
CANADA / JUDGMENT

A.J.B. v. J.M.

2019 BCSC 2335

COURT

Supreme Court of British Columbia

DECIDED

8 November 2019

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

2019 BCSC 2335 A.J.B. v. J.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.J.B. v. J.M.,

2019 BCSC 2335

Date: 20191108

Docket: E-082273

Registry: Vancouver

Between:

A.J.B.

Claimant

And

J.M.

Respondent

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

T. Yu

Counsel for the Respondent:

S. Simpson

Place and Date of Hearing:

Vancouver, B.C.

November 6 & 7, 2019

Place and Date of Judgment:

Vancouver, B.C.

November 8, 2019

- [1] THE COURT: There are two applications before me, one filed by each party. They relate to the same issue: what type of report should this Court order regarding the parties' child. The respondent filed her application on September 24, 2019, seeking a "Hear the Child" report (HTC report) be prepared pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25, and suggesting two possible authors. She has also sought weekly counselling be approved for the child, perhaps together with the claimant.
- [2] The claimant's application and response to the respondent's application were filed October 23, 2019, and he seeks a full s. 211 report to be completed by the same person who completed such a report 10 years ago, which was adduced at trial. He also seeks an order varying the parenting schedule to be either on a week-on/week-off basis or on a 2-2-5 schedule.
- [3] It is my understanding that both parties agree that the current schedule, which I believe has remained unchanged for 10 years and has the child spending equal time with each parent, is no longer in the best interests of the child. However, at this time, they are not seeking from this Court a new order regarding that schedule. Instead, their dispute is on a narrow issue: should the court order a full s. 211 report or just production of an HTC report.
- [4] Because the child is now 13 years old, and given s. 37(2)(b) of the Family Law Act, there can be no question that her views need to be taken into account in determining the parenting schedule, including the amount of time spent with each parent. Absent highly unusual circumstances, a 13-year-old is entitled to have her views given considerable weight even if they are not determinative.
- [5] As noted in *L.E.G. v. A.G.*, 2002 BCSC 1455 at para. 17, in addition to the statutory mandate contained in the Family Law Act, Canada has international obligations to ensure children have an opportunity to make their views known regarding parenting.
- [6] The claimant's position is a full s. 211 report is needed. Section 211(1) allows the court to appoint a person, typically as chosen by the parties or chosen through a process approved by the court or to which the parties agree, to assess one or more of the following:

- a) the needs of the child in relation to a family law dispute;
 - b) the views of the child in relation to a family law dispute; and
 - c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.
- [7] The person appointed under this section must be a family justice counsellor, a social worker, or another person approved by the court: s. 211(2)(a). It is my understanding that the costs for a simple views of the child report to satisfy s. 211(1)(b) is in the range from \$1,500, compared to about \$15,000 or more for a full assessment. Section 211(5) of the Family Law Act allows the court to assess how the costs of such reports can be attributed to each party.
- [8] The claimant's position is that the parties share the cost of the s. 211 report, although he offered to pay for the entire cost up front.
- [9] The respondent seeks an HTC report which provides a verbatim, non-evaluative report for a fee. These reports are generally less expensive with a quicker turnaround time. The reports are completed by professionals who have specific training to interview children. They meet only with the child. The report is obviously hearsay, but admissible pursuant to s. 202 of the Family Law Act.

FACTS

- [10] Many of the facts are not in dispute. The parties have never been married or lived together, but they share a daughter who was born in April 2006, who I will refer to as T.M.
- [11] The claimant is 62 years old and a businessperson involved as an investor, officer, and director in companies, primarily in the natural resources sector. He is also a lawyer. The respondent is 52 years old and works as a counsellor for the North Vancouver School District.
- [12] After a nine-day trial held in July 2009, the court issued oral reasons granting the parties shared guardianship and equal parenting time, which I understand they implemented immediately. Because that litigation was undertaken under the former legislation, the nomenclature is a bit different, but I have used the language of the current legislation. Neither party raised an issue that there was any significance in difference in wording between the previous and current statutes as it relates to this application.
- [13] According to the trial judge, there were two significant issues in dispute. The respondent wanted to have sole custody and joint guardianship, whereas the claimant wanted joint custody and guardianship. They also differed on how quickly T.M.'s time with the claimant would be implemented and ultimately how much time he would have.

