

CANADA / JUDGMENT

T.A.M. v. A.E.B.K.

2025 BCSC 1627

COURT

Supreme Court of British Columbia

DECIDED

21 August 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1627 T.A.M. v. A.E.B.K.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.A.M. v. A.E.B.K.,

2025 BCSC 1627

Date: 20250821

Docket: 202576

Registry: Victoria

Between:

T.A.M.

Claimant

And:

A.E.B.K.

Respondent

Corrected Judgment: The text of the judgment was corrected
at paragraph 110 on August 26, 2025

Before: The Honourable Justice K. Wolfe

Reasons for Judgment

Counsel for the Claimant:

M. Witzman

Counsel for the Respondent:

E. Neary

L. Marshall, A/S (Sept. 23, 25-27 and Nov. 4-7 and 27, 2024)

Place and Date of Trial:

Victoria, B.C.

September 23-27, 2024,

November 4-7 and 27, 2024,

and August 21, 2025.

Place and Date of Judgment:

Victoria, B.C.

August 21, 2025

Table of Contents

Introduction.. 3

Issues. 5

Factual Background.. 5

The parties' relationship and the child's first year 6

Relevant procedural history. 8

Analysis. 18

Expert Evidence. 19

The Kang Report 19

Admissibility. 20

Weight 27

The Section 211 Reports. 29

The role of section 211 reports. 32

Discussion of the England Report and the Elterman Report 34

Credibility and reliability. 42

The best interests of the child analysis. 44

A. Health and emotional well-being, need for stability, nature and strength of relationships and views of the child. 46

Strength of relationships - s. 37(2)(c) 46

Views of the child - s. 37(2)(b) 47

Stability given age and stage of development - s. 37(2)(e) 48

Health and emotional well-being - s. 37(2)(a) 49

B. History of care and parent's ability to exercise their responsibilities. 55

History of child's care - s. 37(2)(d) 55

Ability to exercise parental responsibilities - s. 37(2)(f) 56

C. Family violence and the appropriateness of requiring cooperation. 65

Family violence and its impact - ss. 37(2)(g) and (h) 65

Appropriateness of requiring cooperation - s. 37(2)(i) 72

Conclusion on parenting time. 75

Conclusion on parenting responsibilities. 79

Conclusion on communications and conduct 82

Conclusion and summary of orders. 85

Introduction

- [1] At the heart of this family law trial is a child, now six years old, who is loved and adored by both of her mothers. The child's parents, who separated when she was less than a year old, are both dedicated to the child's well-being and each professes a desire to ensure the other parent remains a part of the child's life. However, the two parents have very different perspectives on what the child needs and very different parenting styles. While each has strengths and weaknesses, and therefore different things they can offer their child, post-separation, their differences have led to intense conflict, including, but not limited to, their communications with each other. That conflict, and their inability to agree on even the simplest parenting matters, eventually resulted in an 11-day trial.
- [2] The primary issues I must decide relate to parenting time and parental decision-making. Inherent in those issues are questions of how the parties are to communicate with and about each other, particularly given past problematic conduct. The parties agreed, reasonably in my view, that they will continue to require the assistance of a parenting coordinator. On the last day of closing submissions, the parties signed a consent order to retain a mutually-agreed parenting coordinator and to divide holiday and special parenting time equally (the "November 2024 Consent Order"). Both parties accept that in determining the remaining

issues, my sole focus must be on what is in the best interests of their child going forward.

- [3] The claimant, T.A.M., seeks equal parenting time and shared decision-making responsibilities. The respondent, A.E.B.K., says equal co-parenting is not in the child's best interests. She relies on Dr. England's report, prepared under s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] and released in January 2023 (the "England Report"), to seek a parenting regime aligned with its recommendations. The respondent says the child should primarily be in her care, the claimant should essentially have parenting time on alternate weekends, and the respondent should retain ultimate decision-making authority if the parties cannot agree. The claimant disputes the conclusions in the England Report and, in any event, says they have been overtaken by the more recent s. 211 report completed by Dr. Elterman in September 2024 (the "Elterman Report"). Given the parties' positions, I must decide the weight to be given to, and use to be made of, both s. 211 reports. I must also address the admissibility and weight of a third report the claimant obtained to address concerns the England Report raised about her mental health.
- [4] The parties spent considerable trial time addressing why matters reached the point where a trial was required. Among other things: they tendered evidence respecting historical determinations and actions of former parenting coordinators; they addressed a consent order under which both parties (while represented) agreed to implement recommendations from the England Report before they were known; and they explored in detail communications the claimant sent several years ago that she candidly acknowledged were "absolutely horrendous", "unacceptable" and "abusive". Both parties contributed to the conflict. In viewing this evidence through the lens of what I must decide, and consistent with the applicable test under s. 37 of the FLA, I have focused not on who is to blame, but instead on if and how those past events might continue to inform my assessment of the child's best interests.
- [5] At the end of the day, I find the child's interests are best served by spending quality time with each of her parents, so that she may benefit from both of their unique perspectives and approaches. After many years of litigation, I hope this decision will allow each parent to move forward and grow to see the value the other parent brings to their child's life, without feeling like that recognition somehow diminishes their own role. In these reasons, I have attempted to strike the balance between the parents that I consider to be in the child's best interests at this point in time, based on the evidence before me. I have also tried to equip the parties with tools and guidance to manage their communications challenges and allow them to address past challenges more mindfully. As devoted parents to the child, they will inevitably be a part of each other's lives. The child will be best supported in her future growth and development if the parents can both interact respectfully.

- [6] To protect the privacy interests and well-being of the child, I have not used the child's name or initials in these reasons and I have avoided identifying personal information. I have also initialized the parties' names in the style of cause and have referred to the parties as the claimant and the respondent throughout.

Issues

- [7] Each of the three main issues for decision engage the child's best interests:
- a) What parenting time schedule is in the best interests of the child? While the primary focus is on so-called "regular" parenting time (because most holiday and special parenting time has already been agreed), the November 2024 Consent Order expressly requires me to decide the length of the two summer vacations each parent may take with the child.
 - b) How should parental decision-making responsibilities be allocated between the parties, and in particular, should one party have ultimate decision-making authority if they cannot agree?
 - c) What conduct and / or communication orders are required to manage the parties' interactions with each other respecting the child?
- [8] There is also a preliminary question about the admissibility of the report of Dr. Shimi Kang (the "Kang Report"). Dr. Kang is a registered psychiatrist whom the claimant retained after the England Report concluded the claimant displayed traits associated with borderline personality disorder. As part of the trial, I declared a voir dire to address the respondent's objections to the Kang Report. In consultation with counsel, I determined my ruling on the voir dire would form part of my overall reasons at trial. Both parties made submissions on admissibility and, if the report is found admissible, on the weight it should be given. I will address my ruling on the voir dire, as well as the parties' positions on the s. 211 reports, at the start of my analysis.

Factual Background

- [9] To ground my analysis, I will provide an overview of the parties' relationship and the critical moments of the procedural history, the key facts of which are largely undisputed. While these reasons do not refer to all the evidence adduced at trial, I have reviewed and considered all of it in reaching my decision. To the extent specific past events between the parties inform the factors of the best interests of the child analysis, I will address those matters in the appropriate sections below.

The parties' relationship and the child's first year

- [10] The parties met in summer 2008. Despite their age difference, both testified the attraction was instant. They began dating in July that year and by October 2008, they were living together in a marriage-like relationship. The claimant is an artist; the respondent is a naturopathic doctor. The evidence at trial, including the parties' testimony, confirmed they

were and remain very different people. On the whole, the claimant presents as expressive, emotional and somewhat impulsive; the respondent is more reserved and analytical in her approach, which can appear calculating. In spite of these contrasts, both parties confirmed they got along really well, had mutual interests and shared periods of happiness together. The evidence also confirms the claimant struggled at times with anxiety and depression, which was particularly exacerbated when a beloved family pet became lost in December 2012 and could not be found. The claimant admits her deep and protracted emotional response to that traumatic event changed her. The respondent testified the claimant's depression grew, but she also became more emotionally reactive and angry. This created strain in the parties' relationship.

- [11] In late 2016, the respondent decided to end the relationship. The couple briefly separated, but reconciled after a few months. As part of their reconciliation, the claimant agreed to the respondent's request to have a child. The parties began what became a lengthy and exhausting process to find a suitable sperm donor. The stress of that process, which eventually resulted in the respondent becoming pregnant with the parties' child in 2018, also created tension between the parties. However, it is clear they were both eagerly awaiting their child, who was born in early June 2019.
- [12] As is often the case, the child's birth led to changes in the parties' relationship and lifestyle. The parties recall their respective roles immediately after the birth differently. The claimant says she was primarily responsible for the household and the child, except for breastfeeding, as the respondent was unwell for some time. The respondent disputes this and says, after a short period of recovery, she was the child's primary caregiver. Given the relationship trajectory that followed, it is not necessary for me to resolve this specific conflict. I find both parents played an active role in the child's care in the first eight or so months of her life before the parties separated. I also find that even then, their different approaches to parenting, perhaps amplified by the natural stressors of having a new baby, increased the conflict between them. The claimant testified she felt constantly criticized for her caregiving efforts, adding to her anxiety and depression. The respondent admitted she became more abrupt in her interactions, but testified the claimant could not handle normal things like the child's crying and viewed all feedback as criticism, leading to an "emotional explosion" if the respondent raised a concern.
- [13] The conflict between the parties continued through the fall of 2019; the claimant says she asked the respondent to leave on at least one occasion. The parties attempted counselling. It was not ultimately successful and on or about January 20, 2020, the respondent ended the relationship. The parties continued to reside in the same residence, but lived separate and apart from each other until April 2020. During those few months, the parties essentially shared care of the child on a day-on, day-off basis, with the respondent continuing to care for the child overnight due to breastfeeding. There is some evidence that both parties were open to moving to a 50-50 time split. But the conflict between them escalated.

- [14] In April 2020, the conflict between the parties reached a breaking point. The respondent says the claimant threatened suicide multiple times leading up to the events on or about April 16, 2020. The respondent told Dr. England that after one argument, the claimant left the home saying she was going to return to the parties' former home in the Gulf Islands to kill herself; the claimant was crying and told the child she would never see her again. The respondent contemplated calling the police, but the claimant texted to say she was ok and not going to the Gulf Islands. The claimant admits this behaviour but says she was sad and overwhelmed due to the respondent's incessant criticism and threats to take the child.
- [15] On or about April 16, 2020, the parties got into a further argument that led to their physical separation. The respondent says when she told the claimant she had bought a condo and secured a moving date, the parties fought verbally and the claimant threatened to kill both herself and the respondent and left in a rage. This time, the respondent called the police. When the claimant returned home, the police met the claimant and took her to the hospital. The claimant admits she uttered those statements but says she chose unfortunate language to express her frustration as she believed the respondent was actively trying to reduce her time with the child; the claimant says she had no such actual intentions. The claimant testified that on telling the hospital staff about the home environment, the staff advised her the situation was emotionally abusive. The claimant was released because she was found not to be a danger to herself or others. She went home. That night, the respondent took the child and left; the respondent testified she feared for their safety.
- [16] After the respondent left the home on or about April 16, 2020, the claimant did not see the child for a short period of time. The specific number of days is disputed, but does not require resolution. It is common ground that within a week, and with the assistance of counsel, the respondent permitted the claimant to see the child again. However, the respondent restricted the claimant's parenting time to three, six-hour daytime blocks per week. The claimant's parenting time was gradually increased to include longer blocks of time (up to 12 hours), but she was not permitted to have the child overnight. While counsel and a child specialist were involved with the parties at this time, from a practical perspective, the respondent controlled the claimant's time with the child.

Relevant procedural history

- [17] The claimant filed the notice of family claim on August 13, 2020. The respondent filed a response to family claim and a counterclaim on September 21, 2020. The original claim and counterclaim sought orders respecting family property and debt, as well as matters related to the child.
- [18] On December 10, 2020, the parties signed a separation agreement which resolved the property matters between them, and confirmed that neither party was seeking, or would in future seek, spousal support. Each party also confirmed that the child's living arrangements at that time qualified as "shared custody" for purposes of child support under the Federal Child Support Guidelines, SOR/97-175. The parties agreed that, based on their similar

incomes, their child support obligations to each other were equal, such that no actual child support was payable. The parties also agreed to share equally the special expenses for the child as defined. The original separation agreement allowed for review of child support upon a material change in circumstances, and set the parameters for any such review, but precluded a review before September 2024. The parties signed a revised agreement on February 19, 2021, accepting that they could not waive child support, but each agreeing to financially support the child and not to seek child support from the other in future. Those arrangements respecting child support and special expenses continued as of the date of trial.

- [19] To attempt to address issues related to the child, and with the assistance of a mediator and counsel, the parties entered into a parenting agreement on January 27, 2021; it was filed with the Court on February 17, 2021. That agreement contemplated a three-phase approach to increased parenting time for the claimant, beginning with one overnight in early February 2021 and eventually progressing to three overnights and almost equal parenting time by May 2021. The schedule contemplated the child would continue to transition between the parents every day until early August 2021. In fact, the daily transitions continued for a full year beyond that date.
- [20] In early February 2021, the parties also engaged their first parenting coordinator, Ms. Marjorie Thompson. Ms. Thompson worked with the parties until mid-December 2021. She provided notice on December 21, 2021 that she was withdrawing her services because the claimant refused to work with her or pay her invoice. Ms. Thompson made six formal determinations while working with the parties, addressing issues including but not limited to: haircuts, counselling, communications (with each other and third parties, including Ms. Thompson), the parenting schedule (including for holidays / special days) and emergency travel.
- [21] Ms. Thompson's determinations reflect her attempts to address the conflict between the parties and its negative impacts on their co-parenting. Among other things, she recommended counsellors, provided resources and set boundaries for respectful communications. Despite these efforts, she continued to document repeated inappropriate communications from the claimant to the respondent as well as to herself and, in some cases, other third parties. She also noted the claimant's increasing refusal to engage.
- [22] The claimant says Ms. Thompson's final determination exceeded her jurisdiction by substantially changing a parenting time agreement. The claimant says, in fall 2021, she and the respondent directly reached a binding agreement to move to a 2-2-3 schedule in early 2022, but the respondent used the parenting coordinator process to resile from the agreement. The respondent admits she agreed in an email to move to a 2-2-3 schedule because she thought it was "inevitable", but conceded she resiled from the agreement after counselling professionals engaged by Ms. Thompson raised concerns about the claimant in December 2021. Those concerns, coupled with the claimant's inappropriate communications, poor treatment of Ms. Thompson and refusal to engage, led to Ms.

Thompson's final determination on December 17, 2021. Along with addressing the claimant's communications, that final determination halted any change to the parenting time schedule.

- [23] Even if the respondent resiled from a parenting agreement or Ms. Thompson exceeded her jurisdiction (and it is not necessary or useful for me to address either question, so I decline to do so), the claimant had options to address any such concerns, including by seeking the Court's assistance. Her choice not to do so, and her perception that she was being mistreated, do not excuse her behaviour. That said, in her testimony at trial on both direct and cross-examination, the claimant candidly admitted that her communications at that time, which included swearing, blaming and other accusations, were extremely inappropriate. I find she expressed genuine regret and shame for her actions.
- [24] The parties did not have a parenting coordinator until late August 2022, when they engaged Ms. Joan Cotie. The respondent called Ms. Cotie to testify at trial. I found Ms. Cotie a frank witness; her testimony was balanced, and her observations were helpful. Before the parties engaged Ms. Cotie, through counsel and to avoid court applications, the parties entered into a consent order dated May 3, 2022 to appoint Dr. England to prepare a s. 211 report (with costs to be shared equally). Separately, the parties also agreed to begin a 2-2-3 parenting time schedule in late August 2022; that schedule was implemented August 29, 2022, and set out in a further consent order dated October 11, 2022 (the "October 2022 Consent Order"). Until August 2022, the child continued to transition between houses every day.
- [25] The October 2022 Consent Order was the subject of significant evidence and submissions at trial. Both parties were represented by counsel (different from trial counsel) when it was negotiated and entered. In addition to containing a term respecting the 2-2-3 parenting schedule the parties had implemented in late August 2022, paragraph 3 of the October 2022 Consent Order stated that upon the release of the England Report, the parties' "parenting time will be varied forthwith to reflect the recommended parenting time schedule" in the England Report. The claimant says she did not wish to include that term and she believed it was requested by the respondent. The respondent initially testified she could not recall who put the term forward, but on cross-examination, conceded she believed including that term was her best chance to avoid the 2-2-3 schedule she otherwise thought was inevitable.
- [26] At the time the parties agreed to this term, Dr. England's recommendations were unknown; they were not released to the parties until early January 2023. The claimant says that makes the term contrary to public policy and therefore unenforceable, including because it amounts to parents pre-agreeing that an unknown schedule is in the best interests of the child. The respondent says parents often agree in advance to parenting schedules and it was no secret that, at the time, the respondent was seeking primary care and the claimant was seeking a 2-2-3 schedule. The respondent says because it was reasonable to anticipate Dr. England would recommend one of those arrangements, the claimant was fully informed about the possibilities to which she consented in the October 2022 Consent Order.

