
CANADA / JUDGMENT

Bergeron v. Gillstrom

2009 BCSC 1616

COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 1616 Bergeron v. Gillstrom

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bergeron v. Gillstrom,

2009 BCSC 1616

Date: 20091130

Docket: F960168

Registry: Vancouver

Between:

Brigitte Louise Bergeron

Plaintiff

And

Brian Curtis Gillstrom

Defendant

Before: The Honourable Mr. Justice Burnyeat

Reasons for Judgment

(In Chambers)

The Plaintiff, Brigitte Louise Bergeron:

In Person

Counsel for the Defendant:

D. LeDressay

Place and Date of Hearing:

Vancouver, B.C.

November 10, 2009

Place and Date of Judgment:

Vancouver, B.C.

November 30, 2009

[1] The Defendant, Brian Curtis Gillstrom, applies for an Order pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, which provides as follows:

If, on application by any person, the Court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court ... against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

BACKGROUND

- [2] For a period of about seven years, the parties lived in a relationship "approximating that of husband and wife". The parties had one child, born May 25, 1993. That child is now in Grade 11. This proceeding was commenced by Ms. Bergeron on March 12, 1996. The proceeding has not, as yet, gone to trial. Ms. Bergeron sought custody and access, and made a trust claim against a business owned by Mr. Gillstrom.
- [3] The many applications before the Court in this proceeding have focussed primarily on the issue of custody and access.
- [4] On March 27, 1996, interim custody of the child was given to Ms. Bergeron by a consent order. There was also an order for specified access. In a May 7, 1996 Motion, Mr. Gillstrom requested an order for the rehearing of the issue and for the preparation of an s. 15 report. On May 9, 1996, an order was made that a s. 15 Report be prepared. The other requests of Mr. Gillstrom were adjourned generally pending the completion of that report. Ms. Bergeron had made complaints about a sexual abuse of the child to the police implicating a neighbour and a friend of Mr. Gillstrom.
- [5] An August 1, 1996 order was made for supervised access by Mr. Gillstrom. In an October, 1996 Motion, Mr. Gillstrom again requested a hearing relating to the issue of custody. There was an October 9, 1996 Order that the application of Mr. Gillstrom be heard in a viva voce hearing. After a viva voce hearing on December 9 through 12, 1996, Coultas J. ordered that Mr. Gillstrom have sole interim custody of the child, and that Ms. Bergeron have supervised access only. In his Reasons for Judgment, Coultas J. dismissed the allegations of sexual

abuse by Ms. Bergeron, holding that the same had no foundation. Regarding what was ordered, Coultas J. concluded:

I conclude Mrs. Bergeron constitutes a psychological danger to her daughter and potentially a physical danger as well, for she may stop at nothing to compel the police to continue to investigate sexual abuse which, in defiance of reason and good sense, she believes has occurred. At all the various times that she has been examined there was no physical evidence that supports any sexual abuse of this child. In my view, Mrs. Bergeron is not capable of exercising judgment and common sense in matters affecting her daughter. I agree with Dr. Elterman that she has completely suspended her ability to discriminate between what is likely and unlikely, probably because of her animosity towards the defendant. At the moment Mrs. Bergeron's influence over her child is pernicious. (at p. 41)

