this additional support from Oxford during her parenting time periods. The mother paid for these sessions without financial contribution from the father.

[188] The mother reached out to the father by email again on September 14, 2019, soon after the start of C.G.'s Senior Kindergarten year, to relay her opinion that it would be beneficial for C.G. to continue with Oxford tutoring to support her with her letters, sounds and reading. She confirmed that Oxford had forwarded the father all of the pricing details and the availability for sessions, and she asked that the father confirm right away if he agreed to the tutoring as she wished to reserve the times for sessions that day. The father responded 1.5 days later, stating:

> I think we should wait and how she dose [stet] this school year. My recommendation is to wait. And if really needs I will definitely concider it [stet]".

[189] The mother responded the following morning to reinforce that C.G. was still struggling with her letters, sounds and reading. She encouraged the father to reconsider his decision, stating she felt it would be best for C.G. to continue with Oxford rather than waiting it

out and putting her in a program in the summer to try to catch up, with the risk that she would fall behind in grade 1. She suggested as a compromise that the parties sign C.G. up for 3 months until December 2019, at which point they could revisit the issue. The father did not change course on this issue and declined to take C.G. to Oxford or to contribute to the cost of tutoring. The mother continued to take C.G. to tutoring during her parenting time.

[190] St. Francis Xavier continued to assign a teacher to work one-on-one with C.G. during the fall of 2019 to assist and support her in regard to letter recognition and their sounds due to the concerns regarding her delays in this area. The father asked the mother about this reading program in an email dated September 26, 2019, stating that he had heard about it from his lawyer and suggesting that they each receive copies of all school letters going forward. It is clear from this email that the father had not reached out to C.G. 's teacher to discuss her progress, and the mother made this point to him in an email dated October 2, 2019. She reinforced in that message that the father had refused her suggestion that he take her to Oxford for extra help. The father responded by stating that he understood the mother's concerns about C.G. falling behind, but that they both knew that C.G. was a smart and talented girl. He expressed confidence that C.G. would more then excel in her studies throughout the years, but that she was still young and was currently simply "holding back from her full potential." He expressed his view that C.G. did not necessarily have a hard time learning and that she definitely did not have a learning disability, and that his stance was to "give her some time and see what she does" before he would consider participating in Oxford tutoring.

[191] I agree with the mother that the father's approach to C.G.'s school issues during the fall of 2019 was problematic. C.G.'s teachers had been reporting to the parties since late 2018 that C.G. was having difficulty keeping up with her classmates in the areas of reading and language, and they were sufficiently concerned by the fall of 2019 that they had assigned a teacher to work one-on-one with her in the classroom. C.G.'s problems had persisted despite the additional support that she had received through Oxford during the mother's parenting time. The father's insistence as of the fall of 2019 that C.G. was not having a hard time learning and that she would do just fine without additional support flew in the face of all of the objective evidence from school professionals at the time. His refusal to take her to tutoring during his time and to contribute to the cost was contrary to C.G.'s best interests.

[192] The mother kept the father informed about C.G.'s involvement with Oxford and advised him by email on December 13, 2019 that she had scheduled a progress meeting with C.G.'s tutor. She relayed that the tutor felt C.G. was making advances as a result of the support that she was receiving, and she inquired again if the father would reconsider his position about participating in taking C.G. to tutoring and contributing to the cost for the period from January to June 2020. The mother testified, and I find, that at that time, that both the tutor and C.G.'s teacher were of the view that C.G. required ongoing tutoring support so that she would not fall behind in grade 1. The father initially indicated on January 5, 2020 that he would participate and share the cost of tutoring, but I find based on the mother's evidence at trial that he did not in fact do so. The mother continued to

take C.G. to Oxford tutoring during this period and to pay the cost without contribution from the father.

[193] The mother persisted in her efforts to convince the father that C.G. required tutoring support to assist her in the areas of reading and language. On March 10, 2020, she messaged the father to confirm that she wished to keep C.G. in tutoring with Oxford during the summer of 2020 and to inquire as to whether he would participate. The father responded on March 10, 2020 stating that he did not support C.G. continuing with Oxford over the summer months. He indicated that he felt the children had had a stressful year due to the COVID-19 pandemic and that he planned to engage C.G. during the summer with numerous activities, books and some educational materials that he had obtained from a teacher. At trial, he testified that he felt C.G. was not enjoying or benefitting from Oxford. However, there is no evidence that he ever reached out to C.G.'s tutor to inquire about her progress.

[194] Again, I find that the father's position respecting C.G.'s participation in tutoring from January 2020 and throughout the summer of 2020 was problematic and contrary to C.G.'s best interests. I accept the mother's evidence that both the tutor and C.G.'s teacher were reporting at that time that C.G. required additional educational support in the form of tutoring during the summer months. I have considered C.G.'s school reading logs for this period, which reveal that the father read with her during the evening on a regular basis. However, it is clear that this support was not resulting in any appreciable improvement in C.G.'s difficulties. All of the available evidence as of the spring of 2020 raised serious concerns that C.G. would be behind in reading and language by the start of her grade 1 school year in September 2020. In the circumstances, it was incumbent upon the father to respond by providing her with additional support over and above any help that he was providing her at home.

[195] C.G. continued to exhibit considerable difficulty at school in the fall of 2020, when she started grade 1. I heard evidence from Ms. Carla Persia, a special education resource teacher with St. Francis Xavier. She presented as a reliable, credible and overall highly impressive witness. Ms. Persia became involved with C.G. in late 2020, after C.G.'s grade 1 teacher Ms. Chalupka asked that C.G.'s academic situation be considered at a School Resource Team ("SRT") meeting. I find that at that time, the school had significant concerns that C.G. was falling behind as compared to her grade 1 peers in both math and language. As a result of these difficulties, arrangements were made for C.G. to participate in a grade 1 Reading Recovery Program with a specialist reading recovery teacher, Ms. Gatto. Unfortunately, the school went to at-home learning again in March 2021 due to the pandemic, and C.G. had to participate in this program virtually, which she found difficult. The significance of C.G.'s difficulties in reading, writing and math is reflected in her year-end report card for grade one dated June 25, 2021. She received a D in reading, a C in writing and a C- in math. Ms. Persia testified that the goal of the grade 1 Reading Recovery program is to get children to somewhere between levels 14 and 16 in reading, but that C.G. only finished at level 2. Based on her lack of meaningful progress, a school meeting was convened in June 2021 with the principal Ms. Farkas, the Reading Recovery Program teacher Ms. Gatto, Ms. Persia and the parents to

discuss next steps. The school personnel recommended ongoing tutoring for C.G. and indicated that the school would recommend a psycho-educational assessment for her in grade 3 or 4.

[196] The evidence respecting C.G.'s academic difficulties throughout her grade 1 year from September 2020 to June 2021 and her need for additional supports demonstrates that the mother's concerns in this area and her position regarding the need for ongoing tutoring services were well founded. They also support a finding that the father's minimizing of C.G.'s academic difficulties, his refusal to take her to tutoring during his parenting time and his failure to contribute to this expense did not serve C.G.'s best interests. The father argued at trial that C.G.'s poor final marks in June 2021 were to a large extent attributable to the fact that she had to attend classes remotely due to the pandemic. While I agree that the pandemic and the need for remote learning posed unprecedented challenges for students, Ms. Persia testified that student marking during this period of time took into account these unique difficulties. In addition, C.G.'s problems with reading, writing and communication had been identified in late 2018, well before the pandemic began. The father also claimed that C.G. did not benefit from the tutoring that she received from Oxford. However, as I have stated, there is no evidence that the father consulted with C.G.'s tutor about her progress, and therefore his opinion that this support was not helpful is not compelling. The mother testified that she consulted regularly with the tutor, and that her decisions to keep C.G. in tutoring were based on the feedback from the tutor regarding the benefits of this support for C.G.

[197] By way of summary, I find that the father was not sufficiently attentive to the feedback that school professionals provided to the parties about C.G.'s school challenges and educational needs from late 2018 onward. He developed ardent opinions early on that C.G.'s difficulties were not serious, that she would outgrow them naturally with minimal intervention, that she would progress well and that she did not require additional tutoring support. Unfortunately, he clung to these views despite all of the evidence that unfolded over time which should have caused him to revisit and revise them. I find that he took reasonable measures at home to provide C.G. with one-on-one support in the areas that she was struggling with, but I conclude that this was clearly not enough. The evidence respecting the parties' responses to C.G.'s educational needs is an important factor underlying my decision to grant final decision-making responsibility on educational issues respecting the children to the mother.

[198] On a positive note, the father has been more cooperative in addressing C.G.'s educational needs since she started grade 2 in September 2021. C.G. was placed on an informal Individual Education Plan ("IEP") to ensure that she received additional support in the classroom and with tests. The consent of both parties was required to implement these additional supports, and both parties provided the necessary authorizations. The parties have also both agreed to C.G. undergoing a psycho-educational assessment in grade 3 or 4, as recommended by school professionals. The mother requested once again during the 2021/2022 school year that the father participate in taking C.G. to Oxford tutoring and contribute to this expense. As I have already mentioned, the parties reached out to Ms. Franchi-Rothecker for assistance in addressing this issue, and with her coaching and

input, the father committed to taking C.G. for tutoring and contributing equally to this expense for one year, following which the issue would be reviewed. The input of Ms. Franchi-Rothecker was instrumental to the parties being able to reach this consensus.

C. The Parties' Difficulties in Addressing Issues Respecting Ch.G.'s Behaviour, her ADHD Diagnosis and her Treatment Needs

1. Overview

[199] The parties have also experienced considerable difficulties under the joint parenting arrangement in reaching consensus as to whether Ch.G. was experiencing any concerning behaviour and attention challenges, her eventual ADHD diagnosis and her treatment needs, including whether she should be prescribed medication for ADHD. The evidence respecting their efforts to work through these issues reveals general patterns similar to those that developed in relation to C.G.'s educational issues. By way of overview, I find that the mother responded in a timely and proactive manner to concerns that school officials raised respecting Ch.G.'s behaviour and her ability to focus, and that the father initially minimized those concerns. The mother wished to follow through as soon as possible with recommendations that professionals made to address the concerns. The father, on the other hand, was much more cautious in reaching conclusions about the concerns and considering options, and he demanded a second opinion and further exploration of the issues. I find that the changes from in-person to virtual schooling posed challenges for professionals and the parties in attempting to reach a definitive conclusion as to the course of action that was best for Ch.G. In the face of these challenges, the father's cautious approach and his requests for additional assessments were in my view necessary and helpful in reaching the best possible outcome for Ch.G. However, on the issue of whether Ch.G. required medication to assist her with respect to her condition, I find that the father once again clung tenaciously to his own personal views on the issue even after numerous steps were taken to fully assess Ch.G.'s needs, and that he was unable to appropriately process the information that professionals gave him and to trust their advice regarding the best course of action for Ch.G.

2. Initial Concerns During Ch.G.'s Grade 2 Year: 2018 to 2019

[200] Issues respecting Ch.G.'s behaviour and ability to focus at school began to surface during her grade 2 year, from September 2018 until June 2019. The mother testified that she became concerned that year about frequent notes from Ch.G.'s grade 2 teacher in the school agenda about Ch.G.'s challenging behaviour, the fact that she was falling behind on her homework and that she was having to stay inside for recess to catch up on her work. The difficulties were due in part to Ch.G. having missed a considerable amount of school due to illness. Ch.G.'s mid-term report card completed by her grade 2 teacher Mrs. Cefaloni dated February 12, 2019 indicates that at that point, Ch.G. was having difficulty following daily school routines, establishing disciplined work habits, maintaining focus to complete tasks, arriving at school prepared with the required learning materials and belongings, organizing her desk materials, and managing her social interactions appropriately during classroom time. Mrs. Cefaloni rated Ch.G.'s

learnings skills and work habits only as satisfactory for responsibility, independent work and organization. She rated her as needing improvement in the area of self-regulation. The mother was understandably quite worried about this information and communicated with Mrs. Cefaloni about the areas of concern. She was proactive in trying to work out solutions with the father. On April 11, 2019, she sent a message to him discussing these concerns and suggesting that they jointly formulate a plan to support Ch.G., including possibly creating a schedule for who would be responsible for what homework and when. Unfortunately, the father did not respond to the mother's attempt to jointly address the problems in a proactive manner.