- [27] Despite the time spent on this issue, the claimant accepts the enforceability of that term of the October 2022 Consent Order is now moot. She did not ask me to decide the issue, nor would I have been prepared to entertain it in the context of this case. However, she says that term, and what she characterizes as subsequent mistakes about its scope, underlies the parenting agreements implemented following the release of the England Report. As those agreements, in turn, established the status quo on which the respondent now relies, the claimant maintains the October 2022 Consent Order is still relevant background.
- [28] The England Report was completed December 22, 2022, but Dr. England agreed to hold its release until after the holidays at the claimant's request. Dr. England testified that since she anticipated her report would be upsetting for the claimant, she thought the request reasonable. She provided her report to the parties on January 3, 2023. The specifics of the England Report are discussed in further detail below, but in overly simplified terms, Dr. England concluded the claimant's emotional reactivity (which Dr. England associated with borderline personality disorder traits) negatively impacted her ability to address the child's needs and to co-parent to such an extent that Dr. England believed the child would be better off in the respondent's primary care.
- [29] As a result, the England Report recommended a parenting time schedule under which the child would be with the respondent 64% of the time, increasing to 71% of the time when the child entered school. Dr. England also recommended the respondent have all decision-making authority. The England Report recommended counselling, that the claimant undertake dialectical behaviour therapy (DBT), continued use of a parenting coordinator and that communications only be through an online platform that actively monitors for tone and content, like Civil Communicator. The England Report allowed that if the claimant followed the recommendations and demonstrated behavioural change, an updated report could be prepared to assess if it would be in the child's best interests for the claimant to have increased parenting time and some involvement in decision-making.
- [30] The claimant was devastated by the England Report. Ms. Cotie testified she saw a "deflating" of the claimant and a lack of engagement due to the perceived removal of all of her parental rights. Ms. Cotie considered the claimant's response a "normal response" to what Ms. Cotie called "very strong" recommendations that, in her view (as the parties' active parenting coordinator), went "far beyond what was necessary" for this family. The claimant believed that because of the term of the October 2022 Consent Order discussed above, it was not open to her to challenge the England Report's recommendations. As a result, in early 2023, the parties engaged with Ms. Cotie and by February 2, 2023, agreed to implement Dr. England's recommended initial parenting time schedule (with slight modifications). Negotiations continued on other issues, including parental responsibilities, and the agreement was revised March 4, 2023, June 8, 2023 and again on June 20, 2023, when it was signed. It was ultimately filed with the Court on February 28, 2024. The agreement expressly provides it is made on "an interim without prejudice basis".

- [31] The claimant testified that during those 2023 negotiations, both she and Ms. Cotie mistakenly believed the October 2022 Consent Order required the parties to implement all recommendations from the England Report, not just the parenting time recommendations. Ms. Cotie confirmed in her testimony that had also been her understanding, and she believed both parties were operating under that same understanding. She testified she later realized she was mistaken, but not until the claimant's current counsel raised the issue. The claimant says she would never have agreed to relinquish her decision-making authority if she thought she had a choice. Ms. Cotie agreed in cross-examination that it is unlikely the parties would have reached an agreement on parental responsibilities absent the mistake.
- [32] The respondent says there was no such mistake; the terms were clear and unambiguous, counsel were corresponding with Ms. Cotie in the background and the claimant has not provided any documentary evidence to corroborate her assertion of mistake. Further, the respondent says that while the recommended parenting time schedule was effectively implemented, the parties ultimately agreed to decision-making terms different from what Dr. England recommended.
- [33] Again, this is not an issue I must definitively resolve. Neither party applied to clarify or set aside the terms of the October 2022 Consent Order, or the resulting parenting agreement, and both parties seek orders at trial that differ from the current status quo. Even if there was a mistake, as the claimant acknowledged, there is no remedy the Court could grant to allow her to recoup any allegedly lost time or to change decisions made in the interim. While it is important to be aware of the parties' perspectives regarding this issue, in my view, the focus of my analysis is properly prospective. The litigation history of this matter makes clear the claimant has consistently believed the parties should share both parenting time and parental responsibilities. Regardless of how the parties ended up in the current circumstances, it is for me to determine what is in the child's best interests going forward, with reference to the relevant factors under s. 37(2) of the FLA.
- [34] Since February 2023, the regular parenting time schedule has essentially meant the child is with the respondent 64% of the time, under a 1-3-3-3-1-3 schedule in her favour. This means that on a two-week schedule, the claimant has parenting time during the first week from Monday morning to Tuesday morning, and then Friday morning through Monday morning. During the second week, the claimant only has parenting time Thursday morning to Friday morning.[1] As the child began attending preschool full-time in September 2023, and kindergarten in September 2024, during weekday parenting time since September 2023, and with a recurring exception, the child has generally not been with either parent during pre-school or school hours.
- [35] The exception is that from September 2023 until at least summer 2024, on the alternate Fridays which were the claimant's parenting time, the claimant would often take the child to dance and music classes in which the child had previously been registered, rather than having her attend preschool. The claimant's decision to do so created conflict between the parties, requiring a determination from Ms. Cotie. The respondent believed the lack of

predictability was causing the child anxiety and her interests were better served in the structured environment of preschool. The claimant wished to preserve the time together at activities the child had attended since she was two, and suggested missing one day of preschool every second week would not be detrimental. Ms. Cotie spoke with the parties' co-parenting counsellors; they agreed it would be in the child's best interests to be involved in an activity with a parent and would not be detrimental. Ms. Cotie also spoke to the director of the preschool, who agreed it was "not detrimental at all". Ms. Cotie's February 22, 2024 determination allowed the claimant to continue taking the child to previously registered activities every second Friday until September 2024.

[36] Pursuant to the parenting agreement signed in June 2023, when exercising parenting time with the child, and with one caveat, each parent has the following decision-making authority under s. 41 of the FLA:

- Subsection (a): making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- Subsection (b): making decisions respecting where the child will reside;
- Subsection (c): making decisions respecting with whom the child will live and associate;
- Subsection (e): making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage [the child is not Indigenous so the remainder of the subsection does not apply];
- Subsection (j): requesting and receiving health, education or other information respecting the child from third parties; and
- Subsection (l): exercising any other responsibilities reasonably necessary to nurture the child's development.

In respect of the above types of decisions, each party is permitted to ask the other a question in a respectful manner about things the child brings up. The caveat is that for any issues of permanence that fall under the above categories, the parties are to discuss the issue and if they cannot agree, the respondent has authority to make the final decision.

[37] For significant decisions that fall under s. 41's remaining subsections, the respondent is to ask the claimant's opinion but has final decision-making authority (and must notify the claimant of the decisions made). Those subsections are:

- Subsection (d): education and extra-curricular activities;
- Subsection (f): consent to medical, dental and other health-related treatments;
- Subsection (g): applying for passports, permits, etc. for the child;
- Subsection (h): non-health consent where required;

- Subsection (i): receiving and responding to legal notices; and
- Subsection (k): dealing with legal proceedings and the child's legal and financial interests.

Given past conflicts, the parenting agreement specifies that haircuts and ear-piercing fall under s. 41(f), over which the respondent has final decision-making authority. This division of authority remained in place at the time of trial.

[38] In fall 2023, the parties discussed obtaining the update recommended by Dr. England, in preparation for the fall 2024 trial. The respondent contacted Dr. England in December 2023 but she declined to provide an update (due to reasons unrelated to the parties). As the respondent was opposed to having another report writer provide the update, the claimant brought a contested application seeking a further s. 211 report. Associate Judge Scarth granted the claimant's application on March 5, 2024, appointing Dr. Elterman to provide a further report.

[39] Dr. Elterman provided his completed report to the parties on September 16, 2024, about a week before the start of trial. The specifics of the Elterman Report are addressed further below. In summary form, Dr. Elterman recommended the parties remain joint guardians and return to shared parental responsibilities, but continue with a parenting coordinator to assist them with communication and to make final decisions if the parties were unable to agree. He also recommended a return to shared parenting time on a 2-2-3 schedule, concluding that the benefits of spending equal time with both parents outweighed any potential costs. He continued to support the claimant attending the DBT program recommended by Dr. England despite the claimant having completed a different DBT program in the intervening period. He also made other recommendations for courses and resources.

[40] The trial of this matter commenced September 23, 2024. While originally scheduled for five days, that time estimate proved wholly inadequate. Despite counsel and the Court being as flexible as possible to accommodate various witness constraints, the evidence alone took nine days, with closing submissions occupying the final two days of what was ultimately an 11-day trial. I scheduled a brief continuation on August 21, 2025 to resolve certain issues with trial exhibits before release of this judgment.

[41] As noted, on November 27, 2024, the final substantive day of trial, the parties entered into the November 2024 Consent Order, under which the parties agreed to retain a mutually-agreed parenting coordinator and to divide holiday and special parenting time equally (with one outstanding matter). That order was entered December 2, 2024; I need not repeat its terms here. The issues that remain for determination are: the regular parenting time schedule and the length of summer holidays each party may take; division of parental responsibilities and authority to make ultimate decisions; and communications and conduct.

Analysis

- [42] At the outset, it is important to clarify the applicable legal framework. The parties to this matter were not married. Accordingly, they agree the provisions of the FLA govern.
- [43] There are a number of preliminary and evidentiary matters to address before turning to the substantive issues. I begin by addressing the three expert reports the parties sought to lead and rely on in this case: the Kang Report, the England Report and the Elterman Report. I address the Kang Report first, as its admissibility was the subject of a voir dire at trial. I then consider the parties' arguments respecting the weight to be given to the two s. 211 reports, in light of the role such reports play in family law cases. Finally, I offer some brief comments on credibility and reliability.
- [44] With respect to the substantive matters, the parties seek orders relating to parenting time, parental responsibilities and communications and conduct. As detailed above, the parties have previously entered into two parenting agreements that address many of these same issues and that were filed with the Court on February 17, 2021 and February 28, 2024 respectively. Sections 44(1) and (2) of the FLA permit the parents of a child to make a binding agreement respecting parenting arrangements in the context of separation. Under s. 44(3), if a written agreement respecting parenting arrangements is filed in the Court, it is enforceable as if it were an order of the Court. However, because the filing of an agreement does not convert the agreement to a court order, a party may seek an order for different parenting arrangements under s. 44(4) of the FLA, rather than under s. 47. As a result, the party seeking different terms does not need to show a material change in circumstances, but rather, must demonstrate that a different order is in the child's best interests: *S.C.B. v. K.M.B.*, 2018 BCSC 1148 at paras. 51, 53 and 58, citing *Nijjar v. Gill*, 2017 BCSC 1362 at paras. 110-112.
- [45] Although neither party expressly referred to s. 44 of the FLA in support of the orders they seek at trial, in practical terms, they each seek to have the Court make a final order that will wholly replace the previous filed parenting agreements. Whether framed in reliance on s. 44 or s. 45 of the FLA, I am satisfied I have the authority to replace the previously filed parenting agreements with the terms of order I consider to be in the child's best interests. Accordingly, I focus my substantive analysis on the factors of the best interests of the child framework under s. 37(2) of the FLA, before providing my conclusions on the orders for parenting time, parental responsibilities and communications and conduct that I find to be in the child's best interests.

Expert Evidence

The Kang Report

- [46] As indicated, the claimant solicited the Kang Report in an effort to respond to concerns raised about her mental health in these proceedings, in particular by the England Report. The respondent says the Kang Report is inadmissible because it fails to meet the requirements for expert evidence under R. 13-2 and 13-6 of the Supreme Court Family Rules [SCFR]. However, if the Court admits the Kang Report, the respondent says it should be given little to no weight due to alleged deficiencies.
- [47] As part of the trial, I held a voir dire to address the respondent's admissibility objections. Dr. Kang testified as part of the voir dire and the portions of the parties' closing submissions respecting the Kang Report also formed part of the voir dire. I advised the parties that given what I perceived as connections between the Kang Report and other evidence at trial, including the s. 211 reports, I would address the questions of admissibility and, if required, of weight, as part of my overall reasons for judgment at trial. This allowed the parties and the Court to make more efficient use of court time.
- [48] Before turning to the respondent's specific objections on admissibility, I note there is no issue with respect to Dr. Kang's qualifications as a psychiatrist. She is a licensed psychiatrist in British Columbia, registered with the College of Physicians and Surgeons of British Columbia and the Royal College of Physicians and Surgeons of Canada in both psychiatry and general medicine. She has more than 20 years experience in medicine. Dr. Kang previously held a variety of psychiatric positions in public practice, including with BC Women's Hospital and the City of Vancouver. At the time of trial, Dr. Kang was working in private practice and as a Clinical Associate Professor at the University of British Columbia. Dr. Kang maintains a general psychiatry practice, but specializes in women's, youth and addictions psychiatry due to her background. She testified that, particularly given her addictions work, she has significant experience with borderline personality disorders.

Admissibility

- [49] The respondent contests the admissibility of the Kang Report on the following grounds:
- a) the Kang Report did not initially contain the certification required by R. 13-2(2) of the SCFR and the late addition of the required certification does not remedy the defect;
 - b) as the Kang Report was not initially obtained as an expert report for Court, it fails to sufficiently address several of the requirements under R. 13-6(1), such as: the nature of the opinion sought in relation to the issues in the family law case; the expert's opinion on those issues; and the expert's reasons for their opinion, including the factual assumptions and documents relied on in forming that opinion (R. 13-6(1)(d), (e) and (f) of the SCFR);
 - c) the claimant directed the contents of the Kang Report; and
 - d) the Kang Report is not relevant or necessary to the matters in dispute, including because it does not address the claimant's parenting capacity.

- [50] The claimant admits there were minor or technical issues with the Kang Report, including with certification, but contends the certification concern was rectified before trial and further addressed through Dr. Kang's testimony. The claimant says the other concerns all stem from the fact that it was the claimant herself, rather than counsel, who sought out the Kang Report; those concerns were also sufficiently answered by Dr. Kang in her testimony. With respect to relevance and necessity, the claimant says the respondent relies significantly on the recommendations in the England Report. Those recommendations appear based, at least in part, on Dr. England's conclusion that the claimant exhibits traits associated with borderline personality disorder, and the respondent's repeated concerns about the claimant's mental health. Given that context, the claimant says she is entitled to respond by providing expert evidence in the form of Dr. Kang's mental health assessment.
- [51] I will deal first with certification. Rule 13-2(1) of the SCFR provides that an expert witness has a duty to assist the Court and is not to be an advocate for any party. Rule 13-2(2) requires that in any report an expert prepares for Court, the expert must certify they are aware of their duty, have prepared their report in conformity with the duty and if called to testify, will do so in conformity with the duty. The case law makes clear that certification is not "optional", including because of the important purpose it serves for both the expert and the Court: *Good v. Huelskamp*, 2012 BCSC 824 at paras. 32-33, citing *Hodgkinson v. Hodgkinson*, 2011 BCSC 634 at para. 51; see also *Pichugin v. Stoian*, 2014 BCSC 2061 at paras. 15, 18-19 citing the equivalent rule under the Supreme Court Civil Rules.
- [52] However, as the respondent properly acknowledged, there are cases where the Court has admitted expert evidence that does not comply with the rules, including the requirement for certification: see, for example, *Hodgkinson* at para. 51; *Cantlie v. Canadian Heating Products Inc.*, 2017 BCSC 286 at paras. 98-105 (awareness of the duty could be inferred); *Brien v. Brien*, 2019 BCSC 331 at paras. 125-131 (report admitted for limited purposes); *D.N. v. B.N.*, 2022 BCSC 2029 at paras. 16-18 (report admitted despite lack of certification where failure arose from counsel's oversight). Rule 13-7(6) of the SCFR expressly preserves the Court's discretion to allow expert evidence despite non-compliance with one or more requirements of the rules, including where the Court determines there is no prejudice to the opposing party or the interests of justice require admission:

When court may dispense with requirement of this Part

- (6) At trial, the court may allow an expert to provide evidence, on terms and conditions, if any, even though one or more of the requirements of this Part have not been complied with, if
- (a) facts have come to the knowledge of one or more of the parties and those facts could not, with due diligence, have been learned in time to be included in a report or supplementary report and served within the time required by this Part,
- (b) the non-compliance is unlikely to cause prejudice

- (i) by reason of an inability to prepare for cross-examination, or
- (ii) by depriving the party against whom the evidence is introduced of a reasonable opportunity to introduce evidence in response, or
- (c) the interests of justice require it.

[53] There is no dispute that the original version of the Kang Report, served on the respondent 84 days before trial (in compliance with the SCFR) did not contain the certification language required by R. 13-2(2). The Kang Report was amended on September 22, 2024, two days before the trial began, to add the required certification. The addition of the certification language is the only amendment to the Kang Report.

[54] The Supreme Court of Canada has confirmed that, at common law, an expert may satisfy the duty they owe to the Court by attesting to it or testifying on oath: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 [White Burgess] at para. 48. In her testimony before the Court, Dr. Kang expressly confirmed she was aware of the duty of an expert witness not to be an advocate, she had never been asked to be an advocate for the claimant and she did not prepare her report or attend court as an advocate for the claimant. Dr. Kang was candid that she was paid to prepare her report and paid to attend trial. The latter facts are common in adversarial litigation and do not, alone, undermine Dr. Kang's independence, impartiality and freedom from bias: *White Burgess* at para. 32.

[55] In these circumstances, I find the lack of certification in the original version of the Kang Report is not a sufficient basis on which to rule the Kang Report inadmissible. I am satisfied, based on the addition of the certification language and Dr. Kang's testimony before the Court, that she was able and willing to carry out her duty of impartiality to the Court, both when she prepared the Kang Report and when she testified. I agree with the claimant that the lack of certification, in and of itself, did not prejudice the respondent's ability to consider the contents of the Kang Report and determine how to respond to it. This concern has been remedied.

[56] Turning to the respondent's second ground, I agree the Kang Report was not obtained in the usual manner for an expert report. There is no question that the claimant's counsel did not contact Dr. Kang to expressly request the preparation of an expert report for possible use at trial, nor did counsel provide a formal letter of instruction. Instead, the claimant herself contacted Dr. Kang's office; the documents produced on the voir dire and Dr. Kang's testimony both confirm this.

[57] The respondent says that the context in which the Kang Report was obtained makes it inadmissible. In this regard, the respondent points to what Dr. Kang described as "intake documents", where the claimant wrote "I hope to get a brilliantly qualified psychiatrist to actually assess me to assist in regaining my parenting time". The respondent also notes that Dr. Kang testified the purpose of the assessment requested by the claimant was not "for court", but rather was a mental health assessment for diagnosis and treatment planning. As

a result, and contrary to the requirements of R. 13-6(1), the respondent says the Kang Report does not clearly address what opinion was being sought as it relates to the family law proceeding, Dr. Kang's opinion on those issues and the reasons underlying her opinion.

