

SCREENS, GAMING, DIGITAL MEDIA: WHERE EACH FIT IN THE BEST INTERESTS TEST

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OVERVIEW

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INTRODUCTION

- Co-parenting and children's social media use.
- Are screens the new Rubbermaid container / undone homework / missed event?
- Disagreements about screen time use: missed opportunity?



THE ISSUE & THE STEREOTYPING

- While it is essential to limit screen time, it is equally important to recognize its potential benefits
- Benefits to screen time:
 1. Educational
 2. Digital literacy
 3. Social Connection
 4. Creativity and expression
 5. Relaxation



BREAKING DOWN THE CATEGORIES

Screen Type	Description
Television	Traditional forms of screen time are often used for watching shows, movies, or playing console games. It's typically a passive form of screen time.
Computer	Used for a variety of activities including homework, research, gaming, and social media. It can be both educational and recreational.
Tablet	Portable device often used for interactive activities such as games, educational apps, and video watching. Its touch-based interface makes it user-friendly for younger children.
Smartphone	Highly portable device used for communication, social media, games, and internet browsing. It's often the most personal and frequently used screen.
Video Game Consoles	Devices specifically designed for interactive gaming on a television screen. They can range from simple handheld devices to complex systems that involve movement, exercise, social interaction and community-building.

DIGITAL PARENTING APPROACHES



- **Restrictive mediation** – is when a parent has set rules regarding media use; this can include the amount of time they spend on screens or what type of content is allowed or both.
- **Active mediation** – is when the parent and child have conversations about social media content to enhance critical viewing skills (co-engaging).
- **Reactive mediation** – sporadic or inconsistent limits/rules that could be based on parent's mood or child's behaviour. Not an effective approach.
- **Co-viewing** – is when parents view content together but there is no dialogue the content is not discussed,

SCREEN TIME USE RECOMMENDATIONS

In reality, children and teens have been steadily consuming more media over the past 5-10 years (American College of Pediatricians, 2020)

Age Group	Recommended Screen Time
>1	Screen time is not recommended, except for video chatting
1-2	Limit screen time to high-quality programming with parent involvement. Less than 1 hour per day
2-5	Limit screen time to 1 hour per day of high-quality programming
6-12	Consistent limits on screen time; ensure it doesn't interfere with sleep, physical activity, or other behaviours essential to health
13-18	Set consistent limits; prioritize healthy habits and ensure screen time does not interfere with sleep, physical activity, or other important behaviours, such as family connection, academics and self-care. Recommended daily is less than 2 hours.

THE BEST INTERESTS TESTS (PROVINCIAL AND FEDERAL)

FED. (DA)	Comments
16(1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.	N/A
(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.	Four of these five factors are directly in play, with the fifth (physical safety) only where cyberbullying or sextortion are in issue.
(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including	Multiple factors apply.
(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;	Relevant. This paper sets out the child's needs from both perspectives: <ol style="list-style-type: none"> 1. Where the child's "need" is to be protected from the harm that can come from sustained overuse; and 2. Where the child's "need" is a sense of community, digital literacy, creativity and expression, etc.

FED. (DA)	Comments
(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;	Child and context driven. The child's views will be relevant but as always will be subject to the appropriate weight to be afforded given the child's age, level of maturity and objectivity on the subject.
(h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;	<p>This comes into play where there will be an obligation on the parties to agree to a plan for screen management and questions arise whether one parent will – or can – execute on that agreement.</p> <p>There is also an echo/pattern argument to made that a parties' approach to screens (whether poor or excellent) is a marker of their overall lack/presence of skills in other areas.</p>
(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;	Clearly relevant, both as to execution as described above, and also as a barometer of their co-parenting skills generally.
Other Factors From Provincial Statutes	Comments
The ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship. (ALTA, s. 18(2)(b)(x))	The same considerations as set out above. This issue distills to a question of capacity, in relation to screens but also as a fundamental question at large.
The ability of each parent seeking the custody or access to act as a parent; (NFLD, s. 31(2)(e))	

THE CASE LAW SURVEY

- We canvassed cases across the country spanning 2013-2024.
- We found a significant but unsurprising uptick of cases where screen time played a role in the evidence and the court's analysis.
- There is a dearth of analysis that is supported by social science or expert evidence. The court is usually left with imperfect records, rife with stereotypes and manipulation of behaviours to fit a narrative.
- Most of the cases where the court had non-party professional evidence about screens arose in the protection contexts; very, very little expert evidence has been called in private matters.
- Orders are made, with increasing frequency, to manage behaviours including the imposition of discipline by a parent, or conduct that dovetails with the other parent.