[201] Ch.G. continued to experience difficulties at school at the outset of grade 3 in the fall of 2019. The special education resource teacher, Ms. Persia, became involved with Ch.G. at that time, and she testified about the nature of Ch.G.'s difficulties. She relayed that Ch.G.'s grade 3 teacher, Ms. Finlay, had presented Ch.G. to the SRT meeting in November 2019 because she had observed that Ch.G. was having problems staying on task, maintaining an age-appropriate focus on her work, self-regulating her behaviour and interacting appropriately with her peers. Ch.G. had experienced conflict with a particular group of her peers at recess and had been brought to the office on more than one occasion for this reason. The mother was in contact with Ms. Cefaloni during the first term of grade 3 and attended a parent teacher interview with her in November 2019 to discuss these concerns further. She expected the father to show up so that they could both obtain a full picture of Ch.G.'s difficulties, but the father did not to attend the interview. He testified that he ran late on a work-related service call but that he called Ms. Cefaloni on a later date to discuss her concerns about Ch.G.

[202] Following the parent-teacher interview in November 2019, the mother proactively reached out to St. Francis Xavier staff to arrange a time for the parents to meet with the principal Ms. Farkas, Ch.G.'s teacher Ms. Finlay and Ms. Persia to further discuss Ch.G.'s challenges and whether school staff had recommendations to address them. A meeting occurred at the school on December 4, 2019, which both parties attended. I find that during this meeting, school staff raised concerns about Ch.G.'s general behaviour at school, her problems with self-regulation and conflict with some of her peers, her lack of focus and fidgeting in the classroom, her request for excessive washroom breaks during the day and her tendency to inappropriately interrupt Ms. Finlay and others during class time. School staff recommended that the parties consult with the family physician, Dr. Profetto, to determine if there were potentially any health-related causes for the difficulties that school staff were observing. They also recommended that a school-based Child and Youth Worker be assigned to work with Ch.G. to provide her with additional support. The mother was also experiencing difficulties with Ch.G.'s behaviour at home at the time, and she agreed to having Ch.G. assessed medically and to the involvement of a Child and Youth Worker. Ms. Persia testified that the father was initially resistant to the involvement of the Child and Youth Worker, but that he eventually agreed to this service. He also agreed to consulting with the family physician about Ch.G.'s needs. However, he testified that at that time, he was not observing any difficulties with Ch.G.'s focus or behaviour at home. He felt that any issues that Ch.G. may be experiencing could have potentially been attributable to several factors other than medical concerns,

including ongoing distress about the parties' separation, the fact that the Society had commenced another child protection investigation into the mother's allegation that he had hit C.G. with a hairbrush, and the fact that the family dog had been put down due to illness. In addition, he stated that Ch.G. had expressed concerns to him that she was being bullied by other girls at school. I find that the father's cautious approach based on these various contextual factors was wise and reasonable.

[203] The Child and Youth worker began to work with Ch.G. following the December 4, 2019 meeting, and Ms. Persia also met with Ch.G. on a regular basis along with the other peers with whom she was experiencing conflict. Ms. Persia testified that no meaningful progress was made in alleviating the peer conflict between Ch.G. and the other girls in question, and that Ch.G. had great difficulty understanding the perspectives of her peers on various issues.

[204] The parties met and consulted with Dr. Kim of Dr. Profetto's office on December 10, 2019. With the consent of the parties, Ms. Persia had sent a letter to Dr. Profetto's office dated December 9, 2019, summarizing the concerns that school professionals had observed respecting Ch.G. and asking Dr. Profetto to review the concerns and make any appropriate medical recommendations. Dr. Kim provided the parents and Ch.G.'s teacher with a questionnaire to complete respecting Ch.G. called the Stop Now and Plan (SNAP) questionnaire, which was geared to providing information about how Ch.G. was behaving and functioning in the classroom and at home. Dr. Kim felt there were some red flags for the possibility that Ch.G. may be suffering from ADHD, and he recommended that a referral be made for Ch.G. to be seen by a pediatrician for further assessment of these concerns. I find that the mother fully supported a referral to a pediatrician, but that the father was at first resistant to this suggestion, because he did not have concerns about Ch.G.'s functioning at home or at school. However, the mother pressed for a referral to a pediatrician during the meeting, and the father eventually agreed. Dr. Kim subsequently made a referral for Ch.G. to be seen by Dr. Abiodun Oyebola.

3. Dr. Oyebola's Diagnosis of ADHD in February 2020

[205] The parties were both diligent in completing the SNAP forms that Dr. Kim had provided to them, and they both attended with Ch.G. for the initial appointment with Dr. Oyebola on January 15, 2020. Unfortunately, Dr. Profetto's office had not sent Dr. Oyebola the father's completed SNAP questionnaire, but he had the SNAP forms from the mother and Ch.G.'s teacher Ms. Finlay, as well as the referral letter from Dr. Profetto's office. Dr. Oyebola testified at trial. He is a pediatrician with a specialization in the area of behavioural and developmental pediatrics. He has over 23 years of medical experience in both the United States and Canada. He presented as a credible and reliable witness. In this regard, I note that his evidence regarding his interactions with Ch.G. and the parents was entirely consistent with that of the mother. Based on the information available to him as of the first appointment with Ch.G., Dr. Oyebola concurred with Dr. Kim's concerns that Ch.G. may be suffering from ADHD, and he relayed his views to the parties. His impression was that the father did not accept this as a possibility at that

point. He concluded that further assessment of Ch.G. was warranted, and to this end, he provided the parties and Ch.G.'s teacher Ms. Finlay with another screening tool to complete called the NICHQ Vanderbilt questionnaire ("the Vanderbilt questionnaire"). This questionnaire is a screening tool for assessing if a child is suffering from ADHD, other comorbidity issues or learning disabilities, and the severity of any such problems. Dr. Oyebola scheduled a follow up appointment with Ch.G. and the parties for February 6, 2020.

[206] Both parties attended with Ch.G. at the second appointment with Dr. Oyebola on February 6, 2020. By that time, Dr. Oyebola had received all of the SNAP forms completed by the parties and Ch.G.'s teacher Ms. Finlay as well as the Vanderbilt questionnaire forms that the parties and Ms. Finlay had completed. Dr. Oyebola concluded based on the feedback provided by the mother and the school that there was clear evidence that Ch.G. was suffering from ADHD. However, he explained that the feedback from the father respecting Ch.G. was different and was not supportive of an ADHD diagnosis. Dr. Oyebola testified that he had a lengthy discussion with the parties on February 6, 2020 about why he felt that Ch.G. was suffering from ADHD, despite the discrepancies between the feedback from the father on the one hand and that of the mother and Ch.G.'s teacher. He educated the parties about the possible long-term effects of not treating children with ADHD prior to them reaching school grade levels in which the workload is heavier and more difficult. Dr. Oyebola testified that the father clearly rejected his diagnosis, was adamant during the appointment that there was nothing wrong with Ch.G. and that she did not require any medical intervention of any sort, questioned his credentials and his competence to reach a diagnosis, stated that he did not believe him and accused him of lying. He stated that the father used "very unkind words" towards him during the session. It was clear from the evidence of both Dr. Oyebola and the mother that the father became quite agitated during this appointment and that the exchange between him and Dr. Oyebola became very uncomfortable. The mother testified that the situation became so escalated because of the father's comments that Ch.G. began to cry. She and Dr. Oyebola both testified that Dr. Oyebola attempted to calm the situation down, without much success. Dr. Oyebola ended the consultation with the parents on February 6, 2020 after approximately 30 minutes based on the father's resistant attitude and the clear tension and lack of consensus between the parties in response to his diagnosis. Dr. Oyebola concluded that he could not treat Ch.G. for ADHD at that point, since the parents were not on the same page with respect to his diagnosis and there was no agreement between them as to how to proceed. In his report dated February 6, 2020, he noted that due to the adversarial situation between the parties respecting Ch.G.'s needs, he recommended "CAS involvement and legal involvement." He noted that the parties could follow up with him once they reached an amicable decision as to how they wished to address the issues. At trial, he explained the importance of treating ADHD as soon as possible, stating that children with this condition typically have problems focussing and learning, often lag behind academically as the effects persist, are disruptive and impulsive, develop anxiety over time as a result of their difficulties and are often prone to problems in the long-term such as breaking social norms and legal rules, substance abuse problems and poor overall social functioning.

[207] The father acknowledged during his evidence that he did not have confidence in Dr. Oyebola's assessment of Ch.G. and did not accept his opinion in February 2020 that Ch.G. was suffering from ADHD. He claimed that Dr. Oyebola had advised the parties on January 15, 2020 that as part of his assessment process, he would be observing Ch.G. in his office engaging in activities such as reading, doing puzzles, colouring and questioning her to gain a sense of her functioning and ability to focus. Part of his rationale for rejecting Dr. Oyebola's opinion was that he did not take these steps with Ch.G. However, Dr. Oyebola denied having ever advised the parties that he would take such measures with Ch.G., and he indicated that this is never part of his assessment process because ADHD cannot be diagnosed based on observations during relatively brief doctor's appointments. He explained that reaching a diagnosis of ADHD requires a much more complex process of gathering relevant information covering an extended period of time from family members, educational professionals and others who have had extensive direct involvement with the child. There is no indication in Dr. Oyebola's initial consultation report that he planned to undertake the clinical observations that the father believed he would be carrying out. Based on the contents of that report and Dr. Oyebola's evidence on this issue, I did not find the father's evidence on this issue to be reliable. As I discuss below, I note that he made similar complaints about another professional who assessed Ch.G. at a later date, Dr. Uthayalingam, suggesting that he had also stated that he would undertake direct clinical observations of Ch.G. However, Dr. Uthayalingam did not make any mention in his report dated January 6, 2021 of having advised the parties that this would be part of his assessment process.

[208] The father also alleged at trial that he did not trust Dr. Oyebola because he did not answer questions that he raised during the sessions with him about the difficulties in diagnosing ADHD and did not provide any information about the medication that he would recommend for Ch.G. I did not find the father 's claim that Dr. Oyebola did not answer his questions to be credible. Both the mother and Dr. Oyebola testified that there was a lengthy discussion between the parties and Dr. Oyebola on February 6, 2020 about the reasons for his diagnosis and his responses to the parties' questions and concerns. In regard to the father's concern that Dr. Oyebola did not engage in discussions about possible medications, I find that he declined to do so because the father outright rejected the possibility that Ch.G. may be suffering from ADHD, and therefore there was no point in addressing treatment options. In addition, the father claimed that when he began discussing his concerns about using medication to treat ADHD during the February 6, 2020 appointment, Dr. Oyebola asked if he was accusing him of being a liar and began speaking in a raised voice, which caused Ch.G. to cry. Again, this evidence was in direct contradiction to that of Dr. Oyebola and the mother, who both testified that the situation during the February 6, 2020 appointment escalated because the father became agitated, questioned Dr. Oyebola's credentials and accused Dr. Oyebola of lying. I accept the evidence of the mother and Dr. Oyebola on these issues over that of the father. Finally, the father also explained his rejection of Dr. Oyebola's diagnosis on the basis that Ch.G. appeared to be doing well at school, and that he was not observing Ch.G. to have the types of behavioural and focus challenges that the mother and school professionals were seeing. However, Dr. Oyebola was well aware of the discrepancy with respect to the father's observations and impressions, and he testified that he explained to the parties on

February 6, 2020 why he nonetheless felt that an ADHD diagnosis was warranted. In regard to Ch.G.'s school marks, the concerns respecting Ch.G. did not relate to her academic progress, but rather to her ability to self-regulate and focus on a consistent basis. I find that the school professionals involved in addressing these concerns had clearly explained this to the parties, and it is concerning that the father did not appear to have understood and properly processed this information.