- [14] At the time, both parties lived close to one another in Vancouver. However, the claimant has since entered a new relationship and has a young child with his current spouse. They live in Victoria. As a result, T.M. has, for many years, travelled to Victoria at least once a month to spend time with the claimant and his family.
- [15] The crux of this dispute is the parties' disagreement about the extent to which the child's views should be given weight in any decision regarding a change in the parenting schedule. The respondent deposed that the child has for some time expressed reluctance, growing into anxiety and upset, at the amount of time spent with her father. The claimant's position is that the reluctance is not genuine, and he blames the respondent for interfering and improperly influencing the child's expression of reluctance. In his affidavits, he accuses the respondent of attempting to alienate the child.
- [16] As a preliminary remark, alienation is an extremely serious accusation for a parent to make. It implies the other parent has engaged in reprehensible behaviour that is clearly harmful to the child. It should not be a term that is used lightly and there should be an evidentiary basis for it.
- [17] Counsel for the claimant attempted to draw a distinction between his client's use of the word in the affidavits and a legal finding by a court, explaining the claimant's use of the word was merely reflecting his concerns. I am unpersuaded. Deposing that children are being alienated is a serious allegation. Alienation of children appears nowhere in the Family Law Act. The claimant is a sophisticated businessperson and lawyer, represented throughout this application by lawyers who understand the impact the term can have in a family proceeding.
- [18] In my view, there was no evidence in this case upon which any reasonable person could render an accusation of alienation. The claimant has suspicions, theories, and beliefs about the respondent's alleged influence on T.M. to which he is entitled, but that is not evidence of alienation. Making that accusation in a legal proceeding inflames the situation. In my view, the accusation should not have been levelled on the facts put before me and it is conduct deserving of rebuke.

LEGAL PRINCIPLES

- [19] The legal principles are not in dispute and, in any event, the determination on this application will turn largely on the facts.
- [20] In *Smith v. Smith*, 2014 BCSC 61 at para. 12, citing *T.N. v. J.C.N.*, 2013 BCSC 1870 at para. 15, the court stated that a broad and generous approach ought to be taken to applications for reports under s. 211, and the threshold justifying their production is quite low. The reason for that was aptly explained, in part, in *Walker v. Maxwell*, 2014 BCSC 2357 at para. 63. Justice Kent noted that the best interests of the child "often entails a more nuanced, contextual analysis and one perhaps vulnerable to 'common sense' assumptions informed by stereotype, popular but not necessarily accurate social science, and even myth."

- [21] This reflects the state of the law that the court does not embark on any consideration about parenting that assumes any particular arrangement is superior to another. Each case depends upon the unique needs and circumstances of the child.
- [22] Notwithstanding those comments, it is also true that the person seeking a s. 211 report has the onus to establish that it should be ordered and must establish that it is necessary and in the best interests of the child.
- [23] In *N.R. v. N.P.*, 2017 BCSC 1962 at para. 26, Justice Riley commented that a s. 211 report is often sought to give the court information regarding the needs or views of the child. In that case, however, the court was assessing whether the report was necessary to assess one parent's suitability to care for the children in an unsupervised setting. Thus, it was only concerned with s. 211(1)(c), the ability and willingness of a party to satisfy the needs of the child.
- [24] At para. 28, Justice Riley commented that the courts rely on such reports because they provide much-needed neutral and objective professional information in an emotionally charged arena. However, at para. 29, the court held that it is not inevitable that, once sought, such a report must be ordered. The applicant must satisfy the court that there is some potential benefit of such a report. Citing *Ryan v. Reid*, 2002 BCSC 872 at paras. 12-14, the court explained that an order for a s. 211 report should not be a fishing expedition. It is also important to keep in mind that ordering the report provides no absolute assurance that it will be helpful, much less dispositive of the issues in dispute.
- [25] Finally, Justice Riley stated it must consider countervailing interests to ordering a report, three of which are the time and delay associated with producing the report, the intrusion or disruption in the lives of the children that preparation of such a report necessarily entails, and the cost implications (at para. 31).
- [26] Ultimately, whether a court exercises its discretion to order a s. 211 report must be informed by the best interests of the child and what purpose the report would serve: *H.V.G. v. L.E.T.*, 2017 BCSC 1324 at paras. 41-43. As reflective of both the importance of considering the views of the child and the potential disruption caused by such reports. In *H.V.G.* at para. 44, the court referred to *R.E.Q. v. G.J.K.*, 2015 BCSC 1786 at paras. 39-40, where Justice Fleming held it would be in the child's best interests to order a report, but only provided the child agreed to it. The child in that case was 12 years old.
- [27] Although the facts are quite different from those before me, because there were allegations of family violence, I find helpful Justice Donegan's comments in *Keith v. MacMillan*, 2014 BCSC 1352 at para. 68. She considered that although a report would intrude on the children's lives, that was far outweighed by the benefit of the expert advice in that case. In other words, there is a balance to be struck.