- [6] On February 12, 1997, Ms. Bergeron through counsel applied for further access and for an order that Mr. Gillstrom pay for her supervised access. In a June 27, 1997 Order, specified access was provided to Ms. Bergeron on the basis that the access would be supervised and the cost of it paid 75% by Mr. Gillstrom and 25% by Ms. Bergeron. Telephone access was also ordered.
- [7] In an August 18, 1999 Motion, Ms. Bergeron requested orders that she be granted interim custody and support, that there be supervised access by Mr. Gillstrom, that he pay all costs relating to "non-intrusive play or art therapy", that Mr. Gillstrom be found in contempt, that Mr. Gillstrom be restrained from directly or indirectly "harassing myself, extended family and friends", that a "full custody trial be set before the Honourable Mr. Justice Coultas in the near future", and "re-establishing the agreement regarding the handling of the assets of ... [his company]." In her August 18, 1999 Affidavit, Ms. Bergeron made allegations of criminal conduct against a non-party, alleged that the Court file had been tampered with, provided details regarding her attempts to have her allegations of sexual abuse investigated, persisted in making those allegations, made harsh allegations against the supervisors who had been assigned to supervise her access, alleged that somebody had been making false allegations about her to the Ministry for Children and Families, and that she had instituted investigations into the custody and access matters in issue at the office of the Ombudsman and to the Children's Commission".
- [8] On September 23, 1999, Warren J. dismissed the applications of Ms. Bergeron and ordered that Mr. Gillstrom would have custody of the child, ordered that Ms. Bergeron would have supervised access to the child, that supervision would be by "a qualified professional supervisor", that the services of the qualified professional supervisor would be paid for by Ms. Bergeron and that Ms. Bergeron would have specified telephone access to the child. Warren J. also ordered that the report of Dr. Elterman would be paid fully by Ms. Bergeron. In his Reasons for Judgment, Warren J. stated:

There is no reliable evidence that I have seen that this child is at any risk. None. There is no evidence that would lead me to believe that a full trial is in the interest of the child or required as a right of the parents. (at para. 25)

- [9] In a June 29, 2001 Motion, Ms. Bergeron requested orders that the child be seen by a child psychiatrist as recommended by Dr. Elterman in his April 10, 2001 Report, the majority of the cost for the counselling be paid by Mr. Gillstrom, access arrangements be changed, Mr. Gillstrom pay at least half of the cost of the supervision, Mr. Gillstrom produce all medical and school records for the child, for compliance regarding the telephone access conditions and: "... draft Orders from this hearing have been signed by both parties immediately following the proceedings".
- [10] In an July 11, 2001 Motion, Ms. Bergeron requested orders to enforce the telephone access which had been ordered on September 23, 1999, "to consider directing Mr. Gillstrom to implement Dr. Michael Elterman's recommendations", to direct Mr. Gillstrom to pay at least 50% of the cost of Saturday visits until this matter could be brought before Mr. Justice Warren on September 4, 2001", to require Mr. Gillstrom to give Ms. Bergeron at least two weeks' notice in writing when leaving the jurisdiction with the child, and to disclose the location where he is going, and restraining Mr. Gillstrom from removing the child from the jurisdiction on July 15, 2001 until he complies with the "above conditions".
- [11] On July 13, 2001, an Order was made adjourning generally the applications of Ms. Bergeron and suspending telephone access. In a July 16, 2001 Motion, Ms. Bergeron requested orders requiring Mr. Gillstrom to provide the telephone number where the child would be staying between July 15 and July 20, to disclose the location of the camp where the child would be staying, allowing Ms. Bergeron to phone the child every evening if she was not staying at a camp, "directing Mr. Gillstrom to produce...[the child] in the event the above conditions are not met, and that Mr. Gillstrom be held in contempt of the July 13, 2001 Order. In her July 16, 2001 Affidavit, Ms. Bergeron stated that it was her fear that the child was not going to summer camp but was going to see her grandfather against whom she had made allegations of sexual abuse.
- [12] On September 4, 2001, Warren J. struck the June 29, 2001 Motion of Ms. Bergeron, and order that she would not reset her motion without consulting counsel for Mr. Gillstrom for convenient date or by providing counsel for Mr. Gillstrom with three weeks' notice.
- [13] In a December 10, 2001 Motion, Mr. Gillstrom requested orders varying that part of the September 23, 1999 Order relating to telephone access and that the telephone access be suspended while the child was on holidays. On December 18, 2001, Warren J. ordered that he continue to be seized of hearing matters, Ms. Bergeron would have supervised access each Saturday, the proposed supervisor was to take supervision training or lessons so that Warren J. could consider "her suitability as a supervisor in substitution for a professional supervisor", and that any consideration of the proposed supervisor was conditional upon the following: (a) the resumption and continuation of personal counselling of Ms. Bergeron; (b)

the re-attendance by Ms. Bergeron in two months time for another assessment by Dr. Elterman; and (c) the provision of a current psychiatric assessment of Ms. Bergeron by Dr. Roy O'Shaughnessy.