Year	BC	ALTA	SASK	MAN	ONT	NB	NS	PEI	NFLD/L	Subtotals
2013	1									1
2014	1	1								2
2015	1				1					2
2016	1				1					2
2017	1		1		5					7
2018	3		1		2					6
2019	2	2			3				1	8
2020		1			4					5
2021	2			1	8	1	3			15
2022	4	1	1		3	4	1	1	1	16
2023	2	1			5	2	2			12
2024¹	3				1	1				5
Subtotals	21	6	3	1	31	8	6	1	8	
Total	85									

THE CASE LAW

CASES WHERE DISCIPLINE IS THE ISSUE

- *Douglas v. Fletcher*, 2023 ONSC 5026
- *J.B. v. B.F.*, 2023 NBKB 55
- *J.M.M. v. T.L.G.*, 2019 ABQB 81
- *C.J.A. v. E.M.A.*, 2018 BCSC 2175,
- *G.B. v. L.R.*, 2017 BCSC 1342
- *M.L. v. J.C.*, 2017 ONSC 166

CASES WHERE PARTIES ARE LEFT TO MANAGE THEIR OWN DAY-TO-DAY CARE (OR NOT)

- *R.F. v. K.F.*, 2022 NSSC 194
- *Hatcher v. Golding*, 2017 ONSC 785
- *M.L. v. J.C.*, 2017 ONSC 7179
- *Callwood v. Purdy and Callwood*, 2021 ONSC 5815
- *Morrison v. Harder*, 2021 ONSC 5107

THE CASE LAW (CONT'D)

(WHERE IT DIDN'T MATTER)

Case	Note
<i>Leonard v. Leonard</i> 2022 SKQB 164	26 The petitioner's only other negative observation is she thinks there may be too much screen time with A.J. and his father or A.J. and his cousins in Cape Breton. This, of course, is a matter of debate in many households. The minor quibbling over screen time will not play a part in my analysis.
<i>Robert v. Louiseize</i> 2022 ONSC 1756	77 The parents have had communication challenges in the past. During the course of the trial, it was clear that they had different opinions on issues of medication, alcohol experimentation, and screen time, etc. These are common issues for parents, particularly in the teenage years. ... Provided that both parents continue to use the tools they have learned in their course work and therapy, I find they will be able to co-operate and communicate on matters affecting the child. I find this factor favours shared parenting.
R.V. v. K.M. 2022 NBQB 105	The mother led evidence that the father did not properly control screen time. The father's evidence was a complete answer. The complaint played no role in the analysis.
Sammon v. Krajewski 2021 ONSC 8310	The problem was not the screen time per se, but rather one parties' refusal to engage in communication on that and other issues.

THE CASE LAW

WHERE SCREEN USE OVERLAPS WITH VIRTUAL PARENTING TIME

- *Cornelisse v. Conelisse*, 2023 ONSC 3754;
- *C.R.B. v. K.J.M.*, 2023 NBKB 224; and
- *M.S.R. v. D.M.R.*, 2022 BCSC 1398

THE CASE LAW

SCREEN USE AS A CLEAR BIOC FACTOR

- *J.L.L. V . A.J.M.*, 2023 BCSC 1698
- *Boxhorn v. Hessdorfer*, 2023 ABPC, 20
- *A.J.S.A. v. K.L.W.*, 2024 BCSC 453
- *Rygiel v. Malthes*, 2024 ONSC 33
- *Moses v. Weekes*, 2023 ONSC 6140
- *Jacques v. LeBlanc*, 2023 ONSC 1689
- *Traplin v. Ruckstuhl*, 2022 ONSC 1903
- *Souleman v. Yusef*, 2021 ONSC 6994
- *Kaiser v. Bezanson*, 2021 NSFC 2021
- *T.A.S. v G.A.S.*, 2020 ABQB 761
- *G.(J.M.) v. G.(L..D.)*, 2016 ONSC 3042
- *J.(N.M.) v. G. (D.C.)*, 2015 BCPC