- [58] The respondent's concerns in this regard are overly technical and do not make the Kang Report inadmissible. In my view, the Kang Report clearly sets out what opinion was sought from Dr. Kang and why. At p. 4, under the heading "Reasons for Referral", the Kang Report states "[the claimant] has requested a Psychiatric assessment to ascertain the presence of any mental health disorders." The paragraph then provides the relevant context, namely, that the claimant is involved in a "custody battle" and, as part of that proceeding, "participated" in the England Report where "it was noted that she has 'Borderline Personality Disorder' traits". The paragraph indicates that, as part of the request, Dr. Kang was provided with a copy of the England Report; Dr. Kang confirmed this in her testimony.
- [59] Further, the articulation in the Kang Report is consistent with the information the claimant provided in the intake documents. The claimant wrote she had "been falsely diagnosed with borderline personality [disorder]" which is "being used as justification [for] removing parenting time". The claimant also wrote "I need an actual psychiatrist to be making a proper assessment of my mental health". I find the claimant asked Dr. Kang to provide an expert opinion, as a psychiatrist, on whether the claimant suffers from borderline personality disorder or other mental health disorders because of how those potential diagnoses were being used in the context of the family law proceeding.
- [60] I am also satisfied the Kang Report provides a clearly expressed opinion, in the form of a clinical diagnosis, which confirms the claimant "does not meet the criteria for Borderline Personality Disorder". The Kang Report states, and Dr. Kang confirmed in her testimony, that the claimant does suffer from symptoms of major depressive disorder and generalized anxiety disorder, which are in partial remission. Dr. Kang explained that, in her opinion, the claimant suffers from symptoms of both conditions, which are often interconnected, and that those symptoms had been exacerbated by the recent situational stressors of the court proceeding.
- [61] Further, I disagree the Kang Report fails to set out the reasons for Dr. Kang's clinical diagnosis. The Kang Report indicates the information Dr. Kang was provided and reviewed (including the England Report and certain medical records relating to the claimant) and sets out the process used to arrive at the clinical diagnosis (review of medical records, completion and review of mental health screening questionnaires, mental health status examination by a registered social worker working with Dr. Kang, and independent interview and assessment by Dr. Kang). In her testimony, Dr. Kang was questioned about the process and testified she followed her standard process to reach her independent medical conclusion. Dr. Kang also provided cogent explanations of the checks and balances which have been developed to account for the reality that mental health symptoms can change from day to day. While the Kang Report may not have all the trappings of a "traditional" expert report, I do not find any of the alleged deficiencies with R. 13-6(1) of the SCFR render

it inadmissible.

- [62] I reject the respondent's third ground of objection. In my view, there is no concrete evidence the claimant "directed" the contents of the report. When asked about why the Kang Report references an attempt to contact the claimant's nurse practitioner after the March 25, 2024 date of the report, Dr. Kang testified it was "possible" the claimant had asked for further information to be added. However, Dr. Kang also testified that post-report contact with collaterals does sometimes happen, and the attempt may have been made because of particular results in the screening. That explanation for the attempt would be independent of the claimant. In any event, Dr. Kang's office was not able to connect with the nurse practitioner, and there is no evidence that any of the substantive contents of the Kang Report were changed.
- [63] I turn finally to relevance and necessity. I agree the Kang Report does not expressly address the extent to which any mental health disorders do or might affect the claimant's parenting capacity. Dr. Kang was candid that she was not asked to opine on that question and she did not do so in her report. However, given the opinion she did provide, in cross-examination on the voir dire, Dr. Kang was asked if such a diagnosis would be an impediment to parenting. I recognize she could only provide a general response, but despite that limitation, I find her answer helpful. Dr. Kang testified that, based on her experience, such a diagnosis would not, in and of itself, be an impediment to parenting, especially given what she called a "general consensus" that a parent need only be "good enough", rather than perfect. This opinion is consistent with the expert evidence of the two s. 211 report authors.
- [64] The respondent suggested in one section of her written closing submissions that the Kang Report is not required to respond to the England Report. Yet in another paragraph, the respondent expressly admitted the claimant's mental health was "put at issue" through the respondent's testimony and the England Report. I accept the latter statement as accurate. The evidence at trial, including from the respondent, both s. 211 report writers and other witnesses called by the respondent, includes repeated references to and questions about the claimant's mental health, prompted by the respondent's concerns. Although Dr. England refrains from making a formal diagnosis of borderline personality disorder, she nonetheless opines that the claimant "appears to meet several of the criteria", stating "it may be arguable" whether the claimant would meet the number required for formal diagnosis. She concludes the claimant is "best described as having, at least, Borderline Personality traits", which she describes as "no less problematic" than a formal diagnosis (England Report at p. 40, emphasis added). Given the potential implications, this evidence invites further exploration and response.

- [65] In my view, since the claimant's mental health was put at issue in such a direct manner, and since the spectre was clearly raised that the claimant could suffer from borderline personality disorder (rather than just exhibiting associated traits), it was open to the claimant to respond with evidence that addresses the presence or absence of any mental health disorders in a definitive manner.
- [66] I find the Kang Report is relevant and necessary to address whether the claimant suffers from any specific mental health disorders. I certify Dr. Kang as an expert witness in the areas of general psychiatry and mental health. I admit the Kang Report as evidence that, as of March 2024, the claimant did not suffer from borderline personality disorder. The Kang Report is also evidence that, as of that same time, the claimant suffered from symptoms of major depressive disorder and generalized anxiety disorder that were in partial remission, but were exacerbated by situational stressors including the litigation. I also admit Dr. Kang's testimony on the voir dire as evidence in the trial proper. Accordingly, the two exhibits marked on the voir dire as VD1 and VD2 will be marked as the final two exhibits in the trial.

Weight

- [67] The respondent contends that if admitted, the Kang Report should be given very little weight. She cites concerns with: Dr. Kang's reliance on self-reported information from the claimant; an alleged failure to review complete medical records (including recent medical records and counselling records) or speak to professionals involved in the claimant's care; an alleged failure to produce her complete expert file; concerns about the reliability of the screening tests based on how they were administered; concerns that Dr. Kang was not the sole author of the Kang Report; and concerns about the utility of the Kang Report. Some of these concerns overlap with the respondent's admissibility objections.
- [68] I do not agree the Kang Report should be given very little weight based on the identified concerns. With respect to the information on which Dr. Kang relied, as set out above, I am satisfied the process developed by Dr. Kang for conducting mental health assessment accounts for possible inaccuracies in self-reporting or screening questionnaires, incomplete medical records or an inability to speak to medical professionals involved with a particular subject's care. I accept Dr. Kang's evidence that the assessment process is based on the whole collection of assessment tools, rather than on one source of information. As a result, if there is an issue with one source of information, such as a screening questionnaire or certain self-reported information, there are safeguards in place.
- [69] In respect of the records and information she had, Dr. Kang allowed that, in an ideal world, more information would be better, but testified that is not the reality in which she practices psychiatry, and as a result, she and her colleagues have had to adapt. She testified it is often the case that records are requested but not provided. She was clear that in cases where she is not confident or comfortable enough to provide an assessment without receiving additional information, she will "hold off" on completing the assessment. Dr. Kang was also clear, and I accept, that with respect to the claimant, Dr. Kang was confident she had the information

necessary to complete the assessment and provide a clinical diagnosis.

- [70] With respect to the alleged failure to disclose the entirety of her file, both the claimant's counsel and Dr. Kang confirmed a request was made to produce the file and documents were provided. The process was complicated somewhat by Dr. Kang having moved to a different clinic since the time of the assessment. Some of the documents produced were adduced during the voir dire. The respondent's counsel asked Dr. Kang about notes from the interviews conducted with the claimant. Dr. Kang testified she does not take written notes, but rather records directly into the assessment template which becomes the final report. I accept she could not speak to whether the social worker would have had separate notes; she did not have them in her electronic file when testifying.
- [71] I also accept that, during Dr. Kang's testimony, she referred to at least two faxes received from the claimant's nurse practitioner that do not expressly appear in the list of documents under the heading "Collateral review" (Kang Report, p. 8). However, there is reference at the bottom of p. 3 of the Kang Report to the nurse practitioner referring the claimant to Dr. Kang; Dr. Kang testified that one of the faxes was a "referral" document. While it is not clear if those two documents were disclosed, in closing submissions, I asked the respondent's counsel if a request had been made to produce any of the allegedly missing documents after Dr. Kang's testimony. Counsel admitted no such request had been made. As I cannot be satisfied there has in fact been a failure to disclose, I am not prepared to reduce the weight to be given to the Kang Report on that basis.
- [72] Lastly, I do not find the involvement of the registered social worker in the assessment process negatively affects the weight to be given to Dr. Kang's opinion on the claimant's mental health. Dr. Kang clearly addressed which aspects of the process she is not directly involved in (e.g. initial intake, administrative tasks and the mental status examination) and testified that, as the licensed psychiatrist, she is solely responsible for the ultimate clinical diagnosis. It is not controversial that many professionals work with other staff to complete preliminary aspects of their work, in order to support the ultimate outcome. I am satisfied that Dr. Kang alone was responsible for the clinical diagnosis which is the key aspect for which I have admitted the Kang Report.
- [73] On the whole, I am not persuaded that I should reduce the weight of the Kang Report based on the deficiencies alleged by the respondent.

The Section 211 Reports

- [74] Two s. 211 reports have been prepared in this matter: the England Report and the Elterman Report. Both report writers are registered psychologists with significant experience providing such reports. Reports prepared by each of them have previously been accepted and relied on by this Court in other family law matters. I accept that each of them is qualified to provide s. 211 reports generally, as well as the specific report each produced for this matter. Dr. England and Dr. Elterman both attended trial for cross-examination,

however only the respondent required Dr. Elterman's attendance.

- [75] As noted, Dr. England was appointed by agreement between the parties, pursuant to a consent order dated May 3, 2022. The England Report is dated December 22, 2022, but was released to the parties January 3, 2023. At a high level, as a result of her assessment, Dr. England concludes the respondent is "significantly more able to be accurately attuned" to the child's needs and more able to "navigate the numerous parenting responsibilities and communications" required over the long term. The primary basis for this opinion appears to be Dr. England's conclusions about the claimant's emotional volatility coupled with the presence of borderline personality traits or behaviours that she described as "no less problematic" than a formal diagnosis of the actual mental health disorder.
- [76] As a result, the England Report recommends the respondent have primary residence and care of the child (64% of parenting time, increasing to 71% once the child starts school) as well as all decision-making responsibilities for the child. The England Report recommends the parties use Civil Communicator or a similar online communications platform that actively monitors for content and tone. The England Report also recommends the parties continue with counselling, and recommends the claimant attend DBT at a specific program for at least a year to address the claimant's emotional reactivity. It is common ground that DBT is a therapy largely associated with borderline personality disorder, although it also addresses emotional regulation skills more generally.
- [77] Primarily because of the October 2022 Consent Order, by mid-2023, the parties had largely implemented the England Report's recommendations through an agreement reached (and then revised) with the assistance of Ms. Cotie. However, as the claimant did not agree, the parties did not move to the 71-29% split of parenting time in favour of the respondent when the child started kindergarten in September 2024. In concrete terms, as a direct result of the England Report, the claimant's parenting time was reduced from 50% equal time (under a 2-2-3 schedule) to 36% time (under a 1-3-3-3-1-3 schedule over two weeks). The claimant also lost the ability to make decisions about the child other than day-to-day decisions during her parenting time.
- [78] Dr. England writes that she is "hopeful, but not optimistic" that the claimant would follow her treatment recommendations (England Report, p. 45). Despite this strong skepticism, the England Report expressly states that, going forward, if the claimant completes the recommended therapy and treatment, the claimant should "have the opportunity to perhaps earn back more parenting time" (England Report, p. 43). However, the England Report cautions that increases should not occur "until an update has been conducted" to assess "functioning, parenting and ability to coparent" (England Report, p. 43; emphasis added).
- [79] As indicated, in late 2023, the parties discussed obtaining an update to the England Report in preparation for trial, and the respondent's counsel approached Dr. England in December 2023. When Dr. England declined to provide an update to her report (for personal reasons unrelated to these parties), the respondent opposed the claimant's request that a new s. 211

report be prepared for trial. The respondent testified she was concerned about cost and, having read reviews of the other s. 211 report writers who were available, did not wish to use any of them.

[80] The respondent's opposition led to a contested hearing before Scarth A.J., who granted the claimant's application and appointed Dr. Elterman by order dated March 5, 2024. That order expressly provides that Dr. Elterman is appointed "to complete a new section 211 report and provide recommendations regarding the parenting schedule and allocation of parental responsibilities" (para. 1, emphasis added). Paragraph 2 of the March 5, 2024 order states:

2. Dr. England's section 211 report dated December 22, 2022, will be provided to Dr. Elterman, or another agreed upon expert if Dr. Elterman is not available, in a sealed envelope on the understanding that he will review it only if and when he deems it necessary for purposes of providing his report.

[Emphasis added].

[81] The Elterman Report was completed September 16, 2024, a week before the start of trial in this matter. In summary, based on his assessment, Dr. Elterman recommends a return to shared parenting on a 2-2-3 schedule, concluding that the benefits of doing so outweigh the costs. He also recommends a return to shared parental responsibilities. Dr. Elterman concludes that both parents are attentive and loving, each has a strong bond with the child, and both give high priority to being her parent. The Elterman Report maintains the recommendation that the parties use a parenting coordinator, noting their challenges in communicating with each other and the resultant need, when they reach an impasse, to have a third party who can listen to what each party is seeking and make a determination about what is in the child's best interest.

[82] The Elterman Report also addresses the issue of the claimant's emotional reactivity. He concludes there is no suggestion the claimant has directed any such behaviour at the child, and acknowledges the claimant advised she had taken and benefitted from DBT already. However, he recommends the claimant continue to seek a place in the specific DBT program Dr. England identified, noting the claimant should continue to work towards "greater emotional regulation". Throughout his report, Dr. Elterman identifies concrete things each parent needs to work on and be mindful of going forward.

[83] The claimant disputes both the factual basis and the recommendations in the England Report, but says the Court need not make any determinations about the England Report itself, since Dr. England expressly contemplated an update would be done. The claimant says the England Report has been superseded by the more recent Elterman Report, which the claimant characterizes as providing the best and most current evidence in relation to this family. This view is unsurprising as Dr. Elterman's recommendations are more favourable to the claimant.

- [84] Also unsurprisingly, the respondent continues to rely heavily on the England Report and its recommendations, which were significantly more favourable to her. She strongly disputes Dr. Elterman's recommendations. The respondent contends that, particularly when compared to Dr. England's process and analysis, the Elterman Report has serious limitations and deficiencies. She says the Court should not give weight to its conclusions, and should instead favour the England Report.
- [85] Given the parties' diametrically opposed views, and in particular, the respondent's challenges to the Elterman Report, I will address these issues as a preliminary matter.

The role of section 211 reports

- [86] Before addressing the parties' positions, it is helpful to first review the role that s. 211 reports play in family law proceedings. In *M.F.W. v. M.A.H.*, 2020 BCCA 284, the Court of Appeal confirmed previous jurisprudence that s. 211 reports are different than expert reports retained by a party in a non-family case, including because s. 211 report writers are, in a real sense, the "eyes and ears" of the Court in what are often high-conflict family situations: *M.F.W.* at para. 22, citing *A.P. v. J.C.*, 2018 BCSC 1381 at paras. 116-118. In *M.F.W.*, the Court of Appeal upheld the trial judge's decision to depart from the s. 211 report writer's recommendations, confirming the well-established principle that the Court is not required to follow the report's recommendations; while the s. 211 author may provide their opinion, it is ultimately for the Court to decide the matters in issue: *M.F.W.* at paras. 22, 25; *A.P.* at para. 118.
- [87] Although the factual findings in a s. 211 report are considered *prima facie* evidence of their truth, the Court retains discretion to review the background information, carry out an independent assessment based on the evidence at trial and reach different conclusions as to the best interests of the child: *S.A.H. v. J.J.G.V.*, 2021 BCSC 2132 at para. 32; *M.F.W.* at para. 22; *A.P.* at para. 118. Particularly in a full trial, the Court will often receive different evidence, and from different sources, than what was provided to the assessor. The Court must not abdicate its role in favour of the recommendations made, either in terms of trying the facts or determining the best interests of the child: *K.B. v. J.B.*, 2015 BCSC 704 at paras. 9-10; *King v. Borserio*, 2018 BCCA 308 at para. 76; *J.H.F. v. K.B.*, 2022 BCSC 1219 at paras. 13-14.
- [88] Both parties referred me to *Dowell v. Hamper*, 2019 BCSC 1266, at paras. 40-43, where, citing a number of his previous decisions (including *Kwan v. Lai*, 2016 BCSC 1626 at para. 46), Justice Kent provided a comprehensive summary of the context and purpose of s. 211 reports. Those observations, which have been repeated in numerous cases (see, for example, *E.S. v. G.D.S.*, 2023 BCSC 1537 at paras. 122-123), emphasize that while a s. 211 report writer has an obligation to the Court to undertake assessments and formulate recommendations that are appropriately comprehensive, objective and balanced, there is no specific process or format that must be followed in each case. I add that, in any given case, the court order appointing a s. 211 report writer may contain terms and conditions that

modify or inform the scope of their appointment.

Discussion of the England Report and the Elterman Report

- [89] As noted, each party takes issue with one of the s. 211 reports, essentially arguing the Court should eschew its findings and recommendations in favour of those in the other report.
- [90] The claimant disputes both the factual basis and resulting recommendations of the England Report. Her disagreement with Dr. England's strong suggestion that the claimant "at least" exhibits traits associated with, and "arguably" may suffer from, borderline personality disorder, is what prompted the claimant to seek a mental health assessment from Dr. Kang. In my view, it is clear on the face of the England Report that the ultimate recommendations rely heavily on the author's opinion that the claimant's mental health condition affects her parenting capacity. Since the claimant disputes Dr. England's conclusions about her mental health and the severity of the alleged impacts on her parenting, she contends there is no reliable basis for Dr. England's recommendations.
- [91] The claimant says that even if the facts and recommendations in the England Report were reasonable and correct when it was drafted (which she disputes), she has "done everything in her power" to follow Dr. England's recommendations. The claimant emphasizes that Dr. England agreed in cross-examination that the steps the claimant has taken to date align with Dr. England's recommendations. In these circumstances, the claimant contends it would be inappropriate to continue to rely on the England Report without considering subsequent changes.
- [92] The claimant says Dr. England recognized the need to reconsider the parties' circumstances by including an express recommendation for an updated report if the claimant followed the treatment recommendations and demonstrated behavioural change. Since Dr. England was unable to complete the contemplated update, the claimant says the Elterman Report fulfills that role. The claimant says because the Elterman Report provides a more recent evaluation of what is happening with this family, it effectively supersedes the England Report, and should be given strong, if not sole, preference.
- [93] In contrast, the respondent alleges significant deficiencies with the Elterman Report that she says should preclude the Court's reliance on its findings and recommendations. The respondent devoted considerable time in her written and oral closing submissions to challenging the Elterman Report. While she advanced a large number of arguments, they can be fairly summarized as follows:
- a) The failure to review and use the England Report as a baseline: The respondent says this failure prevented Dr. Elterman from determining if there had been any substantial changes, putting the Court in the position of having to choose between competing reports. The respondent also says this violated s. 11.34 of the Code of Conduct that governs psychologists, which addresses repeat assessments.