- [28] I also note that any changes to a final order regarding parenting is governed by s. 47 of the Family Law Act that requires, before a variation, there has to be a material change in the needs or circumstances of the child. In *Williamson v. Williamson*, 2016 BCCA 87 at paras. 29-34, the Court of Appeal set out that determining whether there is a material change is a distinct step in the process.
- [29] That issue is not before me, although I note that the parties no longer live in the same city and the parenting arrangements were about 10 years ago. Indeed, the parties agreed that the current schedule is not in the best interests of T.M. In any event, provided there is a material change, the only inquiry at the time when a change is sought is to look into the best interest of T.M.: s. 37(1).

EVIDENCE

- [30] I summarize the important portions of the respondent's affidavit dated September 9, 2019, which was filed in support of her application:
- a) She explained that T.M. expressed to her concern about the claimant's desire to change the parenting schedule. The respondent desires a neutral consideration of T.M.'s views. She also stated that she wanted counselling to address her observations of T.M.'s upset at having to spend the amount of time that she did with the claimant.
 - b) She deposed at paragraph 10 that T.M. has communicated to her the following concerns about spending time with the claimant:
 - i. T.M. wants flexibility, but is afraid to ask her father for it, because she feels he is unwilling to listen; and
 - ii. T.M. is frequently upset, including crying, about going to spend time with the claimant and feels she is lonely and misses friends from school.
 - c) The respondent recognized that T.M. loves her father and stated that she actively engages T.M. to share her thoughts with her father.
 - d) The respondent noted that T.M. has begun to express anger at the respondent for the insistence that they stick to the current parenting schedule.
 - e) The respondent felt compelled to file the application, because her attempts to address the matter outside of court did not succeed. She stated that, despite sending two letters seeking the claimant's agreement to counselling and discussion of these matters, there was no response from the claimant.
- [31] The narrative portion of the claimant's affidavit filed in reply and in support of his application contains a lot of information that was not ultimately helpful or relevant to the issue in these applications. Although the parties appeared before me for a day and a half following this application regarding a dispute over child support, it was unknown at the time of this application which judge would hear that subsequent application. As a result, it was

unnecessary for the amount of information about financial affairs to be adduced for the purpose of this application.