[209] The father's interactions with Dr. Oyebola in relation to Ch.G.'s problems were troubling. As I have emphasized, section 16(3)(j) of the *Divorce Act* requires the court to consider the ability of the parties to communicate and cooperate not only with each other about matters affecting the child, but also with others who are involved in addressing the child's needs. The father's conduct during the February 6, 2020 meeting with Dr. Oyebola and his overall attitude in response to Dr. Oyebola's opinion raise serious concerns regarding his ability to consistently communicate and cooperate with professionals involved with the children in a respectful and productive manner, and to remain open-minded about the opinions of professionals when they do not support his own strongly-held beliefs about the children's needs. By February 2020, the mother, Ch.G.'s teachers, Ms. Persia and the school principal Ms. Farkas had been observing and discussing concerns regarding Ch.G.' behaviour for over a year. Ch.G.'s family physician had also advised the parties that he was concerned based on the information that he had received from the school and the mother that Ch.G. may be suffering from ADHD or a learning disability. Dr. Oyebola had carefully considered the results of two standard screening tools used to assess ADHD, and he had concluded based on his extensive experience and expertise in the field of behavioural and developmental pediatrics that there was clear evidence that Ch.G. was suffering from ADHD. While the father may have had concerns about this opinion and his request for a second opinion was appropriate, it was unreasonable for him to react as he did by flatly rejecting the possibility of this diagnosis based on his own personal observations of Ch.G. in his home. His aggressive and disrespectful interactions with Dr. Oyebola on February 6, 2020 were also inappropriate and impaired the parties' efforts to work collaboratively towards a solution for the challenges that Ch.G. was experiencing at the time. These are all factors that have informed my decision to grant final say on educational and medical matters to the mother.

4*. *Spring 2020: Return to Dr. Profetto, Counselling with Dr. Chohan and Referral for a Second Opinion re: ADHD Diagnosis

[210] On March 17, 2020, counsel for the father wrote to Dr. Profetto asking him a series of questions respecting Ch.G.'s medical situation and needs, including whether there was a diagnosis for her, how the diagnosis has been reached, whether he had any concerns about any diagnosis, whether he had any recommendations for treatment and whether he would make a referral for a second opinion respecting any diagnosis. Dr. Profetto responded on April 3, 2020 advising that Ch.G. had a "provisional diagnosis of Attention Deficit Hyperactive Disorder (ADHD), as well as situational stressors," and that this diagnosis had been reached through clinical assessments, assessment scales and pediatric opinion. At trial, Dr. Profetto clarified that the situational stressors that he referred to in

his letter related to the fallout from the parties' separation. He explained that he used the term "provisional diagnosis" because there was no consensus between the parties on the diagnosis and the professionals were therefore working towards confirming it. In terms of recommendations at that time, Dr. Profetto suggested that the school modify the classroom environment to meet Ch.G.'s needs, that it obtain an educational assessment, that the parents attend counselling and that medical therapy may be initiated. At trial, he explained that the counselling he recommended for the parties related to understanding and coping with the diagnosis, obtaining a greater understanding of the child's needs and difficulties and learning about the possible long-term repercussions of ADHD. He noted that a second opinion could be obtained, but that he did not think it would change the management of Ch.G.'s care since "[a]nother pediatrician will review all that we have and possibly advise the same." He also stressed that non-urgent referrals would not be accepted during the COVID-19 pandemic.

[211] In the spring of 2020, Ch.G. was engaged in remote learning due to the closure of her school resulting from the COVID-19 pandemic. Accordingly, two of Dr. Profetto's recommendations, specifically for school environment accommodations and an educational assessment, could not be implemented. Dr. Profetto testified that he spoke with the mother in April 2020, and that she accepted the ADHD diagnosis and did not feel the need for a second opinion. I find that the mother was willing to pursue the recommendation for medication at that point. Dr. Profetto spoke with the father twice in June, and it became clear to him that the father did not accept the diagnosis and wanted a second opinion. Dr. Profetto testified that at that point, he made a referral to another pediatrician, Dr. Sarangan Uthayalingam, for a second opinion regarding Ch.G.'s diagnosis further to the father's request. He emphasized again that he did so only because the father requested a second opinion, and that he did not believe that it would result in any change to the management of Ch.G.'s problems.

[212] There were several other moving parts at play within the family in early 2020. As I have mentioned, the Society became involved again due to the mother's allegation that the father was taking the children to work with him and that he was not responding appropriately to the concerns about Ch.G.'s ADHD diagnosis. The mother testified that the Society recommended that both children participate in counselling. With respect to C.G., she advised the father on January 14, 2020 that the child was exhibiting challenging behaviours while in her care, including aggression towards her and Ch.G., pulling her hair, throwing things in anger and difficulties sleeping. The father responded on January 14, 2020 stating that he was not seeing any behavioural issues with either of the children in his care, and that he did not think that counselling was necessary for C.G. He did not object to counselling for Ch.G. in that message. However, he expressed that the children were always being questioned by the Society that he was concerned that this was confusing them and causing them distress.

[213] The mother subsequently reached out to Dr. Chohan to arrange for counselling for Ch.G. and C.G. Again, she was the parent who took proactive steps to address this need which the Society had identified. The father agreed to participate in counselling with Ch.G. with Dr. Chohan, and the parties met with Dr. Chohan together in approximately April 2020. I

find that both parties worked cooperatively with Dr. Chohan in an effort to further assess and address Ch.G.'s needs in 2020. They met with her several times and brought Ch.G. to appointments. The mother relayed concerns to Dr. Chohan that Ch.G. was experiencing anxiety about COVID-19 and not seeing her friends, but that she was not having conflict with peers because of the lack of opportunity for social connections. The father expressed concern to Dr. Chohan that Ch.G.'s issues may be related to anxiety due to the challenging circumstances that she had faced, including the parties' separation, the several Society interventions including the most recent one in 2020, the closures of school and stay-at-home directives due to the pandemic and the clashes that she had experienced with some of her peers at school. Dr. Chohan counselled the parties about techniques that they could use to support Ch.G. at home and gave them cognitive and other activities that they could work on with Ch.G., including several worksheets. The mother testified that Dr. Chohan recommended that a psycho-educational assessment be arranged through the school respecting Ch.G. to obtain more diagnostic information about the cause of her difficulties and how best to address them. She suggested at trial that the psycho-educational assessment did not occur at that time because the father was not on board with the recommendation. The father does not recall Dr. Chohan having made this recommendation. I conclude that this step was not taken at that time due to the closure of school from March to June 2020 and the general shutdown of services during the COVID-19 pandemic, and not because of resistance on the part of the father. Ms. Persia confirmed at trial that there were no supports available for Ch.G. through the school during that period of time due to the pandemic.

[214] Having reviewed all of the evidence regarding Ch.G.'s condition and circumstances in the spring of 2020, I conclude that the father's request for a second opinion regarding the ADHD diagnosis was reasonable and the most prudent course of action at that point. Ch.G. was only 9 years of age, and the possibility of placing her on a regime of long-term medication was being raised. The father's observation was that she was not showing any symptoms of ADHD while she was in his care, and he clearly did not understand at that point in time that children with ADHD could show symptoms in some environments but not in other settings. The onset of the COVID-19 pandemic also posed unprecedented challenges generally and for the management of Ch.G.'s situation, since two of the recommendations that had been made to address her difficulties could not be implemented. The school had been unable to implement classroom accommodations as Dr. Profetto had recommended, and there were significant practical impediments to obtaining a psycho-educational assessment, which both Dr. Profetto and Dr. Chohan had recommended as a reasonable next step to obtain further diagnostic information about Ch.G.'s condition and needs. Furthermore, the behavioural challenges that Ch.G. had experienced at school were not a pressing problem as she was not attending in-person classes due to the pandemic. A review of her year-end report card for grade 3 dated June 23, 2020 reveals that although she continued to have challenges focussing and in her social interactions with peers when school was in session, she nonetheless received ratings of either good or satisfactory on all of her learning skills and work habits based on evidence from prior to the school closure in March 2020. In terms of her academic progress, she received marks of C+ in oral communication and C in Patterning and Algebra, but her other marks were Bs and several As. Her report card reflected that

overall, she was progressing reasonably well academically despite her challenges. It was clear that Dr. Profetto did not consider her situation to be urgent, as he warned in his letter dated April 3, 2020 that non-urgent referrals would not be accepted at that point due to the pandemic. Finally, Ch.G. was experiencing numerous social, personal and family-related challenges at that time, including the emotional fallout from the parties' separation, the Society's investigation and ongoing involvement in 2020, the isolation that COVID-19 caused due to closures and personality conflicts with some of her peers at school prior to the school closure. Dr. Profetto had noted that Ch.G. was experiencing several social stressors at the time, and Dr. Chohan was providing her with counselling in part to address the anxiety that she was feeling as a result of her challenging experiences. Taking into consideration all of these contextual factors, while I have concerns about the father's outright rejection of a possible ADHD diagnosis in 2020, I agree with his position that there was no pressing need to put Ch.G. on a medication regime right away in 2020. I find that the most prudent course of action was to obtain a second opinion regarding her diagnosis as well as a psycho-educational assessment before doing so. My conclusions in this regard are important factors in my decision that the father should have a considerable role in decision-making respecting the children's medical and educational needs.

5. The Parties' First Contact with Accendus Group in 2020

[215] In an effort to improve co-parenting between him and the mother, the father requested that the parties participate in parenting counselling in early 2020. He identified Accendus Group, which Ms. Franchi-Rothecker operates, as an agency that may be able to provide this counselling. Accendus Group offers a wide variety of services for families including triage and intake, counselling, mediation, parenting coordination, therapeutic reintegration services and clinical assessments. Ms. Franchi-Rothecker is an experienced mediator and parenting coordinator with the agency. Both parties spoke with Ms. Franchi-Rothecker on February 27, 2020 and advised her that they were seeking assistance in making decisions together regarding the children, and in particular, respecting Ch.G.'s ADHD diagnosis. Ms. Franchi-Rothecker met with both parties on March 4, 2020. She testified that at that time, the mother had accepted Ch.G.'s ADHD diagnosis and the need for Ch.G. to be prescribed medication, whereas the father had not accepted the diagnosis. The parties both identified the most pressing issues as being how to respond to Ch.G.'s ADHD diagnosis and how they could establish better communications with each other. They both accused the other of involving the children in the conflict.

[216] Unfortunately, the parties did not follow through with the services of Ms. Franchi-Rothecker in 2020, because it was recommended that they undergo a 6 to 8 week intake and triage process to determine the most appropriate services and plan, and the father did not agree to that approach. Ms. Franchi-Rothecker explained that the intake/triage process was recommended as a preliminary step due to the apparent level of conflict between the parties, the number of professionals who had been involved with the family, the possible need for therapy services for the children and the general complexity of the case. The father advised Ms. Franchi-Rothecker through his counsel that he wished to

engage in "parenting counselling" services. Ms. Franchi-Rothecker explained to Ms. Hussain and in a Consultation Summary dated April 8, 2020 that based on her extensive history of assisting families in this type of high conflict situation, parenting counselling would likely be a waste of time and money for the parties. In her Consultation Summary, she highlighted her concerns regarding the seriousness of the damage being suffered by Ch.G. and C.G. due to the family dynamics based on the information that they had provided her. She also emphasized her concern that the family required therapeutic intervention at the earliest possible opportunity.