- b) An over-reliance on self-reported information and observations, rather than conducting independent investigations with third parties to test the information received: The respondent emphasizes that Dr. Elterman allowed the parties to choose their own collaterals and did not seek out further information, including from third party professionals who had worked with the claimant. The respondent says Dr. Elterman was obliged to speak to those professionals, and because he did not, he simply accepted the claimant's own views that she has changed. The respondent suggests the claimant minimized in her self-reporting and Dr. Elterman's process was not sufficient to address this.
 - c) The specific failure to speak to Ms. Cotie: The respondent says, as the parties' parenting coordinator both before and after the England Report, Ms. Cotie had the most relevant information about the parties' communications and conflicts in the two years preceding his report. As a result, Dr. Elterman's recommendations were made in the absence of key information.
 - d) Alleged procedural failures that compromise the fairness and integrity of the Elterman Report: The respondent alleges various process and approach-related failures, including what she perceives as unequal and poorly focused questioning of the parties' collaterals, a failure to engage sufficiently with the best interests of the child factors under s. 37(2) of the FLA (particularly family violence), and an allegation that Dr. Elterman was "rushing" to complete his report and did not spend adequate time gathering and analyzing relevant information.
- [94] The consistent theme underlying the respondent's challenges to the Elterman Report is that his process and the resulting report is not what the respondent was expecting because it was different than what Dr. England did. The overarching suggestion is that, by comparison, the Elterman Report and its recommendations are inferior to the point of deserving little to no weight. I do not agree.
- [95] There is no question Dr. England and Dr. Elterman have different processes for preparing and delivering s. 211 reports. Both authors spoke candidly to this fact when they testified at trial, acknowledging that each s. 211 report writer brings their own background, experience and expertise, as well as their own style, to the exercise. The final reports in this case reflect this reality. This reality is also one of the reasons Dr. Elterman testified that in his view, it is not actually possible for one psychologist to "update" another psychologist's report and recommendations. Neither expert suggested such differences create inherent limitations or should be treated by the Court as a failing.
- [96] The jurisprudence also clearly recognizes that differences are to be expected. In *L.C.T. v. R.K.*, 2015 BCSC 2378 [L.C.T.], rev'd in part on other grounds 2017 BCCA 64, Justice G.P. Weatherill dealt with a very high conflict family law matter where the parties, by consent, obtained s. 211 reports from Dr. England (in 2011) and Dr. Elterman (in 2014). The claimant mother vehemently disagreed with both the process and recommendations of those two report writers and, as a result, retained her own two experts to prepare critique reports and

offer recommendations. All four experts testified at trial. The Court found both of the mother's experts were acting more as advocates for the mother than as independent and neutral experts, and gave their reports little or no weight.

[97] Of immediate application to this case, to a great extent, the critiques of the work done by Dr. England and Dr. Elterman in L.C.T. mirror the respondent's challenges to the Elterman Report. For example, the alleged deficiencies included the failure to interview particular collaterals such as certain family and treating professionals, failure to engage adequately with and sufficiently investigate issues of concern, and procedural and substantive concerns with the testing, interview methodology and reporting. In rejecting the mother's arguments, the Court said the following:

[418] The professionals who are tasked with the responsibility of preparing these reports are experienced and qualified. Time and money [do] not permit these reports to be, and they are not intended to be, exhaustive and detailed. In a perfect system where time and cost [were] no object perhaps more interviews, studies, tests and assessments could be done. When dealing with questions, such as here, of whether one parent should be granted supervised or unsupervised access to children, one parent will inevitably be unhappy with the recommendations of the author of a s. 211 report.

[419] The fact that Dr. Koopman would have conducted the court ordered assessments differently, or would have interviewed different collateral witnesses, is unhelpful. The standard of preparing these reports is not perfection. There is no protocol or checklist that must be exactly followed in every case, regardless of the circumstances or the individuals involved such that failing to do so will result in the report being rendered "insufficient and inadequate". The authors of the s. 211 reports must be free to use their education, experience and expertise to conduct the assessments with an eye to the objective of assisting the courts in determining what is in the children's best interests.

[Emphasis added.]

[98] With good reason, this Court has cited these observations multiple times: see, for example, Kwan at para. 46 and various cases citing it. I find these observations particularly apt here. It is unhelpful for the respondent to assert that she expected Dr. Elterman would approach and deal with collaterals in a particular way, or would cite specific legislative provisions in his final report, because Dr. England did. That difference is not a basis on which to accord the Elterman Report less weight.

[99] Turning briefly to the respondent's specific complaints, I reject any assertion that Dr. Elterman was required to use the England Report as a baseline or precluded from preparing a new report. The March 5, 2024 order under which he was appointed is express that Dr. Elterman was appointed to prepare a new report, and that the decision about whether to review the England Report was left to his professional discretion alone. These points were contested before Scarth A.J. and the respondent did not apply to appeal or vary the terms of that order.

- [100] It is not a failing for Dr. Elterman to have prepared his report in conformity with the express terms of the order that appointed him. Further, and consistent with what is stated in the Elterman Report, Dr. Elterman testified he deliberately chose not to review the England Report because he wanted to provide an independent opinion about the best interests of the child at the time of his assessment. He did not wish his evaluation to be based on someone else's process and conclusions, undertaken and reached almost two years earlier under different circumstances. He also testified, and the Elterman Report makes clear, that he was aware of Dr. England's recommendations because both parties advised him of the recommendations and the general rationale for why they were made. Finally, I decline to consider the respondent's contention that Dr. Elterman violated s. 11.34 of the Code of Conduct. The respondent asked Dr. Elterman if he was aware that the Code of Conduct has specific rules around repeat assessments. Dr. Elterman confirmed he was, but testified those rules relate mainly to testing and, in any event, he was following the Court's order. The respondent did not directly put to Dr. Elterman in cross-examination that any particular portion of his work had violated s. 11.34 of the Code of Conduct.
- [101] With respect to the allegations that Dr. Elterman improperly allowed the parties to choose their own collaterals, failed to interview third party professionals and failed to undertake the independent investigations the respondent says were obligatory, again, I do not agree. The case law is clear that s. 211 report writers are the Court's experts and have wide latitude to control their own process. This makes sense given the breadth of circumstances in which these individuals do their work. While the parties may suggest sources of information that could assist a s. 211 report writer, it is not for a party to dictate how the work is done. Further, if a party considers certain information critical to their case, there are options to compel the attendance of witnesses and to require those witnesses to bring documents in their possession.
- [102] The fact that Dr. England has a different process for collaterals does not invalidate how Dr. Elterman approaches the issue. Both report writers asked the parties to provide names of possible collaterals from which the writers would select the people to be interviewed. Dr. England selected and interviewed seven collaterals in total; all but one were professionals engaged with one or both of the parties and only one of the collaterals is noted as having seen the parties with the child (and then, only in the context of three couples' counselling sessions). Dr. Elterman testified (and the Elterman Report states) that while he requested each parent to provide a list of six collaterals from which he intended to interview three, for this evaluation, he decided to speak to more collaterals. He ultimately interviewed 12 collaterals from the names provided by the parties, six for each. In response to a question in cross-examination about professionals as collaterals, Dr. Elterman testified that his retainer asks clients to provide names of collaterals who "know you as a parent". Two of the respondent's collaterals were professionals who had not seen her with the child; all of the claimant's collaterals had witnessed her parenting the child in various scenarios.

- [103] Ms. Cotie's name was provided to Dr. Elterman but she was not interviewed. Dr. Elterman attempted to contact her in September 2024 but Ms. Cotie was on vacation at that time. She did not return until September 24, 2024, about a week after the Elterman Report had already been completed. As a result of that timing, her input was no longer of assistance. The situation is distinguishable from that *N.R.G. v. G.R.G.*, 2015 BCSC 1062, on which the respondent relies. In *N.R.G.*, the report writer suggested he did not contact the mother's treating psychologist because he did not have their contact information. The Court found the report writer had "no valid excuse" for not contacting that individual because the report writer had previously worked with the treating psychologist and their contact information was readily available (*N.R.G.* at paras. 210-211). The Court's criticism was also made in the context of a notable imbalance not present here. The report writer had interviewed all seven of the father's collaterals, but only one of the mother's five collaterals (and not the psychologist).
- [104] In cross-examination, Dr. Elterman agreed he reached out to Ms. Cotie because he thought it would be helpful to speak to her, but did not agree his inability to connect with Ms. Cotie was a major limitation to his report. Dr. Elterman testified he had Ms. Cotie's determinations so was aware of what had taken place. I have the benefit of having heard from both Ms. Cotie and Dr. Elterman at trial. I am not persuaded Ms. Cotie's testimony would have changed Dr. Elterman's ultimate opinion. I am satisfied he was generally aware of the issues Ms. Cotie addressed in her testimony and he considered them in making his recommendations. Further, I am mindful that Ms. Cotie has never met the child or seen her with either parent. In contrast, Dr. Elterman spent time with the child on two separate occasions, seeing her with each of her parents. As in *L.C.T.*, I am not persuaded it is helpful to compare what was or might have been done by a different report writer to what Dr. Elterman did. Nor is it helpful to suggest that because his evaluation was not as exhaustive as the respondent might have preferred, that necessarily renders it inadequate or of lower assistance to the Court.
- [105] Finally, in regard to the alleged procedural deficiencies, I agree with the claimant that there is no requirement for a s. 211 report writer to spend a certain amount of time or ask specific questions of each person interviewed. In an ideal world, I anticipate most s. 211 report writers would welcome more time to complete their tasks, but the specific suggestion that Dr. Elterman was "rushing" was not put to him in cross-examination. In any event, I accept as genuine Dr. Elterman's testimony that he asked each collateral witness the questions he believed were relevant to his recommendations. To the extent some of the respondent's arguments have the flavour of an allegation of bias or unfair treatment by Dr. Elterman, I have carefully reviewed the Elterman Report and his testimony at trial and I am not persuaded any such bias exists.
- [106] While I do not find I should give the Elterman Report less weight compared to the England Report as a result of the respondent's arguments, I also do not accept the claimant's contention that the Elterman Report negates or wholly supersedes the England Report. Dr.

England was appointed more than two years before trial and her assessments were undertaken during a period of significant conflict between the parties, when the claimant's communications often included inappropriate language and / or content. Neither fact was controversial at trial. The England Report is a useful snapshot of where the family was and what challenges they had faced and, in some cases, continued to face, in fall 2022. Dr. England made recommendations she considered to be in the child's best interests in light of the information she had at that time.

[107] Dr. Elterman was made aware of Dr. England's recommendations and, at least in a summary sense, the basis on which they were made. Based on his own assessment, Dr. Elterman chose to carry some of those recommendations forward, such as the use of a parenting coordinator and that the claimant should continue to seek a place in the DBT program recommended by Dr. England. This suggests he considered some of Dr. England's observations still relevant, even if the intensity of certain concerns had changed. As a result, I am satisfied the England Report remains useful for more than just historical interest.

[108] However, I agree with the claimant that, given the passage of time, interim developments, and the additional evidence available to me through the trial, I cannot accept the England Report unconditionally. To the extent I have more up-to-date or comprehensive evidence, Dr. England's factual findings may no longer hold. As one example, I have accepted the expert evidence of Dr. Kang that the claimant does not suffer from borderline personality disorder. As another, both parties and Ms. Cotie testified that the tenor of the claimant's communications improved, and the conflict decreased, after the parties began using Civil Communicator. As a result, Dr. England's now dated conclusions regarding the claimant's mental health and her interactions with the respondent must be considered in light of the evidence at trial. While the Elterman Report is more recent, I must also consider it in light of the evidence adduced at trial, which is understandably different.

[109] At the end of the day, I find both reports offer information that is useful to my assessment of the best interests of the child. As set out below, in relation to certain factors, I find Dr. England's perspective more aligned with the evidence. For others, I find the evidence supports Dr. Elterman's views. But it remains for me to determine what is in the best interests of the child, having regard to all the evidence and the applicable legal principles. As the Court said at para. 425 of L.C.T., the two s. 211 reports are just two pieces of the evidence that go into my decision.

[110] Before leaving the issue of the s. 211 report writers, I must address the issue of Dr. Elterman's fee for attendance at trial. As indicated, the claimant did not require Dr. Elterman to attend for cross-examination; the respondent did. The claimant says because Dr. Elterman only attended at the respondent's request, the respondent should be solely responsible for his fee. I disagree. Dr. Elterman provided his report as the Court's expert, but both parties cross-examined him and have relied, in different ways, on the testimony he offered at trial in support of their positions. Dr. Elterman's testimony was also ultimately of

assistance to me. The parties have shared the costs of Dr. England's report and attendance. In the circumstances, I find it appropriate to order the parties to share the costs of Dr. Elterman's attendance at trial. As the respondent paid at first instance to secure his attendance, I order the claimant to pay the respondent \$2,730.00 as her portion of Dr. Elterman's fee for attendance.

Credibility and reliability

- [111] While not an overarching focus of this trial, both parties raised concerns about the credibility and reliability of certain aspects of the other party's evidence at trial. Neither party raised specific concerns about any of the non-party lay witnesses.
- [112] The law respecting credibility and reliability is well-settled. In general terms, credibility "involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides": *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296, leave to appeal to SCC *ref'd*, [2012] S.C.C.A. No. 392. Reliability is a distinct but related concept. Rather than being concerned with the honesty or truthfulness of a witness, reliability is concerned with the accuracy of their testimony for reasons other than honesty, such as faulty powers of observation, recall or narrative skills: *Ford v. Lin*, 2022 BCCA 179 at para. 104; *Equustek Solutions Inc. v. Jack*, 2020 BCSC 793 at para. 109. When addressing credibility, this Court frequently cites the guidance in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.), where the Court stated "the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."
- [113] To assess credibility and reliability, the Court must consider factors such as the witness' ability to observe events, the firmness of their memory, their objectivity, any inconsistencies between pre-trial evidence and testimony at trial or between direct and cross-examination or with other independent evidence accepted at trial, the plausibility of the testimony and the witness' demeanour generally: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Laces Canada Ltd.*, 2019 BCSC 739 [Youyi Group Holdings] at paras. 90-92, *aff'd* 2020 BCCA 130, leave to appeal to SCC *ref'd* [2020] S.C.C.A. No. 218. In *Bradshaw*, at para. 187, the Court suggested a witness' testimony should first be assessed on a stand-alone basis, and if inherently believable, it should be assessed in the context of the other evidence at trial.
- [114] In my view, a Court assessing credibility must also be mindful of certain uncontroversial realities that can impact memory. Testifying and participating in a trial is an inherently stressful experience. In family law in particular, emotions are often high and parties tend to assert their positions and resist conceding anything related to the opposite view: *A.S. v. S.S.*, 2023 BCSC 1077 at para. 47. The passage of time can distort memories such that a witness genuinely believes the truth of their "version" of an event, despite being objectively

mistaken. And not all people have the same focus for recall, with some retaining dates and details of written documents and others retaining faces or feelings.

- [115] Credibility and reliability are also not "all or nothing" propositions. It is open to the Court to accept all, part, or none of a witness' evidence, and to attach different weight to different parts of that evidence: *Radacina v. Aquino*, 2020 BCSC 1143 at para. 96, citing *R. v. R. (D.)*, [1996] 2 S.C.R. 291 at para. 93, 1996 CanLII 207, per L'Heureux-Dubé J. (in dissent in the result).
- [116] I carefully listened to and observed the parties throughout this trial. I find that both parties testified to the best of their memories and generally attempted to be forthright, despite each occasionally becoming argumentative or defensive in cross-examination. However, as each party necessarily viewed the issues from their own perspective, their responses - particular in relation to historic events - did not always harmonize with the preponderance of probabilities. I do not wholly accept or reject the testimony of either party, nor can I say that I consistently prefer the evidence of one party over the other. Further, as already noted, some of the factual matters in dispute do not require resolution for purposes of my decision. Where the issues require me to assess credibility or reliability in respect of discrete events, I have applied the above guidance and principles to my analysis of the evidence.
- [117] Having addressed the preliminary issues, I turn now to the best interests of the child analysis and what my assessment of the factors means for the specific orders the parties seek.

The best interests of the child analysis

- [118] Where, as here, the parties seek orders relating to guardianship, parenting time and parental responsibilities, s. 37(1) of the FLA requires that I consider only the best interests of the child. All of the child's needs and circumstances must be considered, including the following factors set out in s. 37(2) of the FLA:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;

- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[119] Section 40 of the FLA confirms there is no presumption that a particular parenting arrangement (such as shared parenting time or equal allocation of parental responsibilities) is in the best interests of a child. Rather, to be in a child's best interests, an order must protect, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: FLA, s. 37(3). The Court may only consider a person's conduct if it substantially affects a factor set out in s. 37(2) and then only to the extent that it affects that factor: FLA, s. 37(4).

[120] Sections 37(2)(g) and (h) of the FLA specifically require the Court to consider allegations of family violence when assessing a child's best interests. Consistent with s. 37(4), the focus of the analysis is first, on the impact any family violence has on the child's safety, security or well-being, and second, on whether the actions of the person responsible for family violence indicate they may be impaired in their ability to care for the child and meet their needs. Allegations of family violence may also bear on whether an arrangement that requires cooperation between the child's guardians is appropriate: FLA, s. 37(2)(i).

[121] The best interests of the child directly underlie the orders the parties seek respecting parenting time and parental responsibilities, as well as communications and conduct. Accordingly, I will first address the relevant factors under s. 37(2) of the FLA, before setting out my conclusions on the specific issues. I have grouped related s. 37(2) factors together.