- [14] On February 6, 2002, Warren J. made an order that Dr. Elterman provide to the Court the name of a psychologist/psychiatrist for the child to attend upon for an initial assessment to determine whether ongoing contact between the child and the psychologist/psychiatrist is required, and that Mr. Gillstrom would pay for this initial assessment.
- [15] In a May 9, 2002 Order, Ms. Bergeron was authorized to receive transcripts for hearings up to that date and to make written requests to the Court for transcripts for future hearings. During potential holidays for the child, Mr. Gillstrom was to provide two weeks' notice to the Court regarding holidays so that the Court could determine whether telephone access should continue during holidays.
- [16] In a June 28, 2002 Motion, Mr. Gillstrom requested an order pursuant to Rule 18A of the Rules of Court for judgment dismissing paragraphs 3 through 6 of the Prayer for Relief in the March 12, 1996 Statement of Claim of Ms. Bergeron, or alternatively, for an order pursuant to Rule 2(7) of the Rules of Court dismissing the proceeding for want of prosecution. On July 3, 2002, Warren J. ordered that Ms. Bergeron retain counsel by July 17, 2002 to act on her behalf and that this counsel was to provide counsel for Mr. Gillstrom with a response to the motion of Mr. Gillstrom by August 9, 2002. The application of Mr. Gillstrom was adjourned to September 6, 2002.
- [17] In a July 31, 2002 Motion, Ms. Bergeron requested orders that the access orders be varied to provide that the parties would have joint custody of the child, the primary residence of the child would remain with Mr. Gillstrom, access between Ms. Bergeron and the child would be extended to overnight visits, supervision of the overnight visits be carried out by a family member of Ms. Bergeron, and that, in the alternative, the parties share joint guardianship of the child "which shall follow the Master Joyce model". Ms. Bergeron also requested an order that the application of Mr. Gillstrom pursuant to Rules 18A and 2(7) of the Rules of Court be dismissed.
- [18] In a December 9, 2002 Order, Warren J. dismissed the application of Mr. Gillstrom pursuant to Rule 18A and ordered that each party would bear their own costs. In dismissing the applications of Ms. Bergeron for custody, Warren J. stated:

All visits by the plaintiff with her child must continue to be supervised. This is because of my continuing concern of the risk to the child because of the plaintiff's deep-rooted beliefs that her daughter has been abused.

The reason for this is not, as Ms. Bergeron would believe, to punish her further for her attitudes and actions, but because she continues to present a risk to the child.