[217] The mother was willing and ready to proceed with the intake/triage process that Ms. Franchi-Rothecker recommended in April 2020, but the father remained firm in his view that parenting counselling was the most appropriate service even after receiving Ms. Franchi-Rothecker's Consultation Summary dated April 8, 2020. He also had concerns regarding the cost of the intake/triage process. His decision not to proceed as recommended by Ms. Franchi-Rothecker at that stage was unfortunate and not child-focussed. The concerns respecting the family's overall functioning and the children's needs were such that immediate therapeutic intervention had been strongly recommended. Based on the extent of counsel's ongoing involvement in addressing parenting issues after this point, engaging the services of Accendus in early 2020 would have likely been more cost-efficient in the long-term. The father's insistence on pressing for the type of service that he personally felt would be best for the family, despite the strong recommendations of Ms. Franchi-Rothecker to the contrary, raises further concerns regarding his inability at times to trust and accept the well-founded recommendations of professionals regarding the children's needs and the appropriate services to address them.

6. The Second Opinion of Dr. Uthayalingam Regarding Ch.G.'s Diagnosis

[218] The parents both followed through as required in obtaining a second opinion regarding Ch.G.'s ADHD diagnosis with Dr. Uthayalingam. The met with him separately in October 2020 to provide him with relevant information, and Dr. Uthayalingam subsequently assessed Ch.G. in his office on January 6, 2021. Dr. Uthayalingam was not called as a witness at trial, but the parties agreed to the admission of his report respecting Ch.G. dated January 6, 2021 as evidence at trial. It is apparent from his report that he carried out a comprehensive assessment of Ch.G. that included not only interviews with the parties, but also a review of all relevant school and clinical records respecting Ch.G. and the SNAP and Vanderbilt tools that the parties and Ms. Finlay had completed. Dr. Uthayalingam found the school information to be reliable, as Ch.G.'s grade 3 and grade 4 teachers both provided consistent summaries of Ch.G.'s classroom behaviour, learning patterns and impairment during classroom time. Based on his evaluation, he concluded as follows:

1. He diagnosed Ch.G. as having ADHD, Inattentive Subtype, in the mild to moderate range.

2. He noted that this diagnosis is characterized by reduced ability to focus attention and reduced speed of cognitive processing and responding. He indicated that children with this condition frequently appear to be "off task, have difficulty maintaining attention in school and at home, have problems organizing tasks and activities, and are easily distracted by irrelevant stimuli.

3. He acknowledged the discordant ratings from the mother and father on the SNAP and Vanderbilt tools but emphasized that "this can be explained by differing expectations and environmental factors such as structure and adult authority that may vary between homes" (at p. 4). He addressed the discrepancy in the parties' scores on the screening tools in more detail at page 5 of his report, where he noted that it was significant that each of their scores was consistent over the course of a year. His conclusion based on all of the information from the parents and professionals was that the different ratings were attributable to the mother placing more academic demands on Ch.G. and therefore requiring her to complete more complex tasks than the father did during his parenting time periods. He noted that "[t]he converse is also true in that when she is at her father's home there is very little academic demand as reported by [the father]. (such as coloring), therefore with that little degree of academic demand and lowered expectation, it would likely result in the raw scores on [the father]'s rating scales."

4. He concluded that Ch.G. was experiencing stressors in her life which may also be impacting her functioning, including the parties' separation, divorce, change in family structure and dynamics and the Society's involvement. However, he stressed that these were not causal factors for her condition, but rather contributing ones.

5. He recommended an audiological assessment of Ch.G. to rule out the possibility of a central auditory processing disorder, based on Ch.G.'s reports of difficulty discriminating amongst auditory stimuli in the classroom.

6. He was able to confidently rule out other disorders that frequently coexist with ADHD, noting that there did not appear to be any features of learning disabilities, language disorder, autism spectrum disorder, developmental coordination disorder, sleep disorder, tics or depression/anxiety. He also concluded that Ch.G. was not exhibiting any symptoms to suggest that there were any organic contributors to her condition.

7. He concluded that the optimal treatment plan for Ch.G. would involve home behavioural interventions, school-based interventions and pharmacological treatment, and that this multi-pronged approach would require agreement and positive communication between the parties.

8. He indicated that the father was skeptical of his assessment and diagnosis, and for this reason, he opted not to discuss in depth the nuances of treatment options any further until there was a unified acceptance by both parents of the diagnosis. He

referred the family back to Dr. Profetto to determine next steps for treatment in terms of home and school interventions. In regard to recommendations for the school setting, he noted that Ch.G. required preferential seating and other such accommodations that best suit the ADHD inattentive subtype.

9. Because of the father's skepticism regarding his diagnosis, he recommended that Ch.G. undergo a psycho-educational assessment. He emphasized that psycho-educational testing was not necessary in the routine evaluation of ADHD, but that it could exclude other disorders or identify specific problem areas for children with ADHD, including abstract reasoning, mental flexibility and planning and working memory.

[219] A review of Dr. Uthayalingam's report reveals several benefits to Ch.G. from having obtained this second opinion. First, whereas Dr. Oyebola had made a general diagnosis of ADHD, Dr. Uthayalingam was able as a result of the passage of time and the availability of further information to finesse the diagnosis to specify that it was ADHD, Inattentive Subtype. This more specific diagnosis was important for the purposes of crafting the most appropriate treatment plan for Ch.G. Second, Dr. Uthayalingam provided further clarification about the potential causes of the different scores that the parties had given Ch.G. on the SNAP and Vanderbilt tests, and reinforced Dr. Oyebola's opinion that the different ratings did not preclude a diagnosis of ADHD. Third, Dr. Uthayalingam picked up on Ch.G.'s reports of having problems discriminating amongst auditory stimuli in the classroom, and he recommended an audiological assessment to rule out the possibility that her problems were attributable to auditory issues. The parties subsequently arranged this assessment and it ruled out any such problems. This was in my view an important step to take before opting for a regime of long-term medication. Finally, while Dr. Profetto and Dr. Chohan had raised the possibility of Ch.G. undergoing a psycho-educational assessment, Dr. Uthayalingam included as part of his report a very helpful summary of the reasons why such an assessment would be beneficial for Ch.G. to rule out disorders other than ADHD and to identify specific problem areas for her. The inclusion of this information in his comprehensive report was helpful for both the parents and the various professionals involved with Ch.G. for the purposes of planning next steps. Moreover, although Dr. Uthayalingam's opinion was that optimal care for Ch.G. at that point would include medication, it was also evident from the report that another reasonable option would be to complete the psycho-educational assessment first to rule out other possible disorders and hone-in further on whether there were any particular areas of concern for Ch.G. before deciding on the medication route. For all of these reasons, I conclude that the father's persistence in requesting a second opinion was extremely beneficial for Ch.G.

[220] On the other hand, I conclude that the father's ongoing resistance to accepting Ch.G.'s ADHD diagnosis after the completion of Dr. Uthayalingam's assessment was unreasonable, and that it gives further cause for concern about his inability at times to trust and accept the advice of experienced and skilled professionals. The father appeared to have had a change of heart on this issue during the weeks following the completion of the assessment, as evidenced by the fact that his counsel wrote to Dr. Uthayalingam on

February 2, 2021 to confirm that the father accepted the doctor's diagnosis and to request that he provide detailed recommendations for Ch.G. Dr. Uthayalingam advised the parties' counsel by telephone and also by letter dated February 17, 2021 that the parties were to follow up with Dr. Profetto to discuss and formulate the treatment plan.

7. March 2021: Meetings with Dr. Profetto and School and Society Professionals

[221] I find that the mother responded in a timely and responsible manner to Dr. Uthayalingam's report by contacting Dr. Profetto on January 14, 2021 to discuss the report and next steps for treatment for Ch.G. Dr. Profetto provided her with information about medications that could be prescribed for Ch.G. and directed her to read about them so that she could make an informed decision. The mother was also the one to contact Dr. Profetto after receipt of Dr. Uthayalingam's letter dated February 17, 2021 to make a joint appointment for the parties to discuss Ch.G.'s needs.

[222] The parties both participated in a phone appointment with Dr. Profetto on March 9, 2021 to discuss a treatment plan for Ch.G. They reviewed the details of Dr. Uthayalingam's report and treatment options, including prescribing medication for Ch.G. It became evident during this meeting that the mother continued to have concerns about Ch.G.'s functioning at home and at school, and that she consented to Ch.G. being prescribed medication. By contrast, the father felt that Ch.G. was doing quite well at home and at school. He indicated that he had ongoing concerns about the ADHD diagnosis and he refused to consent to a course of ADHD medication for Ch.G. Based on the parties' divergent views as to how Ch.G. was doing at that point, Dr. Profetto advised them that he would require more information from school professionals respecting Ch.G.'s progress before making recommendations as to whether medication was warranted.

[223] The mother felt that the father's description to Dr. Profetto of how Ch.G. was functioning as of March 2021 was inaccurate, that his resistance to the option of medication for Ch.G. at that time was unreasonable and that his response to Ch.G.'s situation had the effect of unnecessarily delaying the treatment that Ch.G. required. Based on all of the evidence respecting the ADHD diagnosis that was available at that point, I agree that the father's ongoing concerns regarding the validity of the diagnosis reflected once again his inappropriate tendency at times to prefer his own opinions over those of experienced and skilled professionals involved with the children. However, I do not agree that his resistance to medicating Ch.G. at that stage was unreasonable. Attempting to obtain an accurate understanding of Ch.G.'s overall functioning and progress at that point in time was extremely challenging due to several contextual factors, and there was in fact evidence to support the father's impression that she was performing better than she had in the past at school. At the same time, however, there were unusual factors at play at the time that explained these improvements, and which would not have been readily apparent to the father. Ms. Persia explained at trial that although the children attended school in-person in the fall of 2020, the classes were isolated from each other due to the COVID-19 pandemic, and they did not take recess together. In addition, the school took steps to separate Ch.G. from the other girls in her grade who she had clashed with. Ms. Persia testified that during the first term, Ch.G. continued to experience some problems

focussing, needed to be given small chunks of work at a time and sometimes blurted out in class, but that her general functioning was much improved in comparison to the previous year due to these modifications and the changes in the school environment necessitated by the pandemic. Accordingly, Ch.G. did much better when the school made accommodations respecting her contact with her peers and the manner in which work was assigned to her. Ch.G.'s mid-term grade 4 report card from her teacher, Ms. Labreche, reflected that she was making progress in regard to her ability to focus, stay on task and self-regulate during class time. There were many positives noted in this report card as compared to previous ones, including that Ch.G.'s notebooks and desk were always neat and well maintained, that she was checking in with her teachers regularly, that she was readily asking for clarification when necessary and that she was tackling problems with perseverance even when they were difficult. Ms. Labreche concluded her report card with the notation "Overall, a job well done this term, [Ch.G].!" Although Ch.G. was only rated as satisfactory in the areas of organization and self-regulation, she was rated as good for all other learning skills and work habits. Furthermore, she only received one C mark in writing, and all other marks were either Bs or As. Having carefully considered and weighed all of this evidence, I find that the father had sound reasons for questioning whether the significant step of medicating Ch.G. was necessary, and for inquiring whether a combination of other home and school-based interventions could meet her needs. Accordingly, I conclude that his caution about proceeding with medication at that time was fully justified.