[122] As there are no civil or criminal proceedings relevant to the child's safety, security or well-being, s. 37(2)(j) of the FLA is not in issue in this matter.

A. Health and emotional well-being, need for stability, nature and strength of relationships and views of the child

[123] Sections 37(2)(a), (c) and (e) of the FLA respectively address a child's health and emotional well-being, the nature and strength of their relationships with important people in their life, and the child's need for stability given their age and stage of development. Section 37(2)(b) requires the Court to consider the child's views, unless doing so would be inappropriate (for example, as a result of the child's age). I will consider these factors together.

Strength of relationships - s. 37(2)(c)

- [124] The consistent evidence is that the child's most significant relationships are with her two mothers and she is strongly bonded to both of them. Both parties recognize and admit this. In her 2022 evaluation, Dr. England noted the child has a "significant attachment bond" with both parents (England Report, p. 36) and is "well-loved and showered with warmth and attention" (England Report, p. 37). The England Report concludes that both parents present as "warm, loving and attentive" and as "wanting the best" for the child (England Report, p. 38). At the time of her report, Dr. England noted the child had few other family members and none in close proximity: the claimant's family is in the eastern United States; the respondent's parents are both deceased and her sister lives in Ontario. Accordingly, Dr. England concluded it may be beneficial for the child to have some connection with her limited extended family and for her relationships with them to be supported (England Report, pp. 37-38). I understood Dr. England's comment to pertain to both sides of the child's family.
- [125] The Elterman Report similarly reflects the child's strong relationship with each of her mothers. Unlike in the England Report, many of the collaterals Dr. Elterman interviewed had actually spent time with the child and one of her parents. I also had the benefit of hearing from some of those collaterals when they testified at trial. All such collaterals confirmed the bonds between the child and each of her parents.
- [126] In addition, by the time Dr. Elterman was preparing his report in summer and fall of 2024, the respondent had a new child, born in December 2023. The respondent testified about the close bond between the child and her sibling, and says that relationship will only grow as the two children get older. I agree this is an important relationship to be nurtured. However, in my view, the presence of the sibling does not elevate the importance of the child's relationship with the respondent above that of the child's relationship with the claimant. It is one factor to be considered.
- [127] During his parent-child observation at the respondent's home, Dr. Elterman witnessed a change in the child's demeanour when her new sibling arrived home, with the child becoming more irritated as the respondent paid greater attention to the baby's needs. While this kind of sibling jealousy (which is my word, not Dr. Elterman's) is a fairly normal reaction for any child, Dr. Elterman concluded it is likely the child feels "some loss" as a result of the respondent directing some of her finite attention to the child's sibling (Elterman Report, p. 32). Again, this is one factor to be considered.

Views of the child - s. 37(2)(b)

- [128] Given the child's age, no formal evidence was obtained respecting the child's views. Although Dr. England "interviewed" the child after each parent-child observation, the child was three years old at the time and Dr. England is candid that she was unable to obtain much information from the child. Dr. England assumed, given the comfort and affection the child displayed with each parent, that the child would want to spend regular time with each parent and "would not want a lengthy separation from either" (England Report, p. 36).
- [129] Dr. Elterman did not formally interview the child, but he did spend time observing her and interacting with her on two separate occasions. The Elterman Report as a whole, including the observations of both parties' collaterals, supports that the child generally enjoys being with both parents. However, in 2024, the child was spending less time with the claimant (only 36% of her time), and Dr. Elterman both observed and heard from the claimant's collaterals that the child "loves being with" the claimant. Based on his evaluation, Dr. Elterman accepted the claimant's report that the child asks for more time with her, stating he "did not doubt" that at the end of her time with the claimant, the child wished that their time was longer "because she does have a pleasurable time being with" the claimant (Elterman Report, p. 31). This is also a factor to consider.

Stability given age and stage of development - s. 37(2)(e)

- [130] There is no question that stability is in the best interests of any child. I accept Dr. England's opinion that children of separated parents generally experience more disruption in their lives, including because there are often separate households. As a result, such children have a heightened need for stability. However, in this case, the parents have been physically separated since before the child was one; for better or worse, the child's "normal" experience involves transitions between households. Until after she was three years old, the child essentially transitioned every day. While the transitions were reduced by the 2-2-3 schedule implemented in late August 2022, the frequency and timing of transitions changed again in February 2023 when the parties switched to the current schedule.
- [131] At present, the child transitions six times in each two-week block. No matter which parenting time schedule is implemented, the child will continue to transition between households. While both Dr. England and Dr. Elterman recommended changes to the parenting time schedule that existed at the time of their evaluations, neither raised concerns for the child's stability. As I read the England Report, the key for stability at this stage of the child's life is in maintaining regular contact with both parents and avoiding long spans of time between when the child sees each parent (England Report, p. 37). This is consistent with Dr. Elterman's testimony.
- [132] I note as well that the parties live fairly close together; the respondent is able to drop the child off at the claimant's by bike. The evidence before me indicates the child has connections in both of the parent's neighbourhoods, and given the evidence that she built

friendships at preschool and is an outgoing, social child, it is reasonable to assume the child is similarly building friendships within her school environment. There is no indication that either parent intends to move homes or is requesting a change of the child's school, all of which contributes to her stability. While the respondent raised concerns about the child's emotional stability, in my view, those issues are better addressed in relation to her health and emotional well-being, to which I now turn.

Health and emotional well-being - s. 37(2)(a)

- [133] On the whole, the evidence before me indicates that the child is generally a healthy, well-adjusted child. Both parents describe the child primarily as a happy child, who is bright, inquisitive, social and imaginative. The lay witnesses who have spent time with the child, including at organized and casual activities, describe the child in much the same terms - outgoing, kind, playful and affectionate. One witness commented that when he sees the child with the claimant, the child always has something to show him. A number of witnesses (including the parents) described the child as mischievous, but not in a negative way. While there was some evidence of dental, tongue-tie and hearing issues that needed to be addressed, there do not appear to be any significant ongoing health concerns.
- [134] Dr. England, whose last contact with the child was in 2022, noted the child could be demanding and somewhat resistant to direction in both homes. The child hit the respondent twice during the parent-child observation session at the respondent's home. Dr. England did not consider such behaviour unusual for the child's age, but suggested the behaviour required some monitoring. Dr. England also suggested both parents work on creating appropriate limits and structures, and be alive to the dangers of permissive parenting (a tendency to which both parents admitted to some degree). Dr. England concluded the child was comfortable in both homes, was not distressed by transitions and would likely adapt well in future.
- [135] The respondent raised concerns at the time of Dr. England's assessment that the child was more "emotionally dysregulated" on returning from the claimant's parenting time. As Dr. England conducted both parent-child observations on the same day, she did not witness the reported dysregulation. Nor did she find that, to the extent it was happening, it was caused by the claimant's parenting time. Further, while the respondent reported and attributed the child's "flinching" reaction to the claimant's influence, in cross-examination, Dr. England agreed she could not attribute that reported behaviour to either parent.
- [136] The respondent also raised concerns with Dr. England about the impact of the parties' conflict on the child, including because the claimant admitted to making negative comments about the respondent in the child's presence (at least one of which occurred more than a year before the England Report). Dr. England found it was difficult to offer an opinion on whether the child had been negatively affected by the conflict. She stated the child's views of each parent did not appear to have been affected at that time. Dr. England also noted the claimant had more recently acknowledged the need to avoid engaging in

such behaviour.

- [137] Dr. Elterman conducted his evaluation between May and September 2024. As the Elterman Report reflects, the respondent raised similar concerns that the child's time with the claimant was negatively impacting the child's emotional well-being. The respondent again reported emotional dysregulation on the child's return to her care, including hitting, more anger and an "I don't care" attitude. The respondent also told Dr. Elterman she believes the claimant is "openly hateful" towards the respondent in the child's presence (leading to alienation), and the claimant discusses inappropriate issues with the child, such as the parenting schedule.
- [138] At trial, the respondent emphasized her belief that, due to the claimant's emotional reactivity, the child is less emotionally safe when she is with the claimant and less able to express her emotions with the claimant, leading to the child's "emotional release" (including acting out) when she returns to the respondent's care. In addition, based primarily on one incident with the preschool in late January 2024 (discussed further below), the respondent asserts the claimant's emotional reactivity will cause problems with third parties, such as teachers and parents at school, which, in turn, will negatively impact the child's well-being.
- [139] For her part, the claimant denies the child is emotionally unsafe in her care or unable to express her emotions and says the child does not "act out" while in her care. The claimant says, given the lack of such behaviour with the claimant, there is no evidentiary basis for the respondent to attribute the child's dysregulation while in the respondent's care to something the claimant is doing. The claimant says the respondent is unwilling to entertain the idea that the child could be acting out due to some aspect of the respondent's parenting, rather than that of the claimant.
- [140] The most recent independent evidence I have regarding the child's emotional well-being comes from the Elterman Report and Dr. Elterman's testimony at trial. Dr. Elterman observed the child with the respondent in her home in June 2024 and with the claimant in her home in July 2024. At the claimant's request, Dr. Elterman organized each visit so that the child had spent time in each home and settled in with that parent prior to his attendance.
- [141] In the respondent's home, while he considered the overall tone of the visit to be "cooperative and friendly", Dr. Elterman did observe the child acting out, including responding more abruptly to the respondent and becoming increasingly resistant and oppositional even when asked to do small tasks like hand washing. When the child's sibling arrived home, Dr. Elterman witnessed the change in the child's demeanour referenced above. This situation reached somewhat of a "crisis" when the child stood on the cat and the respondent reprimanded her more loudly and abruptly than previously, further increasing the child's anger (Elterman Report, p. 21). In his testimony, he characterized this particular behaviour as "shocking" both to the respondent and himself. Dr. Elterman opined, and

confirmed in his testimony, that based on his observations and experience, the child's reactions appeared to be provoked by the respondent paying attention to the baby. However, aside from those few difficult moments, and the respondent's understandable exasperation at the child's aggression toward the cat, Dr. Elterman characterized the visit as "upbeat" and the respondent as gentle and calm for the vast majority of the time. The respondent's collaterals who know her as a parent similarly commented that she is even-keeled, patient, attentive and handles the child well, even when the child is not in a good mood.

- [142] In the claimant's home, Dr. Elterman observed the child as "relaxed, cooperative and generally compliant with any requests" made by the claimant. He noted physical affection between the child and the claimant, stating there was "no need for any child management or even a warning or reproach" as the child "seemed to quite spontaneously be cooperative and eager to please" (Elterman Report, p. 22). During his interviews with the claimant, Dr. Elterman addressed the respondent's allegations that the claimant makes negative comments about the respondent in the child's presence. The claimant admitted to Dr. Elterman (and in her testimony at trial) that she made one comment about the respondent having stolen the claimant's money when the child was two years old and she regretted having done so. She also admitted that she ought not to have commented to the child that the respondent tells her patients not to eat bread but then feeds the child bread. The timing of the latter comment is not clear.
- [143] Two of Ms. Thompson's determinations refer to occasions where the claimant is alleged to have made negative comments about the respondent in the presence of the child. Ms. Thompson's final determination (made December 17, 2021) suggests the claimant acknowledged that behaviour prior to June 2021, but it is not clear if that is a different example than the two addressed above; the claimant was not specifically asked. A further incident is alleged to have occurred in October 2021; the claimant was not asked about it either. To the extent specific allegations were put to the claimant by Dr. Elterman or at trial, and with the two exceptions noted above, the claimant denied having made the other statements which the respondent alleges the child has parroted back.
- [144] Dr. Elterman did not record or testify that any of the claimant's collaterals had witnessed the claimant make negative comments about the respondent around the child, or react to the child in an angry or emotionally volatile way. The Elterman Report states several collaterals commented positively on the claimant's ability to explain things to the child and use teachable moments; others commented on her patience and positive interaction with the child. One collateral said the claimant can be stern when she needs to be. That collateral has never seen the claimant be annoyed or angry with the child, and said the claimant is not irritated except if the child is being rude (a natural reaction to which I expect most parents can relate). There was no suggestion the claimant's level of irritation was excessive or in any way concerning.

- [145] The claimant's witnesses at trial similarly did not provide evidence of having heard the claimant make negative comments about the respondent in the presence of the child. One witness admitted he could sense coldness between the parties when he was present for some of the transitions of the child in 2020 and 2021, but he testified the parties kept their discord to a minimum in the child's presence. Although one of the respondent's witnesses testified she had heard the claimant call the respondent "malicious" and "disrespectful" in the presence of the child, I do not have sufficient evidence about the context in which the alleged statements were made (for example, dates, frequency, etc.), nor were those alleged statements put to the claimant in cross-examination. As a result, I decline to give that evidence weight. Taken as a whole, and with the few seemingly dated exceptions which the claimant has admitted, the consistent evidence is that the claimant's interactions with the child are appropriate.
- [146] Based on his observations and speaking to collaterals, Dr. Elterman concluded the claimant was neither an angry nor a punitive parent with the child. He noted the respondent acknowledged that the claimant's temper was not directed at the child (England Report, p. 29). Dr. Elterman also did not think it was likely the claimant had directed any of her reported reactivity toward the child. Instead, his view was that if the claimant had expressed any verbal aggression, it was "more likely to have come through comments made or commentary about what has taken place between the two parents" (Elterman Report, p. 31). Dr. Elterman did not conclude the claimant was alienating the child, or find the child was being emotionally harmed by the claimant, despite finding the claimant still has work to do on her own emotional regulation.
- [147] With respect to the child's dysregulation, Dr. Elterman did not attribute that behaviour to something the child experiences when with the claimant. He maintained on cross-examination that even if some of the behaviours pre-dated the child's sibling, at least some of the child's current acting out is "attention-seeking" because the respondent naturally has reduced time for the child when dealing with her sibling. Dr. Elterman testified that, based on his experience, this causal connection was quite apparent from the dynamics he observed in the respondent's home. Dr. Elterman also testified the child's dysregulation may reasonably stem from the different demands placed on the child in each household. He observed that the respondent makes more demands of the child (including because of the second child), while the claimant has more ability to spend with and "follow" the child. Dr. Elterman ultimately concluded that to the extent there might be risks (for example, that the claimant could make an impulsive negative comment), they were outweighed by the enjoyment the child derives from her time with the claimant.
- [148] Having carefully considered all of the evidence at trial, I am not persuaded the child's emotional well-being has been negatively impacted by the claimant's emotional reactivity as alleged. There is no evidence before me of parental alienation. The child is not rejecting either parent, let alone in a manner that would suggest either parent is directly or indirectly undermining the child's relationship with the other parent. Taken as a whole, the

evidence confirms the child wants to spend time, and enjoys her time, with both parents, who are both generally patient, supportive and loving. I do not find, nor did Dr. Elterman suggest, that the child's acting out should be interpreted otherwise.

[149] There is no evidence the child is emotionally distressed or unsafe while in the claimant's care. On the contrary, the evidence confirms the child is relaxed and generally happy when she is with the claimant, and the claimant is good at interacting on the child's level and providing appropriate direction when required. The respondent's contention that the child's emotional well-being suffers when she spends time with the claimant appears to be based solely on the respondent's own interpretation of what she says she has observed while the child is in her care. There is no independent evidence that supports the causal connection the respondent asks the Court to draw between the child's time with the claimant and the dysregulation the respondent reports. This is not a case like *D.A.B. v. C.A.S.*, 2020 BCSC 807, where the s. 211 report writer conclusively found the children had suffered emotional stress and harm from exposure to their parents' reactivity to each other. In *D.A.B.*, the parties actively involved the children in their conflict, and in the father's case, intentionally undermined the children's relationship with their mother.

[150] I find the four s. 37(2) factors considered in the above section to be neutral in this case.

B. History of care and parent's ability to exercise their responsibilities

[151] Section 37(2)(d) of the FLA addresses the history of the child's care, while s. 37(2)(f) addresses the ability of each parent to exercise their responsibilities. I will address these two factors together.

History of child's care - s. 37(2)(d)

[152] With respect to the history of the child's care, as noted above, the parties separated when the child was less than one year old. I have found that, despite their necessarily different roles while the respondent was breastfeeding, both were actively involved in the child's care prior to separation and indeed up until physical separation in April 2020. After a relatively short period of disruption, the claimant began having parenting time again, which was gradually increased, although not as much or as quickly as the claimant wished. From August 2021 to February 2023, the parties shared equal parenting time. Since February 2023, consistent with the England Report's recommendations, the child has been primarily resident with the respondent.

[153] The respondent frames the child's primary residence with her since February 2023 as establishing a status quo that tips the history of the child's care in her favour. I do not agree. As the England Report states, since the outset, the child has had regular contact with both parents, and I find both parents have remained active in her care to the extent the various agreements allowed. While the claimant's time was reduced from 50% to 36% in February 2023, the child still spends more than one-third of her time with the claimant. Dr. England

specifically noted the current schedule ensures the child has time with each parent, with not more than a three-day absence from each. This is not a case where there have been lengthy periods of time when the child did not see or spend time with the claimant. The evidence before me indicates the claimant has an established history of being an engaged and involved parent. This engagement has continued despite the claimant having less overall parenting time since February 2023. I find this factor neutral.

Ability to exercise parental responsibilities - s. 37(2)(f)

- [154] Section 41 of the FLA sets out parental responsibilities with respect to a child. In general terms, those responsibilities include decision-making in respect of both day-to-day matters, such as where the child will live and attend school, and in which activities the child will participate. Section 41 responsibilities also include decision-making in respect of more significant matters, such as the child's language, culture and spirituality, and consent to health care. Finally, parental responsibilities include addressing the child's physical and emotional needs on a daily basis. Virtually all of these responsibilities import a requirement that the parent be able to communicate effectively with others in respect of matters affecting the child.
- [155] There is no concern that either parent lacks the willingness or desire to perform their parental responsibilities. The England Report and the Elterman Report describe the parties using terms such as "loving", "dedicated" and "attentive". The England Report recognizes that both parents "bring strengths to their parenting" (England Report, p. 38). The Elterman Report finds that both parties put a high priority on being parents. The evidence indicates both parents have some flexibility in their work so they can organize their time to a certain extent around the child. The comments of the collaterals who spoke to both s. 211 report writers and the testimony of the non-party witnesses at trial largely mirror these overall impressions.
- [156] There is also no suggestion from the evidence at trial or the two s. 211 reports that either parent is unable or unwilling to address the child's physical needs. Dr. Elterman, whose report provides the more recent snapshot of this family, did not find any issues with the nutrition or the amenities provided to the child in either home. He noted the child's bedroom in each home is child-oriented and more than adequate, with the child having sufficient freedom to arrange her things as she wishes. He confirmed in his testimony that he has "no concerns" about the child's physical needs. While Ms. Cotie has not seen the child with either parent, she testified that based on her discussions with each parent about the child - including what they do together, and their knowledge of food, nutrition and exercise - she considers both mothers to be "great parents." Ms. Cotie testified, and I accept, that unlike many of the high conflict families she works with who treat their children "abominably", that is not the case with these parents.