- [19] In a May 6, 2003 Motion, Ms. Bergeron requested orders that Mr. Gillstrom comply with the July 13, 2001 Order that certain transcripts be produced, (including the transcripts for April 3, 2002, October 30, 2002, December 18, 2002, and May 3, 2003), and that various documents be produced including ICBC documents relating to insurance maintained by the wife of counsel for Mr. Gillstrom and the Vancouver School Board "Primary Progress Report" for the child. All of those requests were either dismissed, adjourned or abandoned.
- [20] In a May 13, 2005 Motion, Ms. Bergeron requested that there be a contempt hearing against Mr. Gillstrom "and Others", that the "Vancouver Registry Staff" provide Ms. Bergeron on an indigent basis any further photocopying required until there was a final order under Rule 18A of the Rules of Court, and that the "Vancouver Registry Staff" be directed to draft and enter the above Order of Court "immediately following the hearing".
- [21] In a May 24, 2005 Motion, Ms. Bergeron again requested that Mr. Gillstrom be found in contempt of court. In a June 28, 2005 Motion, Ms. Bergeron requested orders varying the September 23, 1999 and January 5, 2000 Orders respecting telephone access and payment of supervision fees, enforcing the July 13, 2001 order with respect to the payment of access fees, restraining Mr. Gillstrom from taking the child to the Sunshine Coast, restraining Mr. Gillstrom from "harassing, annoying, and/or threatening the Plaintiff ... or her extended family directly and/or indirectly", directing the RCMP to apprehend Mr. Gillstrom and bring him before the Court if he "breaches the above order" and that Mr. Gillstrom and his company "be restrained and enjoined from disposing of, encumbering, signing, or in any way similar manner dealing with the defendant's personal assets as well as with the company ... until that time that a final Order under Rule 18A has been rendered by this Honourable Court." In her May 24, 2005 Affidavit, Ms. Bergeron states that her former counsel was guilty of "a criminal degree of gross negligence", that there is a conspiracy, that "these player's wilful conduct to commit the continuous actions in their game and of shameful deceit", and of "spoliation of evidence". That Affidavit has a total of 320 paragraphs.
- [22] In a June 28, 2005 Order, the application of Ms. Bergeron was adjourned generally to be heard by Warren J. at the same time as the contempt application set for September 7 and 8, 2005. In her June 28, 2005 Affidavit, Ms. Bergeron states:
- I am requesting that the Court restrain the defendant from harassing, annoying and/or threatening me, or my extended family, directly and/or indirectly. As a precautionary measure, I am also requesting that the Court Order, that I be given reinforcement that allows for the RCMP and/or any Police/Peace Officer to bring the defendant before the Court for what it deems as the appropriate disciplinary action.
- [23] The application of Ms. Bergeron that Mr. Gillstrom be held in contempt came before Warren J. on September 8, 2005. The application was dismissed with costs to Mr. Gillstrom. In a September 12, 2005 Motion, Ms. Bergeron requested transcripts of the reasons of Warren J. on an indigent basis. That order was made on September 12, 2005.

[24] In an ex parte January 11, 2006 Application, Ms. Bergeron requested the following orders:

- (a) The defendant, Brian Curtis Gillstrom, as well as others relating to the misconducts in this matter, to be investigated for the obstruction of justice, while compromising the "life blood" of the Court, by partaking in the actions of "spoliation of evidence" and "fraud" of various court documents, including written transcripts of the proceedings relating to this matter. In particular, the Oral Reasons of the Honourable Mr. Justice Warren made September 8, 2005.
- (b) The defendant, Brian Curtis Gillstrom, be found in contempt of the Orders of the Honourable Mr. Justice Warren made September 23, 1999 and January 5, 2000, with respect to the defendant's interference with the plaintiff's telephone access.
- (c) The custody Order of September 23, 1999 and January 5, 2000, be varied and the plaintiff to be awarded custody of the child
- (d) Dr. Michael Elterman to be re-appointed and also provide for the Court a list of names of potential counsellors for the child
- (e) And, an Order directing that the Vancouver City Police, RCMP and MCFD to investigate the allegations of the plaintiff and to provide protection needed and according to the Orders of this Honourable Court.
- (f) Costs.

[25] In a February 1, 2006 Motion, Ms. Bergeron requested the education, health records and any other information relating to the activities of the child. On February 1, 2006 an order was made that she could serve that motion and affidavit materials substitutionally by forwarding them to a facsimile number. In her February 15, 2006 Affidavit, Ms. Bergeron stated:

Further, is fact that the defendant continues to defame my character by misrepresenting the truth to ultimately mislead the Court. The defendant is not in a position to judge my mental status and in all honesty should reserve judgment until that day his own state of mind is revealed. I am requesting that the Court caution the defendant and that in the very near future, consider that Mr. Gillstrom be made to undergo an extensive psychiatric examination and I be at liberty to make an application to that effect.

[26] In an April 12, 2006 Motion, Ms. Bergeron sought an order that: "The Plaintiff seeks direction or is requesting the Court to entertain the idea for an Order that the child ... is restrained from attending the Sunshine Coast until there is a final Order in this 10-year matter."