- [32] This of course adds time and expense to the hearing, in addition to difficulty for the court which, in the context of two applications set to be heard for a total of two hours, had to wade through three binders, two of which were four inches thick. It is somewhat frustrating to the court to be put in that position when the issue between the parties is extremely narrow. I acknowledge (as advised by the parties) that the bulk of some of that material was financial disclosure sought by the respondent. However, the claimant's affidavit also discusses at length his preferred schedule and the difficulties he sees posed by the current parenting schedule. Numerous paragraphs in his affidavit recount his version of scheduling conflicts in the past. There are numerous statements where he expresses his perception and opinion of the respondent's motivations and attitudes. As noted earlier, he specifically accuses the respondent of not encouraging T.M.'s relationship with him, but he adds also an accusation that she does not encourage a relationship between T.M. and her step-sister
- [33] His counsel submitted that the purpose of that evidence is to support the claimant's position that a s. 211 report is necessary in this case. I summarize some of the evidence from the claimant's affidavit dated October 23, 2019:
- a) The claimant stated the respondent does not encourage or cooperate in T.M. having a relationship with her step-sister.
 - b) He deposed that if the respondent had cooperated, by which he means agreed to the schedule he proposed, he would have had more time with his two daughters together.
 - c) He claimed that he begged the respondent for a more manageable access schedule, but that she did not cooperate.
 - d) He stated that the respondent refused his proposals to change the parenting schedule, which have included proposed week-on/week-off and 2-2-5 schedules.
 - e) The claimant stated the respondent refused to allow makeup time the claimant had missed for business trips.
 - f) I quote from a paragraph that appears to summarize generally his position in this application: "[The respondent] remains bitter at me and has not moved on. I believe she has allowed her bitterness to direct her conduct to make it as difficult as possible for me even though it negatively impacts [T.M.] and in the result is not acting in [T.M.'s] best interest." The claimant then repeats in his affidavit a quote from the s. 211 report adduced at trial 10 years ago as support for his opinion.
 - g) He also alleged that the respondent was coaching T.M. during a telephone conversation that the claimant had with his daughter, and specifically accused the respondent of encouraging T.M. to criticize that he had a child with his current spouse.

- h) He recounted that T.M. did state to him that she did not want to spend 50 percent of her time with him. He continued:

Again, I believe this to be [the respondent] influencing [T.M.] inappropriately and that this stems, in part, from [the respondent's] continuous bitterness at me for moving on and having another child and, in part, to keep [T.M.] away from her [step-sister] and, in part, attempt to have [T.M.] insist on staying more with her mom.

- i) Few paragraphs later he deposed:

I have provided [the respondent] with numerous settlement offers [re support] that I believe to be in [T.M.'s] best interests while eliminating at least part of the reason for alienation.

- j) And a few more paragraphs later he stated that "[The respondent] is now using our daughter as a tool to punish me further."

[34] Given the seriousness of the allegations in the affidavit and the extent to which the claimant goes to blame any of T.M.'s concerns on the respondent, the respondent must have felt compelled to file an affidavit responding to those allegations, and I repeat a summary of some of her responding affidavit (dated October 31, 2019):

- a) She denied that she has not moved on or that she has separation anxiety or demonstrated confrontational emotional volatility, or communicated negative feelings about the claimant to T.M.
- b) She denied that she has attempted to alienate T.M. from him, and referred to examples of sharing photos and information about T.M.'s dance activities when the claimant was unable to attend. One exchange of text messages included in her affidavit is revealing. She asked the claimant if he was available to have dinner with the child. He was not and stated in his text:

[T.M.] needs to understand that the court order is the order and she must spend [half] time with each of us. Monday was missed and there are past days missed. I was stunned with what [T.M.] said to me last night. Including her choice of words. Thank u in advance for explain[ing] to her it isn't her choice right now and she must be with each of us equally in any event.

- c) The respondent's text in response was:

No need to thank me. As I shared with you on the phone yesterday, I've been explaining that to her for a long time. I have tried everything I can, and have been successful for a long time.

- d) Further texts attached to her affidavit clearly demonstrate the respondent is working hard to encouraging parenting time with the claimant. One text exchange demonstrates a very thoughtful parenting strategy of calming the child when T.M. expressed upset, by diverting her attention to perhaps watch a cooking show. She similarly used this strategy to calm the child when she was very upset about going to her father's house by calling a friend. That is corroborated by an affidavit from the same friend dated October 30, 2019. That affidavit, I note, is brief and to the point and does not go beyond confirming that information, which is

appropriate.