- [157] The main concerns here are the parties' interactions with each other and with other individuals, both of which are a necessary part of exercising parental responsibilities. In this regard, the England Report identified significant concerns with the claimant's emotional reactivity. As noted, Dr. England framed her concerns as an assessment that the claimant "at least" has traits of borderline personality disorder that were as problematic as a formal diagnosis. Dr. England identified intense anger, general difficulty with emotional regulation, defensiveness and resistance to feedback, and a lack of awareness of and accountability for the impact of the claimant's words and actions on others. In both her report and her testimony, Dr. England based her conclusions primarily on the claimant's abusive communications to the respondent and others, her depression and repeated expressions of suicidal thoughts (after the loss of her pet in 2012 and leading up to physical separation in April 2020), and what Dr. England observed to be an inability to tolerate normal distress (for example, from the psychological testing).
- [158] Importantly, the England Report did not conclude the identified concerns had yet had a significant impact on direct parenting, other than perhaps a tendency towards permissive parenting (England Report, p. 40). Instead, it extrapolated forward, anticipating that, for example, if a third party raised a criticism about an aspect of the child's behaviour, the claimant could not listen and respond non-defensively to resolve the conflict or address the issue. The England Report anticipated the claimant would emotionally escalate, lash out and blame others, consistent with what were, at the time, fairly current documented examples of the claimant's responses to conflict with the respondent, counsellors and parenting coordinators. The England Report also anticipated the claimant could eventually target or subject the child to angry outbursts; Dr. England testified she was also concerned about the claimant's ability to assist the child with her own emotional regulation. Further, Dr. England viewed the claimant's reactivity as precluding cooperative co-parenting. In her testimony, Dr. England confirmed that as a result of these concerns, she considered there to be a significant enough difference in the parents' abilities to meet these aspects of the child's needs that the respondent should have greater parenting time and all decision-making authority.
- [159] The England Report focuses almost exclusively on concerns with the claimant. However, in cross-examination, Dr. England admitted her concerns were not all one-sided. She accepted that the respondent may have stronger reactions and greater sensitivities to issues like conflict and safety that cause her to over-state her concerns at times. Dr. England also testified the respondent may acquiesce to avoid conflict, rather than setting boundaries. This is consistent with statements in the England Report that the respondent needs to work on finding a better balance between accommodating and setting limits, including to avoid a cycle of resentment and overcompensation in relationships. In terms of parenting, the England Report identifies that the respondent may be "overly sensitive to emotional distress" in the child (England Report, p. 39).

- [160] As noted, the claimant disputes the factual assumptions in the England Report, including the strong suggestion that she might suffer from borderline personality disorder. But the claimant admits her reactions and communications in the period prior to the England Report were very inappropriate. As the Elterman Report states, the claimant now acknowledges she had difficulty regulating her emotions with the respondent. The claimant says she has followed the England Report's recommendation, undertaken a DBT program (albeit not the specific one identified because of a lengthy wait-list), implemented Civil Communicator and demonstrated behavioural change. She says she should be judged on her present behaviour, rather than simply having her past behaviour characterized as ongoing.
- [161] The question is whether the evidence at trial presently supports a finding that either party is impaired in the exercise of parental responsibilities to the point that this factor weighs against them in the best interests' analysis. The standard is not one of perfection; no parent is perfect, despite genuine efforts. The focus must be on whether there is evidence of an actual or realistic risk of a negative impact to the child's best interests.
- [162] Based on the evidence before me, I am satisfied the respondent has an adequate ability to exercise her parental responsibilities. By all accounts, the respondent is generally a calm and reasonable individual to deal with. The evidence indicates the respondent generally communicates clearly and respectfully, whether with the claimant or third parties. Dr. Elterman described the respondent as "socially poised"; her collaterals comment that she is not an emotional person. These descriptions largely align with my impressions of the respondent during the trial. The claimant expressed concerns about the respondent's discipline of the child (the respondent admitted to both s. 211 report writers that she raises her voice more often than she would like) and the lack of time that she has to spend with the child after the birth of her second child. However, the claimant does not suggest this factor should weigh against the respondent.
- [163] In terms of the claimant, the respondent acknowledges there has been some decrease in conflict between the parties, but says that is because of the claimant's decreased parenting time and decision-making authority and the parties' use of Civil Communicator, rather than any significant behavioural change on the claimant's part. The respondent maintains she has ongoing concerns about the claimant's mental health and says the claimant's emotional reactivity continues to limit her ability to exercise her parental responsibilities, particularly in terms of interactions with the respondent and with third parties. In this regard, and among other things, the respondent points to: evidence about an incident at the preschool in January 2024 and both the preschool and Ms. Cotie's alleged lack of comfort in approaching the claimant; Dr. Elterman having observed the claimant's reactivity and "sensitive nerves"; and the claimant's reactions in the courtroom during the trial.

- [164] The evidence at trial confirms that, contrary to the strong suggestion raised in the England Report, the claimant does not suffer from borderline personality disorder. The Kang Report confirms the claimant suffers from symptoms of major depressive disorder and / or generalized anxiety disorder. I accept Dr. Kang's evidence that a mental health diagnosis is not, on its own, an impediment to parenting, and that many people with such conditions are "good enough" parents.
- [165] In terms of the interactions with the preschool, the claimant's testimony is the only direct evidence regarding the specific incident on January 31, 2024. The staff member who interacted with the claimant in person that day did not testify. The staff member's emailed report to the preschool director is not evidence of the truth of its contents, nor is the director's second-hand report to Dr. Elterman that the claimant was "yelling" or the respondent's testimony about what she was subsequently told.
- [166] In my view, the background to the incident is relevant to evaluating the claimant's reaction. The claimant admits she was upset when, during a consensus building session with the parties and counsel, Ms. Cotie addressed concerns the preschool director had relayed to Ms. Cotie about the claimant picking up the child early and certain issues with food. The claimant testified she felt the preschool should have spoken with her directly to give her an opportunity to address the concerns as she was not previously aware of them. Instead, the evidence indicates the preschool director spoke to the respondent in October 2023, who in turn raised the issue with Ms. Cotie. Ms. Cotie testified that, rather than exploring the concerns second-hand, Ms. Cotie preferred to contact the preschool director directly, which she did in early December 2023. All of this occurred without the claimant's knowledge. There is no evidence the claimant was ever advised of any concerns, by the preschool or anyone else, before the meeting on January 31, 2024.
- [167] Ms. Cotie testified she advised counsel in mid-December about the concerns that had been raised, but she did not contact the claimant directly. When asked why, Ms. Cotie testified she had several reasons: she was in the process of trying to set up a meeting in a few weeks; she had been instructed to deal with the claimant's counsel rather than the claimant; and she wanted to discuss with counsel how best to raise the issues. Ms. Cotie did testify that she wished to avoid framing the issues in a way that might cause the claimant to react with the preschool and potentially jeopardize the child's ability to attend. But contrary to the respondent's suggestion in closing submissions, that was not the sole or even the primary reason. Ms. Cotie also agreed that another reason she did not contact the claimant directly was that the concerns were not very serious or urgent, and could wait for the meeting.
- [168] After the January 31, 2024 meeting where the issues were raised, the claimant testified she attended the preschool the same day to express her concerns with their approach. She admits she was very upset and crying, but denies she yelled or that there were any other families or children present. She also admits she sent a number of emails to the preschool director in relation to the incident. Those emails were in evidence before me. They reflect the claimant's significant frustration that the preschool triangulated their concerns (this is

my description) rather than speaking to her directly. The claimant's emails also use accusatory language, make negative comments about the respondent and call the respondent names.

- [169] When asked about the incident in cross-examination, the claimant described being upset, surprised and "dumbfounded" that the preschool had spoken with Ms. Cotie without having first raised their concerns directly with her. The claimant testified there was nothing in her previous interactions with the preschool that would have precluded them speaking to her about their concerns. There was no evidence before me that the preschool had previously had specific difficulties interacting with the claimant in the 18 or so months the child had been attending. In fact, there is evidence the preschool had previously raised a concern with the claimant without incident, and the claimant accepted the feedback and adjusted. The respondent testified the preschool was a "safe space" for the child prior to this incident.
- [170] I acknowledge the preschool director testified at trial that she was hesitant to speak to the claimant at the time these issues arose. However, there were inconsistencies within the director's testimony, and between her testimony and other evidence at trial, that cause me to question its reliability. For example, the director initially answered that her interactions with the claimant at pick-ups and drop-offs were "good", noting the claimant would "sometimes" get frustrated by a missing article of clothing in the child's bag. But when asked directly why she spoke to the respondent rather than raising these concerns with the claimant, the director testified she found it "uncomfortable" to talk to the claimant because of her frustration with missing things and because she was "angry" about the situation with the respondent. When asked to clarify her comment about the claimant's anger, the director backtracked, saying "it was more frustration" but she "knew" the claimant was angry.
- [171] The director also suggested both she and the staff member avoided interacting with the claimant after the incident. The claimant confirmed in cross-examination that the director avoided her and refused to acknowledge her after the incident. However, the claimant testified that, after the incident, she spoke directly with the staff member involved and apologized, and their relationship continued without issue. There is no evidence of any further issues with the preschool, and I prefer the claimant's direct evidence of her ongoing relationship with the staff member over that of the director on this point. In addition, the director testified Dr. Elterman did not ask her about the incident because "he knew about it". Her statement is inconsistent with Dr. Elterman's testimony and his report. The Elterman Report expressly states the director was asked about the incident and reflects her response. Dr. Elterman was cross-examined on his interview with the director and his notes from it, and he read from part of those notes during his testimony. Based on the above concerns, I am unable to give the director's evidence much weight.
- [172] The evidence respecting the preschool incident does not persuade me that the claimant's emotional reactivity is ongoing in the way or to the degree the respondent alleges, nor that it demonstrates the claimant will be unable to effectively interact with third parties in

exercising her parental responsibilities. Instead, I find the preschool incident was a unique and unfortunate event. The claimant's decisions to attend the preschool and send emails when she was upset were not good ones; it certainly would have been preferable to wait until she had calmed down before attempting to address her concerns. However, in my view, the whole situation was not well-handled from the outset; triangulation of concerns often leads to problems and unnecessarily hurt feelings. Although I accept the claimant did not express herself in a constructive manner, particularly in writing, I do not consider it unreasonable for her to have been frustrated and disappointed by the situation. There is no evidence the claimant has been unable to interact appropriately in relation to other activities the child attended. None of the collaterals interviewed by Dr. Elterman or the witnesses who testified at trial identified any concerns about interacting with the claimant. In fact, the evidence indicated the claimant was cooperative and engaged, both with staff and other participants.

[173] In terms of Dr. Elterman's observations, his report acknowledges the claimant continues to display some reactivity. Dr. Elterman attributes much of this to the claimant's deep fear of losing the child (based on post-separation events between the parties), which "comes out as confrontational" (Elterman Report, p. 31). Dr. Elterman agreed in cross-examination that the claimant continues to have some "very sensitive nerves around certain points" (such as perceived threats to her parenting time) that when touched, will cause her to react. He also allowed that, when initially faced with a situation, the claimant might be reactive before collecting information that could indicate the facts are different than they first appear. However, Dr. Elterman also testified that, in his opinion, the claimant's reported "overreaction" was sometimes a reasonable response. Dr. Elterman found there was improvement in the claimant's reactivity, but concluded she would still benefit from the additional DBT program Dr. England recommended so that she can continue to work towards greater emotional regulation and impulsivity control.

[174] I accept Dr. Elterman's evidence that he did not find improvement in the claimant based solely on her self-reporting, but rather reached that conclusion based on his professional experience, investigations and observations. He testified he had seen the communications with Ms. Thompson and the respondent, and did not doubt those things happened, but he had also interviewed the claimant "extensively". This is consistent with the claimant's testimony that Dr. Elterman interviewed her on multiple occasions, spending about 10 hours with her in total. While he witnessed some reactivity, Dr. Elterman testified he did not see anything like what the respondent had reported or what he had read in the documents; there was none of the language or rage that had previously been present, nor the same extreme kind of reactions.

[175] Dr. Elterman's testimony in this regard is consistent with my own observations of the claimant during the trial. Dr. England testified the goal of the treatment she recommended was, in part, to see if the claimant could learn to remain quiet and calm, rather than reacting; she said the real test would be on introducing a stressor. There is no question that

a family law trial is an incredibly stressful experience for all participants. When a child is involved, as here, the stakes are particularly high. Both parties testified about very difficult and upsetting issues; both were subjected to pointed cross-examinations that directly called into question their words, actions, character and parenting. The claimant was under cross-examination over a period of three days. While she was occasionally defensive, on the whole, the claimant remained relatively calm. She answered hard questions directly to the best of her ability, admitted mistakes and, in my view, genuinely attempted to take responsibility for some of her role in the conflict. Her testimony was not perfect - no witness' testimony is - but there were no negative emotional outbursts on the stand and she did not shy away from or minimize her past inappropriate behaviour. Given the unique stress of a trial, I am not persuaded the claimant's occasional visible reactions to certain aspects of the respondent's testimony demonstrate an ongoing inability to control her emotions in a manner that significantly impairs her ability to exercise her parenting responsibilities.

[176] While I accept Dr. Elterman's assessment that the claimant has some work left to do on her own emotional regulation (a conclusion with which I note the claimant agrees), based on the evidence that was before me at trial, I do not find the level of the claimant's emotional reactivity to be a factor that impedes her in the exercise of her parental responsibilities.

C. Family violence and the appropriateness of requiring cooperation

[177] As noted, ss. 37(2)(g) and (h) of the FLA require the court to consider allegations of family violence and any impact the alleged conduct has on the child's safety, security or well-being, or on the ability of the person responsible for the family violence to care for the child and meet the child's needs. In the present case, the respondent's family violence allegations also inform whether it is appropriate to require the parties to cooperate on issues affecting the child: s. 37(2)(i). I will address these factors together.

Family violence and its impact - ss. 37(2)(g) and (h)

[178] Section 1 of the FLA defines "family violence" broadly:

"family violence" includes, with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including

- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
- (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- (iii) stalking or following of the family member, and
- (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

[179] To assess family violence in relation to the best interests of a child, s. 38 of the FLA requires a court to consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[180] Where a party alleges family violence, the proper approach is first to determine if the allegations of family violence have been made out, and, if yes, then to determine if that violence "substantially affects", or at least is relevant to, one or more of the best interests factors under s. 37(2) of the FLA. The Court should be careful not to label a parent's conduct as "family violence" where there is no evidence the child has suffered physical or emotional harm, particularly as the focus of the FLA provisions is to address serious social issues and to protect children and spouses from actual harm or danger: *M.W. v. N.L.M.W.*, 2021 BCSC 1273 at paras. 106-109.

[181] The respondent alleges "relentless and ongoing" family violence by the claimant in the form of psychological or emotional abuse. While the allegations primarily arise from the claimant's written communications to the respondent (and sometimes extending to third parties), there are also isolated allegations of verbal abuse in person and through voice-messages. The documented evidence of this conduct dates primarily from 2021 and 2022.

The respondent admits the problematic communications decreased after the England Report was released in January 2023 and particularly after the parties began using Civil Communicator in mid-2023. However, she says the communication history continues to inform the parties' current dynamic and ability to co-parent, and maintains there is a realistic risk of further such violence, particularly if the requirement to use Civil Communicator is eliminated.

- [182] The claimant disputes that family violence is relevant to this case, relying on Dr. Elterman's testimony that he assessed the risk of family violence during his evaluation and did not consider it to have surfaced as a significant factor. The claimant also emphasizes that Ms. Cotie did not raise family violence concerns as an issue between these parties. While recognizing that her past communications were "inexcusable", the claimant says they are not ongoing, they were never directed at the child and because they were primarily in writing, the child has not been significantly exposed.
- [183] The evidence at trial includes an extensive record of written communications between the parties, first in Our Family Wizard between January 2021 and early January 2023, and then in Civil Communicator from June 2023 to September 2024. The evidence also includes communications recorded by Ms. Thompson as part of her work with the family from February to December 2021. In addition, Ms. Cotie testified generally about communications she received from the claimant both before and after the England Report was released.
- [184] In cross-examination, the claimant was taken to various messages she sent to the respondent, and several she sent to Ms. Thompson, in the 2021 to early 2023 period when the parties were still using Our Family Wizard. The messages to the respondent in particular frequently include swearing, name-calling and other derogatory or demeaning comments, threats and all manner of accusations. I do not consider it necessary to list specific examples in these reasons. The claimant admitted she would lash out with words due to difficulty regulating her emotions but she did not make excuses for her behaviour. Instead, with what I find was genuine shame and remorse, the claimant candidly described her own communications as, among other things, "reprehensible", "absolutely horrendous", "unacceptable", "terrible", "disrespectful" and "abusive". Dr. Elterman testified that, as an external third party, he would describe the claimant's communications as an "overreaction", stating that "abuse" describes a subjective experience. Having reviewed many of the communications in the course of the trial and in preparing these reasons, I prefer the claimant's descriptions and find that overall her communications before the England Report was released were emotionally abusive to the respondent.