[224] In response to the impasse regarding the appropriate treatment for Ch.G., the parties agreed to reach out to Ms. Franchi-Rothecker again for assistance. As I have indicated, they eventually signed a Mediation/Arbitration Agreement with her on March 24, 2021. In addition, further to Dr. Profetto's direction, they arranged a zoom meeting with school professionals for March 11, 2021. The attendees at this meeting were the parents, Ms. Persia, the principal Ms. Farkas, Ch.G.'s teacher Ms. Labreche and the Society worker involved at the time, Ms. Townsend. Unfortunately, by that time, school staff had begun to observe a deterioration again in Ch.G.'s level of focus and self-regulation in the classroom and with her peers. During that meeting, Ms. Persia highlighted that in responding to Ch.G.'s challenges, there had been uncertainty all along as to whether they were attributable to her inability to focus or to other problems respecting her cognitive functioning which may in turn have made it hard for her to focus. A consensus was reached among the professionals present at the meeting that a psycho-educational assessment was necessary in order to resolve this fundamental question. This consensus supports my conclusion that the father's resistance to commencing with medication for Ch.G. right away at that point was well-grounded. Both parties agreed to obtain a psycho-educational assessment of Ch.G. The Society worker Ms. Townsend advised the parties that she expected them to identify an agreed-upon professional to complete the assessment within a week.

8. Conflict Regarding the Choice of a Psycho-Educational Assessor

[225] Unfortunately, the parties had great difficulty agreeing upon an assessor to carry out the psycho-educational assessment. A review of the exchanges between them on this issue is

frankly painful, having regard for the back-and-forth nature of their disputes and the extent of the mutual frustration that developed between them. They blame each other for causing the difficulties on this issue, but I conclude that the mother was primarily responsible for the conflict that ensued. To their credit, the parties both made diligent and impressive efforts to research appropriate professionals to carry out the assessment. They began the discussions by each suggesting three professionals who they felt were appropriate for the task. In her initial message on this subject dated March 15, 2021, the mother identified Dr. Erin Warriner, Dr. Gerrit Hultink and Dr. Law as proposed assessors. The father responded the same day and identified Dr. Michelle Bell as a possible candidate. On March 16, 2021, the mother sent another message proposing that Dr. Chohan carry out the assessment, since Ch.G. was familiar with her and this would avoid having to introduce her to yet another professional. The possibility of Dr. Chohan doing the assessment had been raised during the school meeting on March 21, 2021, and the father had clearly indicated that he did not support this. He explained during the meeting and at trial that he did not agree to Dr. Chohan because he felt that she had not responded to his calls or email messages during the family's involvement with her in 2020. In addition, he felt that the mother had provided inaccurate information to Dr. Chohan during the counselling sessions with the parties and Ch.G. in 2020, and that this could influence Dr. Chohan in carrying out the psycho-educational assessment. The perspectives of both parties regarding the suitability of Dr. Chohan to carry out the assessment were understandable and child-focussed, albeit in different ways. While the mother had legitimate concerns about the number of professionals who had been involved with Ch.G. and the possible challenges for Ch.G. of having to connect with yet another doctor, the father was justified in wanting to hire another professional given his unfortunate experiences in attempting to communicate with Dr. Chohan's office. Moreover, the counselling that Dr. Chohan had provided for Ch.G. had focussed in part on very personal issues that were not related to the psycho-educational assessment. It is therefore understandable why the father had concerns about private information that had been exchanged during counselling potentially influencing the outcome of the psycho-educational evaluation. This is not to say that Dr. Chohan would have permitted this to occur, but rather to emphasize that the father's perspective was not at all unreasonable.

[226] The father reminded the mother on March 16, 2021 that he did not agree to Dr. Chohan conducting the assessment, and that he would immediately begin contacting the professionals who she had proposed to obtain more information about them. However, the mother persisted in pushing for Dr. Chohan, and noted that she was available to carry out the assessment in April 2021. The father reminded the mother once again of his objection to Dr. Chohan, and he proposed one of the candidates on the mother's original list, Dr. Erin Warriner, based on her years of experience and the fact that she would not use any associates to assist her in completing the assessment. On March 19, 2021, the mother responded by accusing the father of devaluing her as a mother and not dealing with the concerns seriously. She advised that she had placed Ch.G. on the wait list for Dr. Warriner, but that she would proceed with Dr. Chohan if she could not obtain an appointment with Dr. Warriner by the end of May 2021. She added "I hope and would like to do this together but I am willing to proceed with or without your participation to avoid further delays as this has gone on for far too long." The mother's responses

reflected that she was completely unable to appreciate the father's legitimate concerns and his efforts to reach a timely compromise resolution by choosing a person who was on her own original list of proposed assessors. It was also indicative of her tendency to take unilateral action regarding the children without regard for the father's role and input. As it turns out, Dr. Warriner was unable to book an appointment to see Ch.G. until later in the summer 2021, and therefore the mother proceeded to unilaterally book the assessment with Dr. Chohan without any further discussion with the father on the issue. She did so despite the fact that she knew the father was in the process of trying to contact the other psychologist who she had proposed, Dr. Gerrit Hultink, to make inquiries about his availability. When the father reminded her of this fact on March 26, 2021, she simply directed him to schedule an intake with Dr. Chohan and messaged him later that day to inform him that she would be advising Dr. Chohan's office that he did not want to participate in the process.

[227] On March 28, 2021, the father advised the mother that Dr. Hultink was available as early as Dr. Chohan, and that he could accommodate the mother's concerns about doing the assessment in a single session. At this point, the parties should have been able to reach an agreement on Dr. Hultink, since the mother had proposed him at the outset, he was available on a timely basis and his procedures would have addressed all of the mother's concerns relating to the process. In addition, I find that he had been highly recommended by the Society worker Ms. Townsend. However, the mother nonetheless persisted in demanding that the assessment be carried out by Dr. Chohan, which fuelled the conflict on this issue. The parties eventually turned to Ms. Franchi-Rothecker for assistance in resolving this issue, and with her guidance, they eventually agreed to Dr. Hultink on March 29, 2021.

9. <u>The Psycho-Educational Assessment of Dr. Hultink dated May 13, 2021</u>

[228] Dr. Hultink completed his psycho-educational assessment of Ch.G. on May 13, 2021. He was not called as a witness at trial, but again, the parties consented to his report being admitted as evidence. The parties acknowledged that his assessment was comprehensive, and neither of them had any concerns regarding his methods or procedures.

[229] Ch.G.'s teacher advised Dr. Hultink during the assessment process that Ch.G. was continuing to have some difficulty with focus and attention. As examples, she advised that Ch.G. was asking for bathroom breaks at least eight times daily, was prone to verbal outbursts and tended to become inappropriately involved in other people's business. She sometimes noticed Ch.G. simply staring around the classroom, and she had also observed that Ch.G. had difficulty completing larger and longer projects. Ch.G. was receiving ongoing support from the school-based Child and Youth Worker at the time.

[230] Dr. Hultink determined that Ch.G.'s cognitive capabilities were thoroughly average and that there were no indications that she was suffering from any specific learning disorders. However, he concluded based on his testing, Ch.G.'s historical educational and medical records and the latest feedback from the parents and the school that Ch.G.'s presentation satisfied the diagnostic criteria for ADHD, Combined Presentation, in the mild to

moderate range for severity. This was a somewhat different diagnosis than Dr. Uthayalingam's diagnosis in January 2021 of ADHD, Inattentive Subtype. Dr. Hultink felt that the diagnosis of Combined Presentation fully captured the inattentive features that Dr. Uthayalingam had referenced in his report, but also updated the diagnosis based on the current standardized feedback from the mother and Ch.G.'s teacher, which had revealed the significant presence of hyperactive/impulsive features.

[231] In his report, Dr. Hultink squarely addressed what he referred to as "the elephant in the room," which he described as the consistent reporting by the father over the past two years that Ch.G.'s presentation while she was with him did not reflect any symptoms of ADHD, either with respect to inattention or hyperactive/impulsive behaviours. During his assessment, the parties' ratings respecting Ch.G. once again differed significantly. The mother reported concerns about Ch.G.'s focus and behavioural presentation at home, whereas the father had no concerns in either of these areas. Dr. Hultink noted that he believed both parties with respect to their descriptions of Ch.G.'s presentation during their parenting time, and that any concerns that either of them was being misleading on this issue should be put to rest. However, as Dr. Uthayalingam had also explained in his report, Dr. Hultink noted that the differences in Ch.G.'s presentation while in her father's care did not preclude the ADHD diagnosis, since children can show varying degrees of ADHD symptoms in different environments, as well as no symptoms at all in other settings. He suggested that some possible reasons for Ch.G.'s better behaviour and focus while in the father's care could be the imposition of more rigid boundaries, closer adult supervision, an awareness of possible corporal punishment, a lack of or reduction in emotional volatility or a combination of these factors.

[232] Based on his findings and conclusions, Dr. Hultink made several recommendations respecting Ch.G., including the following:

1. He encouraged the parents and the school to consider presenting Ch.G. to an Identification, Placement and Review Committee ("IPRC") at school to be designated for an exceptionality, potentially in the area of behaviour.

2. Regardless of whether Ch.G. was formally identified, she should have an IEP that addresses her struggles with attention, behaviour and social interaction.

3. He outlined several recommended strategies, approaches and environmental conditions for the school to support Ch.G. and address her challenges in the classroom setting.

4. He recommended that Ch.G. be referred to school-based mental health supports to address her social interaction challenges and to support her in dealing with her parents' divorce and the stressful events relating to their separation.

5. He also summarized several home-based strategies and behavioural programs that the parties should implement during their parenting time to support Ch.G. and respond to her needs.

[233] Dr. Hultink relayed his findings and conclusions to the parties during a meeting on June 8, 2021. Ms. Persia and Ms. Franchi-Rothecker also attended the meeting. I find that during this meeting, he explained that Ch.G.'s reasonable success in school at the time, with marks including As and Bs, was not in and of itself determinative of whether she was struggling with ADHD. In addition, there was a discussion about whether Ch.G.'s treatment plan should include medication. Dr. Hultink relayed his opinion that medication would improve Ch.G.'s overall performance and functioning, and that it would be an important part of an effective treatment plan for her.

[234] I find that the father finally accepted Ch.G.'s ADHD diagnosis without reservation after the completion of Dr. Hultink's assessment. He testified at trial that his resistance to accepting the diagnosis earlier on was attributable to the fact that none of the professionals involved up to that point had explained that Ch.G. could be exhibiting ADHD symptoms in some settings but not in others, and the possible reasons for this. This explanation for his delayed acceptance of the diagnosis was not credible. As I have discussed, Dr. Oyebola explained to the father in February 2020 that the differences in Ch.G.'s level of focus and her behaviour in the parties' respective homes did not preclude a diagnosis for ADHD. Dr. Uthayalingam clearly explained this point as well and explicitly provided possible explanations for Ch.G.'s dissimilar presentation in different settings in his report dated January 6, 2021. While I have found the father's hesitation respecting the use of medication as a treatment modality up until June 2021 to be reasonable, I conclude that his strident rejection of the ADHD diagnosis up until January 2021 and his ongoing difficulty in accepting the diagnosis until June 2021 was ill advised and did not serve Ch.G. well.

[235] Notwithstanding these concerns, the more fulsome picture of Ch.G.'s needs that emerged as a result of Dr. Hultink's assessment is a testament to the benefits of the father's input respecting Ch.G.'s needs, his request for a second opinion regarding her diagnosis, and his cautious approach to the issue of medication, which is what ultimately prompted the school professionals and the parties to pursue the psycho-educational assessment in early 2021. It is clear from the reports of Dr. Oyebola, Dr. Uthayalingam and Dr. Hultink over the course of the period from February 2020 to May 2021 that the precise nature of Ch.G.'s condition was difficult to assess and was evolving during that time. In addition, the school professionals had acknowledged that there could be issues relating to Ch.G.'s organic cognitive functioning that could explain her challenges, and that the psycho-educational assessment would fill in the gaps in this regard. Dr. Hultink's assessment was extremely useful in part because it ruled out various conditions that could have been the source of Ch.G.'s problems. It could have gone differently, and if it had, this would have been critical information in crafting an appropriate plan for Ch.G.