- e) The respondent responds to the accusation that she has made Christmas holiday time particularly difficult, a point emphasized by the claimant during submissions. The claimant suggested the respondent was responsible for the child having to spend Christmas Day on the ferry which was emphasized as an ordeal. The respondent pointed out that the claimant's tradition is to celebrate Christmas Day, whereas her family's tradition is to celebrate Christmas Eve, and that has been the reason for requiring exchanges on Christmas Day, something they had apparently been doing for some time. In general, she disputes his characterization of some of those exchanges.
- f) She denies the claimant's assertion that there have been constant struggles regarding weekend parenting time.
- g) She deposed that there are many occasions of last-minute changes to the schedule requested by the claimant for work, but also for his attendance at hockey games and social events. She has also accommodated his late requests to take T.M. for dinner or overnight during his scheduled parenting time. At paragraph 30, remarkably, the claimant has asked the respondent to drop food for the child at dance on his parenting day and she has done so.
- h) She stated that the child has been going to Victoria monthly for years, even since the child joined her competitive dance program in 2015, an activity that both parents agreed with. That has meant that there are occasions when the child misses certain dance classes that are important. The dance schedule of course is set by the dance company and sometimes she has mandatory classes, and this has caused considerable difficulty with the parenting schedule. That is confirmed by an affidavit of K.G., the dance school office manager, who confirms that they have tried to accommodate her, but sometimes it has been difficult. She also confirms overhearing the respondent urge and encourage T.M. that she has to spend time with her father in a loving and warm way, just as the respondent described.
- i) The respondent believes and is concerned that the claimant refuses to consider the child's thoughts about the schedule.
- j) She explained why she believed the current schedule is not in the child's best interest. She stated the child is unhappy and that is affecting the child's relationship with both her and the claimant. She stated the child has expressed a view that she does not want a week-on/week-off schedule or the 2-2-5 schedule. T.M. has said she wants flexibility. The respondent deposed that over the past several years, the child objected to going to her father's house. The respondent has counselled the child how important it is and insisted that she do so, and has largely been successful.
- k) The respondent deposed that the claimant told T.M. that the respondent was suing the claimant about child support, which of course is entirely inappropriate if true.

- [35] The respondent responded to the claimant's description of an event in his affidavit, which he emphasized during the hearing as an example of the respondent being unreasonable and overreactive, and therefore illustrative of why a full s. 211 report was necessary. It concerns one of T.M.'s birthdays. The respondent deposed that although there had been no prior agreement or specific discussion, their invariable habit had been to exchange the child on her birthdays at 1:30 pm or around that time. In reliance on that, she had booked and paid for a circus party for T.M. and her friends. Her evidence is that at the last minute, the claimant created a problem by wanting to keep the child longer, which would mean the child might have been late or miss out on her own party with her friends, which I assume was an expensive venue.
- [36] Obviously, there had been a lack of effective communication, but what concerns this Court is that knowing that evidence was before me, the claimant insisted on emphasizing that incident as an example of unreasonable behaviour by the respondent and, with respect, that was uncalled for. At the very least, there should have been an acknowledgment of the reason for the disruption.
- [37] Other examples of what the claimant referred to as unreasonable behaviour by the respondent include: (a) Contacting the RCMP when he unilaterally kept T.M. for an extra day on Thanksgiving long weekend; (b) The accusation that she coached the child during the phone conversation; and, (c) requiring confirmation when the claimant and the child get to the ferry terminal, which is somehow upsetting for the child. The respondent provided explanations for each event.
- [38] Even if I accepted the claimant's characterization of those events, which I do not, they do not amount to a concern about the capacity of the respondent to provide for the needs of the child. Nor does the claimant allege the child's needs are not adequately met while in the respondent's care. In any event, having reviewed and taking into account all of the evidence and the submissions of the parties, I prefer the respondent's version of these events over the claimant's.
- [39] In addition to other affidavits, N.H. filed an affidavit on October 31, 2019. She deposed that she is friends with the respondent, and their daughters dance together and are also friends. Because of that, she has seen T.M. frequently over the years. She has heard T.M. tell the respondent that she does not want to go to her father's and she confirms that the respondent is warm and loving in her response, explaining that it is important and that T.M. must go. She has heard that on more than one occasion. This corroborates the respondent's affidavit.
- [40] The claimant relies on the affidavit of K.A., filed October 24, 2019, who is a long-time friend of the claimant, who offered to share her perspective and observations of the claimant and the family. Her observations are consistent as portraying the claimant as a good father, which of course is not a matter contested by the respondent. However, it also contains inadmissible opinion and contains information clearly conveyed to her by the claimant about the respondent. I am referring particularly to things in paragraphs 13-15, such that

she stated that there have been expressions that the time T.M. has with him is uncertain because of the respondent's needs. K.A. expressed the opinion that she truly believed that the claimant and T.M. need more time together. That is an unsolicited opinion, which is inadmissible. It was also unhelpful.