[27] In an April 26, 2006 Motion, Ms. Bergeron sought clarification of the May 13, 2005 "Indigent" Order "... requesting that the Order be more defined", that she be granted "re-production" of the Oral Reasons for Judgment of Mr. Justice Warren made September 8, 2005, that she be at liberty to choose another reporting firm, other than the transcription firm of Reportex to reproduce the document, and that all documents including the notes of the Court clerk and the tape recordings of all proceedings "... not be destroyed until there is a final Order this Honourable Court". In an April 26, 2006 Order, photocopies were to be provided until the

final Order under Rule 18A had been made, that all documents and tape recordings not be destroyed until further Order of the Court.

- [28] In a May 8, 2006 Motion, Ms. Bergeron requested orders that the Guardianship or, alternatively, the Custody Order be varied, that she be awarded Guardianship and Custody, that Mr. Gillstrom be restrained from leaving the Jurisdiction of the Court, that the child not be taken out of the Lower Mainland, that Mr. Gillstrom provide "full disclosure" of his personal property and financial statements and that of the family assets, that the Court order a lien on all family assets until further disclosures have been tendered by the defendant, and that Mr. Gillstrom pay the fees of \$25.00 per hour attributed to the professional supervising of access visits.
- [29] In a June 5, 2006 Order, the request for sole Guardianship and sole Custody was adjourned generally, the request of Mr. Gillstrom that the child be restrained from leaving the Jurisdiction was dismissed, and that Mr. Gillstrom was to provide a sworn Property and Financial Statement by August 1, 2006, which would include financial statements for his company by way of audited or unaudited financial statements for the fiscal years 2003, 2004, and 2005. Burnyeat J. would remain seized of all further applications relating to the proceeding.
- [30] In a June 19 2006 Motion, Ms. Bergeron requested orders that Dr. Michael Elterman be reappointed for a s. 15 report, that Mr. Gillstrom "...must abide by Dr. Elterman's recommendations and if he is not prepared to do so, the custody Order shall be varied forthwith during the proceeding." On July 21, 2006 that application was dismissed and with costs of \$475.00 to be paid by Ms. Bergeron to Mr. Gillstrom.
- [31] In a March 21, 2007 Motion, Ms. Bergeron requested the following orders:
- "(a) A re-hearing of the issue of interim custody, guardianship and access of the child ..., pursuant to the original Order of the Honourable Mr. Justice Coultas made December 13, 1996 and in addition to the current standing Order of the Honourable Mr. Justice Warren made on September 23, 1999, with a reappearance on January 5, 2000 for further Orders, as well as to clarify the Oral Reasons for Judgment made on September 23, 1999. Pursuant to sections 9, 13, 17, 20, 24, 27, 30, 35, 36, 37, 58, 67 and 93 of the Family Relations Act.
- (b) A variation of the interim custody Order made September 23, 1999 where it reads: "THIS COURT FURTHER ORDERS that the defendant, Brian Curtis Gillstrom, shall have custody of the child...and that an Order be made for custody of the child to be awarded to the plaintiff pursuant to that section of the Family Relations Act.
- (c) And, a variation of the Order made January 5, 2000, with respect to that part which indicates both physical access and telephone access of the plaintiff to the above said child pursuant to that section of the Family Relations Act.