10. Ongoing Conflict Regarding Ch.G.'s Need for Medication and an Individual Education Plan

[236] Although the parties were finally on board together respecting Ch.G.'s ADHD diagnosis as of early June 2021, they could not reach a consensus respecting the use of medication to treat her and her need for an IEP. They turned to Ms. Franchi-Rothecker to assist them

in resolving these issues, and her work with them in attempting to reach a consensus was impressive. Unfortunately, it soon became quite apparent that the father's position regarding medication was firmly entrenched, despite the fact that it had been recommended by Dr. Oyebola, Dr. Profetto, Dr. Uthayalingam and Dr. Hultink by that time. During discussions with the mother and Ms. Franchi-Rothecker, he argued in support of his opposition to medication that Mr. Hultink had not personally observed any signs of ADHD in Ch.G., and that he had not recommended medication in his report. Ms. Franchi-Rothecker recalled that Mr. Hultink had addressed these concerns during his meeting with the parties, but further follow-up with him was required to clarify these issues. Ms. Franchi-Rothecker testified that during this follow-up, Mr. Hultink acknowledged that he had not personally observed any ADHD symptoms in Ch.G., but he confirmed that this was not a helpful indicator of whether Ch.G. was suffering from the condition. He also clarified that he did not specifically make recommendations about medication in his report because it was the role of the child's physician to make recommendations respecting pharmacological treatment, and it was ultimately the decision of the parents as to whether they felt it was appropriate.

[237] In response to Dr. Hultink's clarification respecting the medication issue, the parties attended another appointment with Dr. Profetto on or about August 3, 2021 to discuss Ch.G.'s treatment needs. Dr. Profetto again recommended that Ch.G. be prescribed medication for her ADHD during that meeting, but the father still did not agree. His preference was to pursue naturopathic treatment for Ch.G. rather than medication. He also resisted the idea of Ch.G. being placed on an IEP, because he felt that she was progressing reasonably well academically. His position on this issue reveals that he had been unable to process the information that he had received from the professionals up to that point, including most recently Dr. Hultink, that marks alone were not a determinative indicator of ADHD and whether Ch.G. required school-based supports. Based on the abundance of evidence at that time regarding the benefits of medication for Ch.G. and her needs at school, including accommodations, mental health support, special learning strategies and modifications respecting programming and classroom configuration, I conclude that the father's positions respecting medication and an IEP for Ch.G. in June 2021 were contrary to Ch.G.'s best interests. These matters ultimately proceeded to arbitration before Ms. Franchi-Rothecker. In her arbitral award dated July 15, 2021, Ms. Franchi-Rothecker decided as follows:

1. Ch.G. would commence ADHD medication prior to the commencement of the school year in September 2021. The precise date for the commencement of the medication would be determined by Dr. Profetto, in consultation with the parents.

2. Dr. Profetto was to determine the medication that should be prescribed for Ch.G.

3. The effectiveness of the medication would be determined by Dr. Profetto following input from Ch.G.'s grade 5 teacher and Ms. Persia.

4. An IEP would be put into place for Ch.G. for September 2021. Ms. Persia was to coordinate this process.

5. The parties were to comply with recommendations regarding home-based strategies to support Ch.G. and address her needs at home.

6. The parties were to refrain from discussing the arbitral award or the issue of medication with Ch.G., and they were to make an appointment for her to see Dr. Profetto so that he could explain the medication to her.

[238] Ch.G. began taking medication for her ADHD symptoms 3 days prior to the commencement of school in September 2021. The parties both complied diligently with the medication regime that Dr. Profetto prescribed, and they both acknowledged at trial that the medication resulted in significant improvements in Ch.G.'s functioning and behaviour during her grade 5 year from September 2021 to June 2022. With respect to the direction regarding the implementation of an IEP for Ch.G., the parties consented to Ch.G.'s case proceeding to an IPRC meeting in September 2021, at which time Ch.G. was identified as a student with a behavioural exceptionality designation. The school formulated an IEP for Ch.G. and the parties took all necessary steps to implement that plan. The mother testified that Ch.G. has not required the supports or strategies referred to in the plan based on the gains that she has made as a result of taking her medication.

[239] Notwithstanding the overall gains that Ch.G. has made since taking medication to address her condition, I find that near the end of her grade 5 school year and during the early period of her grade 6 year that commenced in September 2022, Ch.G.'s teachers began to relay concerns once again about Ch.G.'s focus and social interactions at school. The parties had two meetings with St. Francis Xavier school professionals to discuss and problem-solve around these reported difficulties. The father testified that Ch.G.'s teachers kept a weekly log respecting Ch.G.'s behaviour during her grade 5 year, and that he spoke with Ch.G. about the concerns that the teachers had logged near the end of that year. He stated that Ch.G. adamantly denied the teachers' reports about her behaviour, became upset and insisted that the teachers were lying about her. Instead of working directly with the teachers and Ch.G. about their different perspectives about Ch.G.'s presentation at school, he used a fit watch that he had purchased for Ch.G. to secretly record Ch.G. during school hours, without the knowledge of either Ch.G. or her teachers. He openly acknowledged having done this during an appointment between the parties and Dr. Profetto in the fall of 2022. This course of action on his part is another example of his concerning tendency at times to mistrust professionals involved with the children and to start from a position of resistance rather than open-mindedness when professionals report concerns about the children. His decision to secretly record Ch.G.'s interactions with her teachers also demonstrates the extent to which he will resort to his own independent means to investigate issues respecting the children, rather than working collaboratively with professionals from the start to find solutions. Engaging in surreptitious recordings of well-intentioned school professionals with a child is not the type of conduct that engenders trust and positive working relationships, which are required to ensure that the child's needs and problems are addressed in an effective and timely manner. These are additional considerations that support my conclusion that the mother should have final decision-making responsibility in regard to educational and health-related issues respecting Ch.G. and C.G.

[240] On a positive note, following the two school meetings and the appointment with Dr. Profetto in the fall of 2022, the parties both accepted Dr. Profetto's recommendation to increase Ch.G.'s medication slightly. The father has complied in ensuring that Ch.G. has taken the medication during this parenting time periods.

D. The Parties' Difficulties in Addressing Issues Relating to COVID-19

[241] The onset of the COVID-19 pandemic, with the resulting unprecedented challenges that this caused for society as a whole, led to some problems between the parties in responding to the children's health-related needs. The parties and Ms. Franchi-Rothecker discussed the importance of fully sharing information about any COVID-19 related issues in 2021, because the mother had raised concerns that the father had not advised her that several of his family members had contracted the virus. In regard to that concern, there is no evidence that the father exposed the children to those family members during periods which would have raised concern for them potentially contracting the virus. In addition, the evidence adduced at trial does not establish that the father breached any public guidelines or directions regarding COVID-19.

[242] The parties had to address issues relating to COVID-19 again over the holiday period in December 2021, when the father determined the morning after the children transitioned to his care that he had COVID. I find that he responded appropriately by messaging the mother right away to advise her of the situation. The mother requested that he isolate himself from Ch.G. and C.G. and sought his agreement to return the children to her care for their safety and protection and to allow him to recuperate. The father did not respond right away to this request, and therefore the mother reached out to Ms. Franchi-Rothecker for assistance in addressing the issue. The father explained that he wished to test the girls before deciding the issue, since it would not make sense to return them to the mother if they also had COVID as this would expose the mother to the virus. The concerns and perspectives of both parties in relation to this situation were in my view reasonable and well-intentioned, and I conclude that neither of them was inappropriate in responding to the circumstances. They once again received very helpful guidance and suggestions from Ms. Franchi-Rothecker. The father proceeded to test the girls, who were negative for COVID-19, and cooperated in sending them back to the mother's home soon after obtaining the results of the testing. The situation was resolved within less than two hours after Ms. Franchi-Rothecker became involved.

[243] Prior to the father contracting COVID, the parties had begun to engage in discussions in December 2021 about whether Ch.G. and C.G. should be vaccinated against the virus. The mother had been vaccinated and wanted the children to be vaccinated as well. However, the father had chosen not to be vaccinated and resisted having the children vaccinated, because he had concerns that the vaccines were new and he was worried about the potential long-term health risks that they could pose. The mother requested that the parties schedule an appointment with Dr. Profetto to discuss the pros and cons of vaccinating the children, but the father initially declined to do so on the ground that he wished to see how things played out respecting COVID-19 vaccination for children, and he had concerns about how the vaccine may interact with Ch.G.'s ADHD medication.

However, I find that he reconsidered his position on consulting with Dr. Profetto within a couple of days, and that the parties did meet with Dr. Profetto to discuss questions that they had about the vaccine.

[244] The mother contacted Ms. Franchi-Rothecker to seek assistance in resolving the COVID-19 vaccination issue in mid December 2021. The parties had two meetings with Ms. Franchi-Rothecker in December 2021 during which they fully explained their positions respecting the vaccination issue. Unfortunately, they were unable to reach agreement on whether Ch.G. and C.G. should be vaccinated, and the issue therefore proceeded to arbitration pursuant to the terms of the Mediation/Arbitration Agreement that they had executed with Ms. Franchi-Rothecker in March 2021. Ms. Franchi-Rothecker released her arbitral award on December 30, 2021 and concluded that the children should be vaccinated. She also established when the children would receive their vaccination shots, how the parents would communicate the decision to the children and how they should prepare them for the shots.

[245] The parties' inability to reach a consensus on the question of COVID-19 vaccination is a relevant factor in determining the decision-making framework that is in their best interests. However, I have considered the evidence respecting this issue taking into consideration all of the relevant contextual circumstances, and in doing so, I find that the manner in which they dealt with the issue does not support an order for straight sole decision-making on medical issues in favour of the mother. Rather, their handling of the issue supports my conclusion that they should be required to make all reasonable efforts and take all reasonable steps to attempt to make health-related decisions respecting the children jointly, including accessing mediation or parenting coordination in their attempts do so. The question of COVID-19 vaccination for children has been an exceedingly difficult one for parents to resolve generally, and there were clearly conflicting court decisions on the issue as of December 2021. Although the government had authorized vaccination for children aged 5 to 11 years, it had not mandated it as with other childhood vaccinations. There was and continues to be extensive debate about the need for vaccination in healthy children, and there was limited scientific knowledge as of December 2021 to allow the parties to decide with any sense of certainty whether the overall positive effects of vaccination outweighed the potentially negative ones. Ms. Franchi-Rothecker testified that the parties were both diligent in researching the issue and presenting information to her in support of their positions. She also emphasized in her testimony on this issue that the question was an exceedingly difficult one that many parents were struggling with at that time, even in intact families. She emphasized that the father's requests, thinking and concerns about the vaccine were all reasonable having regard for the relevant contextual considerations that prevailed at the time. I conclude that both parties were entirely child-focussed in their approach to the issue of COVID-19 vaccination, and that their efforts to resolve the issue jointly ensured first, that there was important sharing of information between them and second, that they both seriously considered all of the information presented by both sides. In my view, this process ultimately ensured that both parties fully considered all relevant information on this very difficult issue, and it was in the children's best interests that this occur. While the issue had to proceed to arbitration, this was in my view an exceedingly challenging issue for

most parents at the time which arose during an unprecedented world-wide health emergency. The parties were respectful and cooperative with each other and with Ms. Franchi-Rothecker, they were able to resolve the issue with her within two weeks of the mother raising it, and they followed through with the directions set out in the arbitral award. The overall positives of how they managed the situation far outweigh any concerns about their inability reach a consensus.