ANALYSIS

- [41] The claimant has failed to persuade me that a full s. 211 report is necessary. As noted above, I do not find sufficient reliable or credible evidence that there are any concerns with the respondent's ability to meet the needs of the child; quite the opposite. The evidence is consistent and reliable in the material that the respondent has acted appropriately, in compliance with the court order, and appropriate to the age of the child to encourage the child to spend time with her father.
- [42] I also do not accept on a balance of probabilities that the respondent should be faulted for failing to agree to a change in the schedule. Quite reasonably, she wants the child to have input into the decision.
- [43] On my assessment of the evidence and based on the claimant's submissions, it appears the claimant has not and is unwilling to place enough weight on the concerns expressed by T.M. He believes T.M.'s concerns are fuelled by the respondent's bitterness. In my view, he revealed an inability to view T.M.'s behaviour as being independent of the respondent. This concerns the Court.
- [44] T.M. is a 13-year-old girl, who on the evidence has stated she resists breaking up her weekends to go to Victoria, because it takes her away from her friends, something that is highly important for teenage girls. I find most reasonable parents would recognize that to be a valid concern expressed by many typical teenagers. It also disrupts her competitive dance program, an extracurricular activity to which T.M. is extremely devoted. It is surprising to me that this is not mentioned at all in the claimant's material, and it did not appear to be a factor in his position or submissions to this Court.
- [45] Based on the evidence before me and the submissions of the claimant, there is a reasonable concern whether the claimant understands the normal, expected, and reasonable wishes of his teenage daughter. Given his affidavits and belief that the respondent does not encourage parenting time with him (I note, despite the collateral evidence confirming the opposite), I find the claimant has not given enough serious consideration to his daughter's concerns and he has failed to accept that they might be genuine.

- [46] I also find some evidence in the material that he appeared to view the 50/50 parenting time as his right, as opposed to something that is done ultimately in the best interest of his child. That schedule was ordered in 2009, when the child was three years old and the parents lived close to one another. It is disappointing that he appears to insist on a mathematical equality of time now, 10 years later, despite the concerns expressed by his daughter, and the fact that she is now a teenager.
- [47] It is also a significant factor that the claimant in his evidence and position does not acknowledge or recognize that his living in Victoria is, and has been for some time, disruptive for his teenage daughter. Obviously, he wants his two children to spend time together and that is very important and consistent with the best interests of T.M. However, he did not appear to give sufficient weight to the logistical problems that poses for T.M. and the struggle she, based on my review of the evidence, has been having with it. Despite what I find are obvious logistical complications of the claimant's living in Victoria, I find the respondent has encouraged that travel. I am satisfied that the only significant concerns the respondent has raised respecting that travel has been to respond to the wishes of her child.
- [48] Nor is it obvious that T.M.'s desire to spend more time with the respondent is driven by any kind of animus, hostility, or reluctance to be with the claimant or her step-sister. As I already stated, I find it is not an unexpected reaction of a typical teenager to the logistical issues that interfere with her social life and extracurricular activities.
- [49] To be clear, I find the evidence does not establish, on a balance of probabilities, of the validity of the criticisms and concerns levelled by the claimant against the respondent. The claimant is seeking a s. 211 report, primarily on the basis of his belief that the unsatisfactory schedule that requires so many transitions per week has created problems for T.M. He goes to great lengths to blame the respondent for all difficulties arising from that schedule because she would not agree to a change. I do not find that to be the case. Instead, I find the respondent has sought to have any change in the schedule accommodate the views of the child. I find instead it is the claimant's refusal to consider something other than 50/50 that has maintained a schedule unsuited to the child's needs.
- [50] I find, in addition, that a full s. 211 report is not only unnecessary because there is no indication that T.M.'s needs are not being met, but it would be disruptive to her. The concern the Court has is that if the claimant does not start adjusting his demands for parenting time revolving around his Victoria family, or at least address the issue with more compassion, it will start to create resentment in T.M., possible towards him but also towards the respondent who will be obliged to enforce the schedule. As I said, in my view, as the chambers judge who has reviewed all of the evidence, and in light of the positions and submissions, the respondent is not to blame for this situation. I do not find on the evidence that a full s. 211 report is justified.