- [185] I also accept that the claimant's communications during this time period, both to the respondent directly and to third parties engaged with the parties, had a significant negative impact on the respondent's well-being and her ability to cooperate with the claimant. On the above basis, I find that before 2023, the claimant engaged in behaviour that constitutes "family violence" within the FLA's definition.
- [186] However, I do not reach the same conclusion in respect of the claimant's communications after receipt of the England Report in January 2023. The parties began using Civil Communicator in June 2023 as a communications platform and, as noted, the respondent admits that as a result of that change, the worst of the abusive communications are now in the past. The evidence is that Civil Communicator is actively monitored by individuals such that communications deemed objectionable are either revised and sent or rejected and not forwarded. There is evidence before the Court that between June 2023 and September 2024, some of the claimant's messages were "rejected" for reasons including that they were deemed "passive aggressive" or "lacking documentation" or "repetitive". Messages from both parties have also been revised, although a larger number of the claimant's messages have been revised. The evidence shows that multiple reasons (or "review codes") for rejection can be applied to a single message.
- [187] The respondent testified there was a bit of a "learning curve" with Civil Communicator and even she had questions about why certain of her messages were revised. Ms. Cotie, who had full access to the parties' communications in Civil Communicator, testified she would not have rejected some of the claimant's messages; she said she might have required a word change in some messages, but she did not understand why others were rejected. For example, one message from the claimant that was rejected as "repetitive" stated "[i]t is my understanding that [the child] really wants to play T Ball". I accept the claimant has sent at least some communications after June 2023 that the platform deemed objectionable, but on the evidence before me, I am unwilling to draw further conclusions or ascribe percentages. The majority of the claimant's communications were accepted, and the platform does not permit any of the previous inappropriate language.
- [188] Outside of Civil Communicator, the evidence only includes one interrelated series of communications from the claimant after June 2023 that contain language similar to what appeared frequently in her communications prior to 2023; that series is the four emails the claimant sent to the preschool director on January 31, 2024 and February 1, 2024. The respondent was not copied, but the messages were subsequently forwarded to her by counsel. As set out above, I accept those emails reflect some of the flavour of the claimant's previous communication style. However, I have also found that incident a unique and unfortunate event. There was also one text exchange with the respondent from September 2024 where the claimant responded in what I would characterize as a "snarky" manner. While I do not consider those communications to be appropriate, I am not persuaded that the claimant's lapses of judgment in relation to the text message or her emails to the preschool director demonstrate a reversion to her old pattern sufficient to justify a finding

of ongoing and current family violence from the claimant's communications.

- [189] The respondent also contends there is ongoing family violence because the claimant allegedly makes demeaning comments about the respondent in the child's presence. The respondent relies on *D.A.B. and J.N.G. v. S.C.M.*, 2024 BCSC 1717, in support of her position that such comments can constitute family violence. To a large extent, I have already addressed these allegations above. There is evidence the claimant made several negative comments about the respondent in the child's presence before the end of 2021, which she regrets and acknowledges were inappropriate. The claimant denies making any other or more recent negative comments about the respondent in the child's presence. Despite the respondent's strongly held belief that this behaviour continues and frequently, I have not found persuasive evidence that it does. This is not like the situation in *D.A.B.* In that case, the children were considerably older. The s. 211 report writer spoke directly with the children and found the father repeatedly made derogatory and demeaning comments to the children about the mother (including telling the youngest child he wished the mother would die). The report writer also found the father actively encouraged the children to criticize the mother with the goal of undermining her parenting. The Court in *D.A.B.* accepted the children had been directly exposed to the parents' conflict on many occasions, causing emotional harm.
- [190] The evidence in *J.N.G.* is also distinguishable from the case at bar. In *J.N.G.*, there were allegations of physical violence during the parties' relationship (which are not present here), as well as verbal and emotional abuse after separation. Several independent witnesses corroborated the volatile dynamic between the parties, including incidents of the father making demeaning comments about the mother in the presence of the child. When coupled with the Court's significant concerns about the father's overall credibility, the Court rejected the father's evidence denying that he had called the mother derogatory and demeaning names in the child's presence.
- [191] On the evidence before me, I am unable to conclude the claimant continues to make the kind of demeaning and openly hateful comments the respondent alleges, including with the apparent frequency she fears. I do not find family violence on this basis. As a result, the remaining question is whether the family violence from the claimant's primarily written communications prior to 2023 is still relevant to or substantially affects one or more of the factors under s. 37(2) of the FLA.
- [192] There does not appear to be much dispute that the child is at least aware of the animosity between her parents. The Elterman Report notes both parties expressed concerns about the impact their conflict may have on the child and by all accounts, she is a bright and perceptive child despite her young age. But there is no evidence the child has been directly exposed to any of the problematic written communications the claimant sent prior to January 2023, when the child was less than 4 years old. This is not a situation like in *L.A.R. v. E.J.R.*, 2014 BCSC 966, where one parent showed the older child acrimonious texts between the parties. I accept that in *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme

Court of Canada confirmed, at para. 143, that harm to a child can result from both direct and indirect exposure to family violence, including experiencing the aftermath of violence or hearing about it. The Court of Appeal recently echoed that guidance in *K.M.N. v. S.Z.M.*, 2024 BCCA 70 at para. 73. However, unlike in many of the cases I was referred to, I do not have evidence that the child's health or emotional well-being, her views, her relationships with significant persons, or her need for stability have been negatively impacted by any indirect exposure to the claimant's abusive communications before January 2023. This conclusion aligns with the conclusions of both s. 211 report writers in this case.

- [193] In addition, consistent with the findings of Dr. Elterman, I have concluded there has been improvement in the parties' conflict. The work the claimant must continue to do with respect to her own emotional regulation does not impair the claimant's ability or willingness to exercise her parental responsibilities or meet the child's needs. I am satisfied the claimant has taken a number of steps to prevent and address her past inappropriate behaviour. In addition to Civil Communicator, the claimant testified, and I accept, she has also engaged in counselling and completed a DBT program. While it was not the DBT program Dr. England recommended, in her testimony, Dr. England conceded that undertaking counselling and the DBT program the claimant did, while remaining on the waitlist for the other program, would align with the treatment recommendations she had made. Dr. England testified she had "no doubt" that the claimant loves the child and "would do what is necessary to improve herself." I share that sentiment.
- [194] The last factor to consider, and to which I now turn, is what impact the historical family violence has on the parties' ability to cooperate.

Appropriateness of requiring cooperation - s. 37(2)(i)

- [195] One of the most significant challenges in this case relates to co-parenting and the parties' self-professed inability to cooperate, which even extends to matters such as haircuts, lost shoes and whether or not to feed the child crackers. Dr. Elterman noted the tendency in s. 211 reports for parties to bring forward isolated events as though they occur frequently and events from many years ago as if they happened recently. In my view, his comment is apt for these parties' interactions more generally. Historical events between the parties continue to colour their views of each other and feed the ongoing lack of trust between them. While each party blames the other, I agree with the assessments of Dr. Elterman and Ms. Cotie that both parties play a role in their ongoing conflict.
- [196] For her part, the claimant has a passionate fear that she will lose the child. This fear appears rooted in long-standing feelings of inadequacy and her conviction that the respondent believes her emotional volatility, among other things, makes her an unfit parent. In the past, her fear caused her to lash out with words in defence, even when faced with legitimate feedback or the exchange of alternatives that are a normal part of attempting to reach a compromise. The claimant's reactivity has improved since January 2023, and, in my view, she is demonstrating more insight into her behaviour and at least

how her past actions impacted the respondent. However, I accept Dr. Elterman's evidence that she remains sensitive, sometimes overly so, and may not fully appreciate her role in a situation. My assessment from the evidence is that this background leads the claimant to approach almost everything from a defensive and skeptical stance.

- [197] The respondent is understandably fearful of returning to a situation where she will again become the target of the claimant's vitriolic and abusive communications. Likely because of her past treatment, the respondent is quick to assume other issues should be attributed to negative behaviour on the part of the claimant, whether dealing with the child's dysregulation or perceived reactions from those in her community. On the latter point, the respondent was unable or unwilling to provide specifics and I found her testimony uncharacteristically evasive. Dr. Elterman testified that he considered the respondent to have a lower threshold for conflict which may make her more sensitive; for example, she is more likely to take offence to tone than would another person. Dr. England also noted the respondent may be overly sensitive to emotional distress in the child. My assessment from the evidence is that, because of the parties' background, the respondent gravitates towards rules and structures that create certainty, so as to minimize the need for negotiation and the potential for conflict. However, as Dr. England testified, this can lead the respondent to be overly rigid and inflexible. Her ever-present need for control as a protective measure translates into what the claimant sees as a lack of trust; if the claimant responds from a place of hurt, the cycle between them continues, even if at a lower intensity since 2023.
- [198] Based on what she saw in 2022, Dr. England did not consider the parties to be capable of co-parenting, largely as a result of what she described as the claimant's reactive temperament and inability to take responsibility for her behaviour. Although she was not optimistic, Dr. England did not entirely rule out the possibility of future change. Dr. Elterman and Ms. Cotie, who have had more recent experience with the parties, are not as negative in their outlook. I share their views.
- [199] Dr. Elterman characterized the parties' post-separation relationship as "a mix of cooperation and abrasiveness" (Elterman Report, p. 28). His assessment aligns with that of Ms. Cotie. She testified that while there was resistance on both sides, there were also compromises, as evidenced by the "long lists" of agreements between the parties. Ms. Cotie testified both parties were generally willing to listen to her feedback, but did not always accept it. She testified the respondent "certainly" had her own opinions on things. For example, Ms. Cotie recalled the respondent was adamant that seven days was too long for the child to be away on a vacation with the claimant. Ms. Cotie testified she permitted the claimant to go for seven days, advising the respondent that longer periods of time would become more common as the child got older. No specific issues were reported following that trip.
- [200] In terms of the parties' dynamic, Ms. Cotie said the respondent would often not agree outright to the claimant's proposals but would instead suggest an alternative. Ms. Cotie testified the claimant was sometimes frustrated by what she perceived as constant

negotiation and the respondent ignoring her ideas; this could make it difficult for the claimant to consider the counter-proposal. At times, the respondent appeared motivated more by a need to be right or in control, than by a real problem. For example, when the claimant accidentally lost a pair of the child's shoes at the beach, the claimant apologized and immediately committed to replacing the shoes. The claimant clearly stated that her plan was to "talk to [the child] about it and find something together that she likes as a replacement". Rather than allowing the claimant a chance to take responsibility in the manner she had committed to doing, the respondent spoke to the child about the shoes and dictated the pair the claimant was to buy. The respondent also engaged Ms. Cotie, despite the claimant having replaced the shoes around the time Ms. Cotie became involved. While Ms. Cotie testified this was a conflict with which she could assist the parties, in cross-examination she agreed there was never a real issue about replacing the lost shoes; rather, the issue was the respondent's dissatisfaction with how the claimant chose to replace them. More generally, Ms. Cotie agreed in cross-examination that the parties' disagreements and distrust were a "two-way street"; for example, concerns around behaviour at each other's homes during exchanges "went both ways".

- [201] Ms. Cotie confirmed that communication is the parties' biggest downfall and it hinders each side's ability to see the other's perspective. In her view, it would be beneficial if the parties could learn, with the assistance of a parenting coordinator, to parent in parallel - in other words, where they each leave the other more or less alone to parent the child. She also testified it would be beneficial if both parties could learn to see each other as a good parent. I echo the latter sentiment. I have faith in each party's ability to parent in the best interests of the child, and I have no doubt that her interests will be enriched even further if the parties can work towards seeing each other as they are now, rather than only through the lens of past behaviour.
- [202] I accept the parties are not there yet, but I do not find the pre-2023 family violence or their ongoing communication struggles preclude an ability to cooperate. The current evidence is that the parties can cooperate and compromise, but for now, they continue to need both a buffer between them, and structures that minimize the potential for conflict and help them to navigate their interactions and expectations. In the November 2024 Consent Order, the parties consented to retain a mutually agreed parenting coordinator, with each party at liberty to seek the Court's assistance if they could not agree. As I am not aware of any such application, I assume the parties have a parenting coordinator in place. Ms. Cotie testified, and I accept, that the role of a parenting coordinator is to help parties to reach agreement on specific issues, but also to help them develop skills so they can find better resolutions together in future. In my view, given the improvements since 2023, what the parties have already agreed to and the additional orders I will make in this matter to provide clarity, the remaining conflict between the parties can be adequately managed.

Conclusion on parenting time

- [203] With the above conclusions respecting the best interests of the child in mind, I turn to parenting time. This is not a case where either party suggests the child should not see the other parent at all. Rather, it is a question of the percentage of time the child should spend with each parent, and on what schedule.
- [204] While the status quo is one factor for the Court to consider (*K.A. v. C.S.C.*, 2024 BCSC 642 at para. 31, citing *D.L.D. v. R.C.C.*, 2013 BCSC 590 at para. 21), in this case, both parties seek a change from the current status quo. The respondent seeks to implement Dr. England's second recommendation of a 71-29% split in her favour now that the child is in school. This would result in the child spending alternate weekends (Friday morning to Monday morning) with the claimant, and when the claimant does not have the child for the weekend, she would have the child Monday morning to Tuesday morning (a 1-3-3-7 schedule). The claimant seeks a 50-50% split of parenting time, either on a 2-2-5-5 schedule (which would give the child and each parent consistent "days" and alternating weekends), or on the 2-2-3 schedule recommended by Dr. Elterman.
- [205] The FLA is clear that there is no presumption in favour of a specific parenting time arrangement, equal or otherwise. However, this Court has recognized that the connection between a child's emotional well-being and promoting a healthy relationship with both parents may support ensuring maximum contact between the child and both parents where possible: *D.A.B.* at paras. 151 and 155 and the cases cited therein; *M.W.* at para. 96.
- [206] Dr. England testified that, broadly speaking, she would want to support a child spending as much time as possible with both parents, while ensuring there are mechanisms in place to monitor for any problems along the way. Dr. Elterman shared that view, and specific to this family, did not agree the child was doing better in one parent's care than the other. He testified that, as a matter of logic, the respondent has less time to spend with the child because of her second child, whereas in the claimant's home, the child faces fewer demands and the claimant can spend more time with her. He recommended a return to equal parenting in part because he considered it to be in the child's best interest to spend at least equal time in the home of the parent that has more dedicated time to give her.
- [207] I have carefully considered the factors under s. 37(2) of the FLA. While the claimant's pre-2023 communications were extremely concerning, in my view, there has been sufficient behavioural change and there is no longer a rationale for reducing the claimant's parenting time with the child. I do not have concerns about the claimant's ability to care for the child or meet her needs, and it is clear the child has a strong emotional connection to the claimant and enjoys their time together. In both *D.A.B.* and *J.N.G.*, despite evidence of verbal and emotional abuse essentially continuing up to the hearings, the Court determined the appropriate response was to make orders managing and minimizing the parties' interactions, rather than reducing parenting time (see *D.A.B.* at paras 157-160, 191; *J.N.G.* at paras. 58-59, 75-77, 80-82, 155, 160). In my view, the same reasoning applies here.

The claimant's past behaviour should not deprive the child of equal time with the claimant. I find it is in the child's best interests to have equal parenting time with both of her parents.

- [208] In terms of the schedule, I am conscious the child is only six years old, and the transition schedules to date have generally not had the child away from either parent for more than three days on a regular basis. I accept Dr. Elterman's recommendation and I find that at this time, it is in the best interests of the child to implement a 2-2-3 schedule. Absent a different agreement between the parties, that schedule is to be implemented beginning Monday, August 25, 2025, to allow the child at least some period of transition before she begins Grade 1.
- [209] I also accept Dr. England's recommendation that there be some form of monitoring after the implementation of this new parenting arrangement. Given the history of this file, I am not comfortable setting the review period as far out as the claimant had asked. Instead, I order that there be a review of the parenting time schedule before September 2026, unless the parties agree a review is not necessary.
- [210] I accept the respondent's position that the parties would benefit by having clear directions regarding exchanges and contact with the child during a party's non-parenting time, in order to minimize conflict. I agree that transitions should generally occur at a neutral location to the extent possible (either school or a camp if school is not in session), and if that is not possible, at the home of the receiving parent. Where exchanges occur at a party's home, the child is now old enough to carry her belongings with her, and she can walk to the door of the receiving parent on her own, with the dropping off parent waiting until the child has entered. The parties must remain civil at all transitions and minimize their interactions. The detailed terms of my parenting time orders are set out below.
- [211] With respect to contact between the child and the other parent during regular parenting time, the parties have operated for some time under an arrangement where the child does not communicate with the parent not exercising parenting time. In my view, this arrangement remains appropriate. The parent not exercising parenting time must respect the other parent's time with the child. The child will now be spending equal time with each parent, and transitioning regularly. There should not be any need for different contact during the regular parenting time schedule than previously. However, the child is reaching an age where she may occasionally wish to contact the other parent to share something, particularly as she begins moving into higher grades at school. I do not wish to make a court order that would preclude the child from such occasional contact if she wishes. As a result, at this time, I am not prepared to make a specific order respecting contact during regular parenting time. The parties are aware of my views and I expect them to govern themselves accordingly. If the child's occasional desire to contact the parent not exercising parenting time were to develop into significant interference with a parent's parenting time, the parties could engage with their parenting coordinator to find a solution that respects the child's needs, hopefully with the input of the child; failing which, the parties may return to Court.

- [212] The last matter to address in terms of parenting time is the duration of summer vacations. In the November 2024 Consent Order, the parties agreed each party would have two non-consecutive vacations with the child during the summer, but they could not agree on the duration. Dr. Elterman testified he did not believe the child should be away from either parent longer than seven days, but the child is now six and pursuant to one of Ms. Cotie's determinations, the parties have already been able to take the child on vacations of up to eight days to allow for plane travel.
- [213] I am conscious that both parties have family on the other side of the country. At least when heading east, one leg of such a trip essentially requires a full day of travel. I find it appropriate to set the duration of summer vacations at one block of seven days, and one block of ten days, to be scheduled non-consecutively, according to the November 2024 Consent Order. The parties are at liberty to agree to different lengths of summer vacation, either generally or for a specific year, and with the assistance of the parenting coordinator if required, as long as the total allocation of summer vacation time to each parent in each year remains equal. During each party's two summer holiday blocks, the parties are to pre-arrange the date and approximate time for one phone or video call between the child and the other parent at approximately the mid-point of the vacation time. I expect each party to afford the other appropriate flexibility if it becomes necessary to shift the date or timing of the call slightly to accommodate vacation events. The specific terms of my order are set out below.