E. The Parents' Challenges In Responding to Communications Between Ch.G. and M.S.

[246] Unfortunately, the parties had to respond to a situation that developed in late 2021 regarding communications between Ch.G. and the father's close male friend, M.S. I heard evidence from the parties, M.S. and Ms. Franchi-Rothecker about this situation. M.S. is one of the father's closest friends and he spends a considerable amount of time with the father and children during the father's parenting time. I find that he and Ch.G. have developed a close relationship over the years, that he has helped her with school work, has encouraged her to become interested in logic puzzles and Sudoku, and that one of their favourite things to do with each other has been to exchange riddles. In December 2021, while monitoring messages on Ch.G.'s cell phone that she had purchased for her, the mother noticed that there were numerous WhatsApp messages between M.S. and Ch.G., some of which had been exchanged late at night. Most of these messages consisted of Ch.G. posing riddles to M.S. and him trying to guess the answers. However, on December 8, 2021, Ch.G. sent a riddle to him regarding Santa Claus, the answer to which clearly indicated that the riddle was for adults and was not age-appropriate for Ch.G. M.S. first responded to Ch.G.'s eventual answer to this riddle with a concerned looking emoji and asked if that was an adult joke. However, when Ch.G. confirmed that it was an adult joke, he continued to engage in communications with her, indicating that he found the joke funny. The exchanges on that occasion continued until 10:40 p.m. that night, with Ch.G. and M.S. continuing to engage in banter about various riddles, and M.S. stating twice that some of Ch.G.'s jokes were not as funny as the inappropriate adult one.

[247] M.S. testified that his communications with Ch.G. on WhatsApp commenced at Ch.G.'s initiative, and that he was not certain how she had obtained his cell phone number. He stated that their messages were generally limited to discussions about when he would be coming to the father's home and exchanges about riddles. He acknowledged that the riddle that Ch.G. sent to him on December 8, 2021 was inappropriate for her age, and stated that he had concerns about this. He also acknowledged that the messages between him and Ch.G. on December 8, 2021 occurred late at night, and that this was inappropriate. On this issue, he explained that he was working on a complex work project with a client from Australia at the time, that his work hours had become irregular due to the time zone differences between Canada and Australia, and that he did not realize what time it was during the exchanges with Ch.G. on December 8, 2021 until he re-read the messages later on. M.S. testified that he tried without success to contact the father early in the day on December 9, 2021 to discuss his concerns about Ch.G.'s

messages to him, and that the father called him back later in the day but he was asleep at the time.

[248] The mother messaged the father on Friday December 10, 2021 and relayed her concerns about the WhatsApp exchanges between Ch.G. and M.S. The father testified that around the same time, he and M.S. were playing "telephone tag" trying to address the issues. There is inconsistency in the evidence as to whether M.S. tried to connect with the father before the mother raised the concerns, or whether the father reached out first to M.S. to discuss the concerns after he heard from the mother. The father testified that M.S. was the one who initiated attempts to connect with him on December 9, 2021 after receiving the message from Ch.G. with the inappropriate riddle the day before, and that they played "phone tag" trying to actually speak with each other due to M.S.'s irregular work hours at the time. However, as I discuss below, Ms. Franchi-Rothecker became involved in addressing the situation, and she testified that when she spoke with the father about it, she specifically asked him whether M.S. had reached out first to tell him about having received any messages from Ch.G., to which the father had responded that M.S. had not done so. I conclude that the discussion between the father and M.S. about these issues occurred at the father's initiative, after he received the message from the mother about her concerns on December 10, 2021. It is difficult to reconcile M.S.'s evidence that he was so concerned about Ch.G.'s communications about the inappropriate riddle that he called the father right away the next day with his messages to Ch.G. indicating how funny the riddle was. I find that when M.S. and the father eventually connected with each other, M.S. discussed the inappropriate riddle, acknowledged that he should have told the father about Ch.G.'s communications with him, apologized for communicating with Ch.G. so late at night and explained that he did not realize what time it was when he sent his messages. The father and M.S. agreed that there would be no further text or other digital exchanges between M.S. and Ch.G. In addition, the father spoke with Ch.G. and told her that she could no longer communicate with M.S. by text. He explained that she should not be communicating with his friends in this manner, and he implemented a rule as of that point that the children could not take their cell phones with them into their bedrooms at bedtime. In addition, after that point, he took steps to disconnect the household wifi on the children's phones at bedtime as an added precaution.

[249] The father spoke with the mother on December 10, 2021 after discussing the situation with M.S. He explained that he had spoken with Ch.G. and M.S., that he had directed both of them to cease their text communications, and that he had implemented the new house rules described above to address the concerns. At trial, he acknowledged that the communications between M.S. and Ch.G. about the inappropriate riddle, as well as the late-night timing of some of the communications between them, were inappropriate. There was a dispute between the parties as to whether M.S. communicated once again with Ch.G after the father directed him not to, which I was unable to resolve based on the evidence adduced. However, I find that even if a further communication occurred, there were no further text communications between Ch.G. and M.S. after that point.

[250] The mother was not satisfied with the father's response to the communications between Ch.G. and M.S. She struggled with whether her concerns were serious enough to contact

the Society, so she decided instead to reach out to Ms. Franchi-Rothecker for assistance in working through the situation. Ms. Franchi-Rothecker met with the parents on or around December 27, 2021, and then spoke with M.S. about the issues. She testified that she was not completely satisfied with some of the explanations that M.S. provided. A further meeting was arranged with Ms. Franchi-Rothecker, both parents and M.S. to discuss the concerns further. Both parents were given an opportunity to express their concerns to M.S. and to reiterate that he should not communicate with Ch.G. by text or other electronic means again. M.S. apologized and assured the parties that he would not communicate any further with Ch.G. Ms. Franchi-Rothecker testified that the parties were able to reach a resolution of the situation with her support, but she had concerns that the father minimized the seriousness of the situation and downplayed the extent to which M.S.'s behaviour was inappropriate.

[251] The father's position was that he took all appropriate steps to address the concerns about M.S.'s communications with Ch.G., and that it was unnecessary for the mother to seek the assistance of Ms. Franchi-Rothecker in responding to the issue. It is clear from his evidence at trial that he felt that the mother over-reacted to the situation and had no cause for further concern after he advised her of the steps that he had taken following receipt of her message. This was obviously a very difficult and highly sensitive situation for the parties to work through, and I conclude that they cooperated well with each other and Ms. Franchi-Rothecker to ensure that the concerns were addressed to the satisfaction of both parties. However, I do not accept the father's position that the mother over-reacted, or that the support of Ms. Franchi-Rothecker was unnecessary. M.S. exercised extremely poor judgment in engaging in text communications with Ch.G. without the parties' knowledge, often late at night, and in relaying to Ch.G. on December 8, 2021 that he found her adult riddle to be funny. His explanations for why he engaged in communications with Ch.G. so late at night were not in my view compelling, and I have not accepted the evidence from him and the father that he was the one to reach out proactively to the father on December 9, 2021 to relay concerns about the communications from Ch.G. regarding the inappropriate riddle. The father has a very close relationship with M.S., and his approach to the situation was in my view influenced by that relationship. I agree with Ms. Franchi-Rothecker's overall impression that the father did not ask M.S. some of the difficult questions that he should have, including why M.S. had not advised him right away when Ch.G. began to text him in the first place. I also concur with Ms. Franchi-Rothecker's overall assessment that the father inappropriately minimized the mother's concerns and the potential seriousness of the situation. The mother's approach was in my view entirely appropriate and child-focussed, and the process of working through the situation with Ms. Franchi-Rothecker and with participation from M.S. was critical in bringing to bear the seriousness of the concerns to the father.

VII. CONCLUSIONS RESPECTING THE CHILDREN'S BEST INTERESTS

[252] I have addressed in detail the factors that have influenced my decision that it is in Ch.G.'s and C.G.'s best interests that the parties make all reasonable efforts and take all reasonable steps to attempt to reach significant decisions respecting the children's health

and education jointly. They require a clear decision-making framework which requires them to provide each other with sufficient time to exchange their perspectives and any relevant materials in support of their positions, and to review any materials that are exchanged. The framework should require them to obtain second opinions from professionals if requested by either party in non-urgent situations. To summarize, the main reasons for my decision are as follows:

[253] First, as I have stated, I have found that both parties are loving, attentive and committed parents to Ch.G. and C.G., and that the children love both of them equally. Although the mother was their primary caregiver prior to December 2018, both parties have played an equal role in meeting their day-to-day needs since that time. While there were some concerns about the father's interactions with the children soon after the separation, those issues were fully and appropriately addressed by the police and the Society, and there have been no further concerns of that nature. The parties have both met the children's daily needs and I find that they both prioritize the children's issues and needs above their own.

[254] Second, I have found that in responding to parenting issues, the parents have both been guided by their genuine views as to what has been in the children's best interests, rather than by their own self interest. As I have discussed at length, they have differed from time to time in their views regarding the children's needs, and I have found that the father's approach has at times been inflexible and contrary to the children's best interests. However, there is no evidence that his approaches or positions have been driven by inappropriate considerations such as personal convenience or financial benefit, or a desire for power and control in the co-parenting relationship with the mother.

[255] Third, as I have discussed, the parties have in fact been able to resolve the vast majority of the parenting issues respecting Ch.G. and C.G. jointly, without difficulty. Some of these issues have been challenging, including the finalization of the parenting time terms and child support. They also cooperated in jointly retaining Ms. Franchi-Rothecker to assist them in resolving issues without the necessity of further court intervention on the issues that raised challenges for them. While there were some difficult issues on which they could not reach consensus, these should not overshadow the significance of their overall successful track record in resolving parenting matters in a reasonably amicable fashion.

[256] I have discussed at length the nature and quality of the communications between the parties. As I have indicated, they have communicated extensively and regularly through OFW about many issues since December 2018. While they have clashed on some important and sensitive issues since that time, it is significant that their communications have overall been responsive, timely and respectful. There is no evidence that either of them has engaged in inappropriate behaviour in their communications as is often seen in high conflict situations, such as name calling, blaming, drudging up past events, or attempting to manipulate or mislead each other. The only concerns that I have identified respecting the parties' communications are in relation to the mother rather than the father. As I have discussed, she has at times been closed-minded and inflexible in her responses

to the father and has persisted in maintaining a negative impression of his parenting even when he has provided reasonable explanations in response to her concerns.

[257] These concerns about the mother's dismissive approach with the father in some of her communications with him tie in with more general concerns that I have identified about her attitude towards the father, and which have led me to conclude that the straight sole decision-making order that she has requested is not in the children's best interests. I have discussed how the mother engaged in a pattern of coercive and controlling behaviour in the past with the effect, whether intentional or not, of inappropriately undermining the father's influence and role in Ch.G.'s and C.G.'s lives. This was particularly evident during the period from July to mid December 2018. While she has made gains in changing her attitude towards the father's parenting role, I have noted that there is cause for ongoing concerns regarding her ability to maintain these advances without the intervention of her counsel and Ms. Franchi-Rothecker. She had great difficulty acknowledging at trial that the father is motivated in his parenting by his concern for the children's wellbeing. Her responses to some of the father's evidence at trial were inappropriate and revealed concerns regarding the level of her ongoing impatience and frustration with him. While I have found her frustration to be appropriate at times, there were other occasions when it was not justified. She took unilateral action in scheduling the psycho-educational assessment with Dr. Chohan, without regard for the father's reasonable concerns about that choice. In addition, I was left with the overall impression that she has viewed the father's requests for further time to consider issues respecting Ch.G.'s challenges, for second opinions and for further inquiries to be generally unnecessary and contrary to the Ch.G. 's best interests. Although I have found her to be equally or primarily responsible for the conflict between the parties in some situations, my impression is that she cannot appreciate that she has had a role in the conflict apart from her litigation conduct at the early stage of the parties' separation. I have genuine concerns based on these considerations that the mother would fall back into old patterns of marginalizing the father's influence and role in the children's lives under a sole decision-making framework in her favour, and without the additional requirement of engaging in mediation or parenting coordination to attempt to resolve significant issues jointly.