- [51] Given the evidence before me, I question whether it is even necessary to order an HTC report since I find T.M.'s views as expressed in the affidavit material are genuine. However, given the claimant's suspicious about the genesis of those views (which I have found are not founded on the evidence) it is probably important that a neutral, objective recitation of what the child wants be produced.
- [52] Accordingly, I grant the respondent's order for the preparation of an HTC report. I adjourn her request for counselling. That can be addressed if she wishes after production of the HTC report.
- [53] Regarding who should complete the report, I reject the claimant's request that Dr. Koch have any involvement in this case. The only reason presented to make that order was that Dr. Koch was involved 10 years ago. In my view, that involvement does not make him preferable to the people identified by the respondent because of two factors. First, the difference in the age between the child he interviewed 10 years ago and today. Second, the respondent has expressed, via counsel, that T.M. has suggested she would be more comfortable with a female counsellor.
- [54] I note with some disappointment, that the claimant felt the need to object to that reasonable request by citing a case that was over 20 years old and, with the greatest of respect, seems to be out of tune with respecting the reasonable wishes and needs of reasonable teenagers that they may feel more comfortable with a counsellor of the same sex.
- [55] Moreover, I am mindful of the judicial comments that have been expressed about Dr. Koch that were referred to me by counsel. Those comments are not determinative. However, after hearing those comments, combined with T.M.'s desire. to have a professional of the same sex be her counsellor and taking that into account in a non-judgmental way the concerns expressed by the respondent about Dr. Koch, in my view, at the very least, the claimant ought to have made enquiries and offered to have a different s. 211 author. Obviously, the claimant has the legal right to disagree with the respondent's objection to Dr. Koch, but I am not persuaded there was a reasonable basis to insist on Dr. Koch.
- [56] The respondent has suggested two people who have expressed availability and willingness to complete the HTC report in a timely manner. Both of those are acceptable and I specifically order that she has the ability to choose whoever she wants to complete that report.

CONCLUSIONS

- [57] With regard to the respondent's application, I grant an order that the respondent can choose one of the two proposed authors to prepare a HTC report pursuant to s. 211. I adjourn generally the order seeking counselling for the child. I dismiss the claimant's application seeking production of a full s. 211 report. I adjourn generally his seeking a variation to the parenting schedule. I am seized of these matters should either party bring on those applications in the future.

[58] I will hear the parties on costs.

[SUBMISSIONS ON COSTS]

[59] THE COURT: On costs, the claimant is asking that I defer the decision on costs until after production of the HTC report. He submits there is a possibility that after that, either the parties agree or after an application, the court might agree to the schedule that he has in fact sought in his application. As noted, his application sought week-on/week-off or a 2-2-5 schedule. The parties agreed the court would not address that issue because the parties would await whatever report was ordered to be produced.

[60] I disagree. As noted in my judgment, I have found, in objecting to any reduction in his parenting time, the claimant has not sufficiently taken into account T.M's views. I am satisfied given the age of the child and the facts of this case that it is mandatory under the legislation to do so.

[61] Therefore, regardless of what parenting schedule is ultimately agreed to or ordered, the respondent's application was necessary, in my view, because of the claimant's unwillingness to accept that his daughter should have a significant say in the schedule. In these circumstances, the respondent is entitled to her costs.

[62] I should add, and this hopefully will help the claimant going forward, that he should take note of my comment regarding his inclusion of an allegation of alienation in his material. Specifically, I found that to be conduct deserving of rebuke, based on my assessment that the evidence did not contain a reasonable ground to raise that serious allegation. One of the factors a court can take into account if asked to grant special costs is if it finds a party has engaged in conduct deserving of rebuke. The respondent did not seek those today. I am not suggesting that she could have been successful in doing so, but it is important to emphasize to the claimant, and more generally to parties appearing before this court, that parents should not lightly allege alienation. It is a serious and severe accusation.

[63] The respondent has asked, and in my discretion, I grant an order that costs be paid forthwith.

"Sharma J."

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/19/23/2019BCSC2335.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/a-j-b-v-j-m-2019>

Prepared on 25 October 2026 · Esheria