THE CASE LAW

CASES WHERE THE COURT HAD EXPERT EVIDENCE

- L.T.C. v. D.P., 2021 ONSC 7806
- R.A. v. M.P.B., 2021 NSSC 102
- *New Brunswick v. C.M.R.*, 2024 NBKB 65
- *New Brunswick (Minister of Social Development) v. L.C.*, 2022 NBQB 37
- *The Director of Child Protection for the Province of Prince Edward Island v. M.M. and D.C.*, 2022 PESC 31
- *J.A.J.*, 2018 SKQB 232
- *Children's Aid Society of Toronto v. J.V.*, 2017 ONCJ 325

THE CASE LAW

CASES WHERE ORDERS WERE MADE TO MANAGE TECH

- *M.S.R. v. D.M.R.*, 2022 BCSC 1398
- *Carolo v. Carolo*, 2022 BCSC 311
- *Fias v. Souto*, 2020 ONSC 6346;
- *E.D. v. J.S.*, 2020 ONSC 5107

THE VIEW THROUGH THE EYES OF COUNSEL

- **The opportunity and obligation on counsel, in advancing their client's claims, is to properly:**
 - Determine what harm/benefit arises through the child relationship with screens and digital media;
 - Consider the contextual circumstances to ascertain the cause or contributors to the harm/benefit, while being cautious to look past broad stereotypes;
 - Where benefits arise, give credit where credit is due and use that credit towards one or both parents in fashioning an appropriate outcome;
 - Where harm arises, isolate the source of the harm, and then frame it within the enumerated factors under the BIOTC Test; and

THE VIEW THROUGH THE EYES OF COUNSEL

- Design a remedy, whether that be (the following is non-exhaustive);
- Arrangements which obligate parties to following a mutual regime;
- Where that remedy will not suffice, give one parent authority to make decisions on the issue and obligate the other to comply; and
- If compliance is unrealistic or unachievable, fashion a parenting plan that provides one party with the necessary time and influence to meet the child's' needs; and
- In the more difficult cases, provide the court with more than just the parties' evidence. Bring the nuance of the issue to the court's attention through non-party or expert evidence so that the court is fully equipped to fashion the best outcome possible

THE VIEW THROUGH THE EYES OF A PSYCHOLOGIST (HIGH CONFLICT PARENTS AND TECHNOLOGY USE)

1. Seeking information via technology to find out what is happening in the other household while the child is away from them.
2. Demand an immediacy of digital response from a child that causes anxiety, distress and hypervigilance about incoming messages from the off-duty parent- which also increases the use of the child's screen device.
3. Control the other household routine through the child (i.e.) meals, homework, bedtime.
4. Inquire about the other parents parenting (i.e.) What did daddy/mommy say when they saw your report card?
5. Interrogate child (i.e.) significant other, about other parents' whereabouts, or their scheduled activities.
6. Talking or texting negatively about the other parent.
7. Technology can be weaponized- prevent the child from connecting with their parent during parenting time (alienating), to track children or the other parent, video/record conversations for court.

THE VIEW THROUGH THE EYES OF THE PSYCHOLOGIST (MENTAL HEALTH IMPACT)

- Internalizing behaviour problems
- Externalizing behaviour problems
- Screen Time and Social Media Use
- Problematic social media use (PSMU). (Vossen, H.G.M., et. al., 2024)

THE VIEW THROUGH THE EYES OF THE PSYCHOLOGIST (PARENTAL INFLUENCE AND FAMILY DYNAMICS)

- Parental Responsiveness
- Parent - Child Shared Experiences
- Family Conflict
- Parent Screen Usage
- ALSO: Quality of Parent-Child Relationship

THE VIEW THROUGH THE EYES OF THE PSYCHOLOGIST (FAMILY ENVIRONMENT)

- Consistency
- Set Expectations
- No Interrogations
- No Screen Time-Related Rewards / Punishments as part of parental conflict
- New Device
- Interrupt Parenting Time
- Tracking Apps

THANK YOU