[258] The other important consideration underlying my decision is that the parties are both very intelligent and diligent in researching matters regarding the children's wellbeing. Their combined efforts, knowledge and insight have in my view usually yielded the best possible outcomes for the children. I find that the need for them to work together to reach decisions has allowed for appropriate checks and balances in addressing important issues. In this regard, the mother has been more diligent in identifying issues early on and in taking proactive steps to address them, whereas the father has often started from a position of denial regarding the existence of problems and resistance to taking steps to resolve them. However, the mother has usually been willing to proceed right away with recommendations of professionals, whereas the father has generally been more cautious in doing so and insistent on making further inquiries. As I have discussed in the context of Ch.G.'s attention and behavioural challenges, those additional inquiries ultimately led

to positive results for Ch.G. Accordingly, both parties have played an important part in addressing the children's needs, albeit in different ways.

[259] I am requiring the parties to access mediation or parenting coordination services if they cannot decide educational or non-urgent medical issues jointly for several reasons. First, I expect that under the framework that I am ordering, the parties will continue to be able to resolve all but the most challenging parenting issues jointly without difficulty. Second, the parties have a positive history of engaging cooperatively and respectfully with their current parenting coordinator Ms. Franchi-Rothecker, who has successfully guided them through some challenging situations and issues without the need for court intervention. Significantly, Ms. Franchi-Rothecker has assisted them in resolving several issues even without arbitration much more quickly than they could have through court proceedings. Third, Ms. Franchi-Rothecker has played a critical role in ensuring that the parties exchange all relevant information about issues before they take final positions on them, which has contributed greatly to the overall quality of decisions that the parties have reached. Fourth, Ms. Franchi-Rothecker's involvement has assisted the parties in shedding their initial resistance to each other's perspectives and opening their minds to each other's ideas and suggestions, and I conclude that this has made them better parents to Ch.G. and C.G. The involvement of a parenting coordinator has been an important safeguard against the mother's tendency to marginalize the father and has been a mechanism for encouraging the father to take a more balanced approach when he has become unreasonably entrenched in his personal opinions about how to support the children's best interests.

[260] I have concluded for several reasons that it is not in the children's best interests to divide final decision-making on educational and health-related matters as between the parties, with each having one sphere of decision-making responsibility. First, the challenges and special needs that Ch.G. and C.G. have experienced to date do not fall neatly into one of these categories of decision-making, but rather cross over into both areas. I expect that this will continue to be the case moving forward. C.G. 's difficulties with language and reading have an educational component, but it is clear from the evidence that she will require a psycho-educational assessment in the future, which crosses over into the realm of health-related decision-making. Additional medical interventions and assessments may be required down the road to pinpoint the source of any ongoing challenges that C.G. may experience. Similarly, the identification, assessment and treatment of Ch.G.'s behaviour and attention difficulties have straddled both the medical and educational realms and have required the intervention of professionals from both of these fields of practice. Accordingly, I conclude that dividing up these incidents of decision-making between the two parties would simply result in further conflict, confusion and frustration between them in attempting to resolve issues, which would be contrary to the children's best interests.

[261] I am not requiring the parties to submit to arbitration with a mediator or parenting coordinator in the event that they cannot reach a joint decision on educational or health-related matters respecting the children, for the reasons that I have outlined in my analysis of the law respecting this issue. Even if I could legally compel the parties to submit to

arbitration, I would not require them to do so because such an order would not in my view be in the children's best interests. The parties should ultimately be entitled to access the courts and the full adversarial process to address unresolved parenting issues, particularly when there are difficult factual and credibility issues in dispute, as this process is uniquely tailored to maximize the odds of reaching the truth and a full picture of all relevant facts.

[262] Having carefully balanced all of the factors relevant to Ch.G.'s and C.G.'s best interests, I find that final decision-making on educational and health-related matters respecting the children should rest with the mother. As I have discussed, this conclusion is based in part on her primary caregiving role in the past, and the fact that she has continued to take the lead in arranging and scheduling services and appointments for the children since the parties' separation. I have also been guided on this issue by my findings that the mother typically identifies and acknowledges concerns that arise respecting the children in a much more timely and open-minded manner. The father has at times denied or minimized significant concerns regarding the children when they arose, as was seen with respect to C.G.'s difficulties with language and reading and with Ch.G.'s problems with attention, self regulation and social interactions with her peers. Finally, the mother has a more positive track record than the father in being open-minded to recommendations from professionals regarding the children's difficulties and needs and is more willing to follow those recommendations once all of the relevant information has been gathered and considered. I am confident that under the framework that I am ordering, with the inclusion of mediation or parenting coordination services, the mother would reach reasonable and well-informed decisions respecting the children. By contrast, as I have discussed, the father has on occasion been too tenacious in clinging to his own views and opinions respecting the children's wellbeing and unable to trust and accept the reasonable findings and recommendations of well-intentioned, knowledgeable and skilled professionals on issues. This tendency ultimately did not serve C.G. well in addressing her educational needs and resulted in the parties having to move to arbitration to properly address Ch.G.'s need for medication, a behavioural exceptionality designation and an IEP at school.

PART 7: TERMS OF ORDER TO ISSUE

[263] For the reasons outlined above, a final order shall issue as follows:

1. The names of the parties, the children, extended family members, family friends and all non-professional witnesses called at trial shall be initialized in these Reasons for Judgment. If either party objects to this order, they may bring a motion within 14 days of receiving these Reasons for Judgement to request that I reconsider this decision after hearing submissions from both parties.

2. Subject to paragraphs 6 and 7, the Applicant and Respondent shall engage in all reasonable efforts and take all reasonable steps to attempt to make significant decisions respecting the health of the children Ch.G and C.G. jointly. This shall include but not be limited to significant decisions relating to the assessment,

treatment and care of the children's physical health, psychiatric and psychological health, counselling needs, developmental needs and vision and dental needs.

3. The Applicant and the Respondent shall also engage in all reasonable efforts and take all reasonable steps to attempt to make significant decisions respecting the education of Ch.G. and C.G. jointly. Subject to paragraph 1 of the order dated November 23, 2022, this shall include but not be limited to decisions about where the children attend school, whether they participate in any specialized educational programming including tutoring, whether they receive other forms of academic assistance and support, the professionals who will provide any such assistance and support, whether they should undergo psycho-educational or other assessments to gain information respecting their cognitive functioning and academic needs, and if so, the professional(s) who will carry out any necessary assessments.

4. In carrying out their responsibility to attempt to reach significant decisions respecting the children's health and education jointly, the parties shall at minimum take the following steps:

    a) The party raising an issue ("the initiating party") shall advise the other party ("the responding party") in writing of the issue to be decided, their position regarding the issue and the reasons supporting their position, and they shall produce any documentary materials that they want the responding party to review in considering the matter.

    b) The responding party shall within 10 days of receiving the message from the initiating party consider the issue, review the materials produced by the initiating party, conduct their own research on the matter, consult with any third parties if they consider this necessary to reach an informed decision, advise the initiating party in writing of their position and the reasons for that position and produce to the initiating party any documentary materials that they want the initiating party to review in considering the matter.

    c) The parties shall both take into consideration the views and preferences of the child in question, if appropriate based on the age and development of the child and the nature of the issue to be decided.

    d) The parties shall both take into consideration the recommendations of any professionals involved with the child in relation to the issue before formulating their position on the matter.

    e) The initiating party shall within 10 days of receiving a response from the responding party consider that party's position and any documentary materials that they have produced in support of it, conduct any further research or inquiries they consider to be appropriate on the issue, and

confirm in writing their position on the issue after having undertaken these steps.

f) If the parties are unable to reach agreement on the issue after taking the steps set out above, and either of them requests a second opinion from a professional qualified to provide guidance on the issue, the parties shall forthwith take all necessary steps required to obtain a second opinion.

g) The parties shall confer with each other again about the issue within 7 days after obtaining a second opinion.

h) If the parties remain unable to reach a consensus on the matter, they shall forthwith take all necessary steps to jointly retain either a mediator or a parenting coordinator to assist them in reaching a joint decision. They shall be equally responsible for the cost of this service. They are not required to submit the issue to arbitration.

i) If the parties remain unable to reach a joint decision despite the assistance of a mediator or parenting coordinator, the mother shall have final decision-making responsibility on the issue.

5. If either party is of the view that participation in parenting coordination is not appropriate at the relevant time, they may bring a motion for directions on the issue and for an order that section 4(g) shall not apply.

6. Both parties shall have the right to take the children for medical assessment and treatment of non-urgent health issues that may arise during their parenting time, and to administer appropriate over-the-counter or prescribed medications, care and treatment for the children's routine health-related issues while they are in their care.

7. If either Ch.G. or C.G. experiences an urgent health-related situation that requires immediate treatment, the party who has care of the child shall notify the other party as soon as is reasonably possible in the circumstances, and if time permits, the parties shall consult with each other regarding the child's treatment needs. Paragraph 4 shall not apply in these circumstances. The Applicant shall have sole decision-making responsibility respecting the health of the child in question, unless the Respondent has care of the child and either:

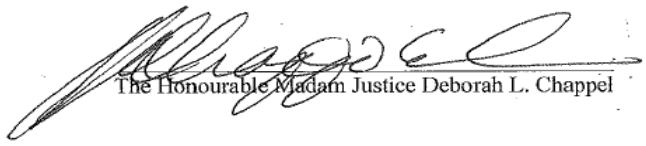
a) He cannot reach the Applicant; or

b) He has been advised by the attending treatment professionals that the situation is of such urgency that the time required to contact the Applicant to obtain her decision would place the child at risk.

In either of these situations, the Respondent shall have decision-making responsibility to determine the appropriate course of action to address the child's urgent health needs and treatment, but he shall advise the Applicant forthwith of the situation and the decision that he has made.

8. The Applicant shall have primary responsibility for making significant educational and health-related appointments respecting the children. She shall consult with the Respondent about his availability before making appointments so that she can attempt to schedule the appointments for times when the Respondent can attend. However, if she considers the appointment to be urgent in nature, she shall have the right to make these appointments based on the earliest possible date recommended by the relevant professional that is compatible with her schedule. She shall advise the Respondent of appointment dates forthwith after they are scheduled so that he may attend if his schedule permits.

9. The parties shall engage in meaningful discussions respecting the issue of costs of this proceeding, including holding a four-way meeting with their counsel if necessary. If they are unable to resolve the issue of costs, any party seeking costs shall by no later than July 7, 2023 submit a written request to the Trial Coordinator to schedule a 2 hour costs hearing before me. If neither party submits a written request for a hearing date July 7, 2023, there shall be no costs payable by either party. Any costs hearing shall occur by no later than July 28, 2023. For the purposes of any costs hearing, the Applicant shall serve and file Costs Submissions of no more than 8 pages, a Book of Authorities, a Bill of Costs and any Offers to Settle by no later than 7 business days prior to the hearing, and the Respondent shall serve and file the same materials by no later than 4 business days prior to the hearing.



The Honourable Madam Justice Deborah L. Chappel

Released: May 31, 2023

CITATION: S.V.G. v. V.G., 2023 ONSC 3206
COURT FILE NO.: FC 1133/18
DATE: May 31, 2023

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

S.V.G.

Applicant

– and –

Respondent

V.G.

REASONS FOR JUDGMENT

Chappel J.

Released: May 31, 2023