Conclusion on parenting responsibilities

- [214] The claimant seeks an order for the parties to make decisions jointly, with the parenting coordinator to resolve disagreements as required. The respondent seeks to retain the current decision-maker model, with each party equally sharing decision-making for day-to-day decisions under ss. 41(a), (b), (c), (e), (j) and (i) of the FLA when the child is with them. The current model requires the parties to discuss issues of permanence that fall under those categories to try to reach agreement, failing which, the respondent makes the final decision. For decisions falling under the remaining subsections of s. 41, the respondent proposes to ask the claimant's opinion but retain final decision-making authority if the parties cannot agree, and the claimant may apply to the parenting coordinator for review. Haircuts and ear-piercing currently fall into this latter category.
- [215] There is no question the parties have had challenges agreeing on issues respecting the child. They have engaged their parenting coordinators for substantive and minor issues. Prior to January 2023, there were significant concerns about the claimant's communications and emotional reactivity that, in large part, led Dr. England to recommend the respondent be given all decision-making authority. Ms. Cotie testified that while steps were needed to address the parties' conflict, neither she nor any of her parenting coordinator peers (some of whom also write s. 211 reports) had ever seen such extreme recommendations.

- [216] Even if there was a basis for Dr. England's recommendations in 2022, the evidence before me supports a different outcome. On the basis of the changes he observed, Dr. Elterman recommended a return to shared parental responsibilities, provided there is a third party who can assist if the parties reach an impasse. While Ms. Cotie testified she would still characterize these parties as "high conflict", she said they fall somewhere in the middle of the spectrum of such families, as they were able to cooperate on various matters and only required her assistance occasionally. The respondent admits the use of Civil Communicator "significantly cut down" on the parties' conflict. Having reviewed many of the parties' written communications both before and after they began to use Civil Communicator, I have observed a substantial change.
- [217] The respondent has exercised more of the final decision-making authority since mid-2023. The respondent suggests if she does not retain that final authority, the conflict between the parties will necessarily increase. I do not agree. The parties have been able to agree on significant issues like enrolment in French Immersion and health care treatments (after the claimant was able to speak to the professional involved). Where the parties have disagreed, such as over holidays and the child's occasional attendance at registered activities rather than preschool, the parties appropriately engaged Ms. Cotie. They have done so despite the respondent's final decision-making authority.
- [218] Much of the parties' conflict appears rooted in the historical power struggle over the child that has existed at least since separation; both sides have dug in their heels. In many instances, their differences of opinion seem more positional than substantive. Unable to resolve the major issues by agreement, the parties put those questions before this Court. After a careful review of the evidence at trial, this decision answers those questions. The power struggle must stop. On both sides.
- [219] The child is going to have a different experience in each home. I am confident those differences will enrich, rather than detract from, her life. I accept that the child needs consistency on important issues, but it is ok for her to eat different things and wear different clothes and get a different haircut (or not) if she chooses. The evidence indicates the child is already developing her own style; it will not be long before the parents' roles will shift from making decisions to supporting the child to make her own choices. The parties need to model that supportive behaviour with each other. In this regard, I adopt the sentiment of Ms. Cotie's February 22, 2024 determination: as long as there are no detrimental impacts for the child, it is equally important that the child sees both parents being supported in making decisions in her best interests. I strongly encourage each parent not to cling so fiercely to the need to be "right" about everything, and to have faith that, even if they would have made a different choice, the other parent is doing their best to act in the child's best interests. I have no doubt that is each parent's goal.

- [220] The respondent says the claimant's failure to provide updates following appointments proves the parties cannot co-parent. I accept that joint decision-making requires the parties to share information and consult. But in my view, the respondent's concerns can be addressed by conduct orders that clearly specify when the parties are required to provide updates and what must be included. Such concerns do not require a reduction of the claimant's parental responsibilities.
- [221] I also accept that it would be inappropriate in this case to order joint decision-making without appointing an ultimate decision-maker. The child is not well served by the cost and delay of the parties attending Court if they cannot agree. While appointing one of the parties to make final decision is one possible model, an alternative is to give that authority to a parenting coordinator: *Harrison v. Haramati*, 2022 BCCA 302 at para. 35, citing *K.P.B. v. K.E.*, 2019 BCCA 152 at para. 22.
- [222] Here, the parties consented to appointing a parenting coordinator in the November 2024 Consent Order. They have experience working with a parenting coordinator when they cannot agree, and the respondent's current ability to make certain final decisions has not eliminated the need to access the parenting coordinator. In the circumstances, where I can make orders to set clear expectations for the sharing of information, I find it is in the child's best interests for the parties to share decision-making equally, with the parenting coordinator to make the final decision in the event of disagreement.

Conclusion on communications and conduct

- [223] The parties seek a number of orders related to communications and conduct. Two of the orders are agreed; the rest are not. I will start with the former. In doing so, I recognize that, given the parties' agreement at trial, it is possible the parties have already taken steps towards or fulfilled those two terms of order, but I include them regardless.
- [224] The claimant accepts Dr. Elterman's recommendation that she should complete the DBT program in Vancouver originally recommended by Dr. England. The respondent supports an order of this nature, which I will grant by consent. I will also add a requirement that the claimant provide the respondent proof of her completion of the program. Dr. Elterman also recommended both parties complete the online "Parenting Without Conflict" course by Bill Eddy; as the parties agree, that order will also be made by consent. I will add a similar requirement for the parties to exchange confirmation they have completed that course.
- [225] With respect to the remaining orders, the respondent seeks an order that the parties continue all communication through Civil Communicator and share the costs equally. She requests that full access to Civil Communicator be granted to the parties' parenting coordinator and any other professionals working with the family. The respondent accepts that it may be appropriate to revisit the continued use of Civil Communicator at some point in the future, but proposes that not happen until the claimant has completed the DBT program that Dr. England recommended.

- [226] The claimant proposes the parties return to using Our Family Wizard, which is both less expensive and less restrictive. The claimant acknowledges that Civil Communicator has contributed to the decrease in inappropriate communications, but says she has also taken steps to change her behaviour and should be given the opportunity to demonstrate she can communicate appropriately outside the Civil Communicator platform. However, the claimant did not strongly press her opposition. She says if Civil Communicator is retained, it should be reviewed in a year and the respondent should be required to pay for it; the claimant has paid since June 2023.
- [227] I find it appropriate to order that all communications between the parties, with the exception of emergency and time-sensitive communications, be through Civil Communicator. While I am satisfied the claimant has made significant strides towards improving her communications, some of the isolated messages exchanged outside the platform suggest the claimant would benefit from more practice to be able to consistently communicate in a respectful manner. I accept the respondent's evidence that switching to Civil Communicator was one of the most impactful changes for the parties' co-parenting and her own mental health. I am conscious these reasons for judgment will create further changes for the parties, and in my view, it is important to maintain consistency of safe communication through this transition period. I will also order that the parties grant full access to their parenting coordinator; for other professionals, the parties may grant full access by agreement.
- [228] I accept that use of Civil Communicator was not intended to be permanent; Dr. England confirmed this in her testimony, noting that it will be necessary to shift to a less controlled environment to test if concerns remain. I agree with the respondent that an appropriate point at which to revisit the use of Civil Communicator is after the claimant's completion of the DBT program. The detailed terms of my order, including respecting payment for the platform, are set out below.
- [229] While Civil Communicator addresses the parties' communications with each other, at trial, both parties raised concerns about what the other party may say to the child or others. Unsurprisingly, the respondent raised significantly more concerns in this regard than did the claimant. I have not found sufficient evidence of recent behaviour to justify a reduction in parenting time. However, the history of this matter confirms it would be beneficial to set clear expectations around the parties' communication and interactions through reciprocal conduct orders. Such orders are helpful to remind parties in express terms what is and is not acceptable conduct. Further, the FLA provides remedies in the event of non-compliance.
- [230] In closing submissions in November 2024, both parties expressed openness to the Court making conduct orders. At the brief continuation on August 21, 2025 to resolve certain issues with trial exhibits, counsel advised the Court the parties had been discussing language for a potential consent conduct order. Given the timing for release of this judgment, I have incorporated the spirit of the objectives I understand the parties to have

been discussing into the terms of the conduct orders I consider appropriate in this case. They are set out below.

[231] As indicated above, the parties viewed their obligations to update each other on matters concerning the child quite differently. To facilitate the joint decision-making that I have ordered, I will also make conduct orders respecting the circumstances in which each party must update the other and the information to be provided.

[232] The respondent also sought an order that the parties continue to support the child attending sessions with a child psychologist; those sessions were arranged after one of Ms. Cotie's determinations. The claimant did not take a position on this request. To the extent those sessions continue to be recommended by the child psychologist in order to support the child's health and well-being, I find it appropriate to grant the order sought.

[233] Lastly, the claimant requested an order that both parties read a book entitled "How to talk so kids will listen and listen so kids will talk" by Faber and Mazlish. The Elterman Report recommended the parties read and engage with that book. Unlike with courses that have been recognized by the Courts, I am reluctant to order either party to read a specific book as part of a formal court order, including because court orders must be enforceable. However, I agree with the spirit of Dr. Elterman's recommendation and the claimant's request. There are excellent resources available that can assist each parent with talking, and more importantly, listening to the child - particularly as she grows older and becomes more independent. I encourage both parties to take advantage of those resources and to be open to reading about approaches that differ from their own natural inclinations, but will not make a formal order in this regard.

Conclusion and summary of orders

[234] In conclusion, I make the following orders under the FLA. Where the terms were agreed between the parties, I have indicated those terms as being by consent.

[235] For overall clarity, I order that:

a) This final order incorporates and carries forward the terms of the consent order entered into by the parties on November 27, 2024, with the following clarifications to address typographical errors:

i. paragraph 3(c) of the November 27, 2024 consent order is modified to read as follows:

"c. the first half of the Special Days will commence at 2:00 p.m. on the day before the Special Days (or after school if [the child] is attending school) until 2:00 p.m. on the day of the Special Days, and the second half of the Special Days will be from 2:00 p.m. (or after school if [the child] is attending school) on the day of the Special Days to 2:00 p.m. on the day after the Special Days, except on Mother's Day or [the child's] birthday when the second half of the Special Day will end when [the child] is dropped off at school the following day; and"

ii. paragraph 6(a)(ii) of the November 27, 2024 consent order is modified to read as follows:

"ii. the Claimant will have the first half of Spring Break in even years and the Respondent will have the second half. This will be reversed in odd years; and"

- b) The parties are at liberty to draft one final order in these proceedings that directly incorporates the terms of the November 27, 2024 consent order with the modifications set out in these reasons, and if the parties choose to do so, the final order need not include the term correcting the typographical errors or this term.
- c) This final order replaces all previous agreements between the parties, and all previous determinations by parenting coordinators, regarding parenting time, parental responsibilities (including decision-making) and communications and conduct.

[236] In respect of guardianship, I order that:

- a) By consent, and pursuant to s. 39(1) of the FLA, the parties will remain joint guardians of the child.

[237] In respect of regular parenting time, I order that:

- a) The parties will share equal parenting time of the child on a 2-2-3 schedule to commence August 25, 2025, subject to agreement of the parties otherwise.
- b) Transitions will occur at 8:45 a.m. at the child's school, or if school is not in session, at the camp or care in which the child is enrolled, or in the absence of school, camp or care, at the home of the receiving parent. When the parent whose parenting time is ending drops the child off at school, camp, care or the other parent's home, the other parent's parenting time begins. If the child becomes sick or needs to be picked up early, it is responsibility of the parent whose time began at 8:45 a.m. to care for the child. For exchanges that occur at one party's home, the child is to walk to the door of the receiving parent on her own with her belongings, and the dropping off parent will wait until she has entered the receiving parent's home. The parties must remain civil at all transitions and minimize their interactions.
- c) There will be a review of the parenting time schedule before the Court before September 2026, unless the parties agree a review is not required.
- d) The parties are at liberty to agree to a different parenting time schedule in writing, including with the assistance of the parenting coordinator.

[238] In respect of summer holiday time and paragraph 8 of the November 27, 2024 consent order, I order that:

- a) Each party is entitled to take one 10-day vacation and one 7-day vacation with the child during the summer, with the two vacation periods to be non-consecutive.

- b) The parties are at liberty to agree in writing to change the length of the summer vacation periods, either generally or for a specific year, and with the assistance of the parenting coordinator if required, provided the total allocation of summer holiday time to each parent in each year remains equal.
- c) For each party's two summer vacation periods, the parties will pre-arrange a date and approximate time for one phone or video call between the child and the other parent at approximately the mid-point of the vacation time.

[239] In respect of parental responsibilities and decision-making, I order that:

- a) The parties will share equally all of the s. 41 parental responsibilities for the child under s. 40(2) of the FLA.
- b) In the exercise of their parental responsibilities, the parties will consult each other about important decisions affecting the child and try to reach agreement. If agreement cannot be reached, the parties' parenting coordinator will make the decision.

[240] To support and facilitate the parties' ongoing interactions with each other respecting matters related to the child, I order that:

- a) By consent, the claimant will enroll with the Vancouver Dialectical Behaviour Therapy Centre and complete the dialectical behaviour therapy (DBT) treatment program as soon as possible.
- b) The claimant must provide the respondent with proof of her completion of the DBT program once achieved.
- c) By consent, the parties will complete an online course called "Parenting Without Conflict" run by Bill Eddy.
- d) The parties must provide each other with confirmation of completion of the "Parenting Without Conflict" course.
- e) Under s. 225 of the FLA, the parties will communicate with each other using Civil Communicator and from December 1, 2024 forward, will share the costs of this service equally. The parties will grant the parenting coordinator full access to Civil Communicator and, by agreement, may grant full access to other professionals working with the parties as well. The issue of ongoing use of Civil Communicator may be revisited, with the assistance of the parenting coordinator, after the later of December 1, 2025 or the claimant's completion of the DBT treatment program required by this order. The parties may communicate via text or email in emergencies and time-sensitive situations, or if otherwise agreed.
- f) Under ss. 222 and 225 of the FLA, the parties must:
- i. Put the child's best interests ahead of their own interests;

- ii. Treat each other civilly and with respect;
- iii. Refrain from abusive, negative, disparaging, demeaning or harassing comments, including, but not limited to, swearing, blaming, shaming and the use of all capitals, in communications with or about each other;
- iv. Encourage the child to have a good relationship with the other parent and speak to the child about the other parent in a positive and respectful manner;
- v. Refrain from blaming, criticizing and making any negative, disparaging, defaming or demeaning remarks about the other parent in front of the child or to third parties known by either parent, including but not limited to remarks to educators and staff at the child's school or activities and remarks made online;
- vi. Refrain from discussing with the child any inappropriate adult, court or legal matters; and
- vii. Refrain from questioning the child about the other parent or time spent with the other parent beyond simple conversational questions.
- g) Under ss. 222 and 225 of the FLA, if a party:
 - i. Takes the child to a medical or other appointment, the attending parent must, within 24 hours of the appointment, confirm the appointment was attended and advise the other parent of:
 - (1) any information shared at the appointment or any necessary follow-up (or confirm there is nothing to report, as applicable); and
 - (2) the date of any subsequent appointment.
 - ii. Receives concerns about the child from a third party (for example, a teacher or activity leader), the parent who receives the information must, within 24 hours of being notified:
 - (1) advise the other parent of:
 - (a) the date the information was received;
 - (b) the nature of the concern and the date it arose; and
 - (c) any actions taken and any proposed next steps; and
 - (2) seek the other parent's input unless the situation is urgent.

[241] To continue to support the child, I order that:

- a) To the extent it remains professionally recommended, the child is to continue her counselling sessions with Dr. Jacqueline Bush, or such other counsellor as agreed between the parties, on the schedule recommended by the counsellor, and the parties will equally share the cost of the sessions. Each party is entitled to take the child to sessions with the counsellor that are scheduled during their parenting time and must update the other parent as required by the terms of this order.
- [242] I also order the claimant to pay the respondent \$2,730.00 as reimbursement for half the costs of Dr. Elterman's fee to attend the trial of this matter.
- [243] The respondent asked that I seize myself of this matter as I am now familiar with the history of the file and the issues; the claimant took no position on that request. My concern is that if I am seized, then the parties are at the mercy of my schedule, which may not permit urgent issues to be addressed in a timely fashion. Rather than seizing myself, I will retain the materials for one year from the date of these reasons. Either party is at liberty to submit a request to appear before me to address future matters and I will consider such requests in due course.
- [244] The claimant sought costs of this matter; the respondent requested permission to speak further to the issue of costs. My preliminary view is that the claimant has been substantially successful in this matter as that term is used in the jurisprudence: see *Marquez v. Zapiola*, 2014 BCCA 35 at para. 16, citing *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at para. 45, leave to appeal ref'd 2002 BCCA 454; see also *McKnight v. Hutchinson*, 2022 BCCA 94 at paras. 6-8 and *Wallace v. Pichichero*, 2021 BCSC 2347 at paras. 13-16. I have granted orders respecting the parties' interactions and communications which were sought by the respondent, and in some cases, my orders expand on her requests. However, in my view the issues of parenting time and parental responsibilities were of greater overall importance to the parties and occupied more trial time. The claimant was substantially successful on those issues, and is therefore presumptively entitled to her costs under R. 16-1, to be assessed as a matter of ordinary difficulty under Appendix B of the SCFR.
- [245] Notwithstanding my preliminary view, if either party wishes to make further submissions on costs, they may do so in writing. The parties' submissions are not to exceed five pages in length and should be exchanged according to a schedule agreed between counsel, with the first submission to be filed with the Supreme Court Registry within 30 days of the release of these reasons. If further costs submissions will be made, the parties must advise Supreme Court Scheduling by letter no later than 10 days after the release of these reasons of the agreed schedule for the exchange of costs submissions.

"K. Wolfe J."

-
- [1] In the February 2023 agreement, as revised, the parties agreed the claimant would have the child Wednesday to Thursday instead of Thursday to Friday in the second week. However, in September 2023, the claimant requested a return to the original 1-3-3-1-3 schedule because the child was in preschool full-time and the claimant wanted to avoid absences longer than three days. The respondent agreed in principle, but wanted Ms. Cotie to help implement the change. The reversion to the original schedule was implemented, but it is not clear when.
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/16/2025BCSC1627cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/t-a-m-v-a-e-b-k-2025>

Prepared on 29 October 2026 · Esheria