- (d) An Order that the defendant pay child maintenance and for the monthly amount to be determined by the Court and pursuant to that section of the Family Relations Act.
- (e) An Order that the defendant be restrained from directly or indirectly harassing, annoying, or threatening the plaintiff pursuant to that section of the Family Relations Act.
- (f) An Order that as part of the Formal Judgment of this Honourable Court, all Peace Officers, including that of any City Police Department and the Royal Canadian Mounted Police, shall forthwith apprehend the child..., and deliver the said child to the plaintiff, Brigitte Louise Bergeron pursuant to that section of the Family Relations Act.
- (g) An Order that for the purpose of locating and apprehending the child, the Peace Officers as mentioned above, may enter and search any place where he or she has reasonable and probable grounds for believing the said child may be pursuant to that part of the Family Relations Act.
- (h) An Order that all above Peace Officers who on reasonable and probable grounds believe that any party has breached this Order, shall forthwith arrest such person and bring him or her before this Court on the next Court day following the arrest to be dealt with on an inquiry to determine whether he or she has committed a breach of this Order or is in contempt of this Honourable Court pursuant to that part of the Family Relations Act.
- (i) An Order restraining and enjoining the defendant from disposing of, encumbering, assigning, or any similar manner dealing with the company Further, the defendant shall also be restrained as above in relation to any other assets accumulated since the separation of the said litigants in this matter. These Orders shall stay in effect until there is a disposition of the Plaintiff's interest by the Court, with respect to any and all assets as stated above and Pursuant to that section of the Family Relations Act.
- (j) Costs."

[32] In her March 12, 2007 Affidavit, Ms. Bergeron stated:

This matter before the Court carries much history that appears to be criminal in nature and involving not only the defendant and his family, but also officers of this Honourable Court. The misconducts of these apparent shameless criminals are appalling and involve innocent children, their potential future and what is the lifeblood of our sacred Courts.

[33] In this Affidavit, Ms. Bergeron refers to counsel as "criminals", deposes that "I believe I may have been drugged", alleges that her mail is being tampered with, states that her daughter was "stolen" from her, makes further allegations of sexual abuse, states that she does not work and is unemployed because of her obligations to her daughter and the Court. In paragraph 56 of her Affidavit, Ms. Bergeron states:

I do not fear these apparent spineless criminals and those of our Courts, who prey on the innocent, weak and defenceless, and who also attempted to make a mockery out of my Justice System. Instead, I know that day will come and we will all be before our God, whose name our

oath is sworn upon. It is my belief that assuredly, we will be held accountable for our thoughts, our actions or lack of, along with the statements sworn as our truths. I chose to do what I feel is right, no matter what are the consequences of their cheap threats and the ramifications of their joint efforts to bury me in this shameless game of deceit. With all due respect to this Honourable Court, I choose to no longer be a player in this game and request that their pawn ... [their daughter], be removed from the defendant's custody and returned in the custody of her loving mother with many supporting extended family members. I have taken this move into "check mate" standing solidly on this foundation as I know it. And, I rely heavily on all the prior pleadings already filed with this, Most Honourable Court.

- [34] On March 28, 2007, the March 21, 2007 application of Ms. Bergeron was dismissed with Burnyeat J. to remain seized of all further applications relating to the Action.
- [35] Contrary to earlier Court Orders, the child was taken by and was with Ms. Bergeron although this access was not supervised. It came as a result of Ms. Bergeron picking up the child, not telling Mr. Gillstrom where the child was located, the attendance of counsel for Mr. Gillstrom to obtain an ex parte Order on Sunday, April 29, 2007, and a subsequent apprehension of the child located at the residence of Ms. Bergeron.
- [36] In a May 1, 2007 Motion, Mr. Gillstrom requested an order that an enforcement clause be added to the December 13, 1996 and September 23, 1999 Orders. That order was made on May 7, 2007. As well, all access by Ms. Bergeron was terminated in that Order.
- [37] In response to the ex parte order that was made on April 29, 2007, Ms. Bergeron swore her May 4, 2007 Affidavit stating that she was "appalled" at the lack of interest expressed by the Vancouver City Police and the Vancouver and Richmond offices of the Ministry and: "Because of their lack of action, which I also believe to be criminal in nature, I have reported what I believe to be their criminal misconducts to the Honourable Minister, Tom Christensen, of the MCFD and others." As to why she had breached previous orders by taking unsupervised access of her child and had refused to advise the child's father where the child could be located, Ms. Bergeron stated that she was concerned that her relationship with her daughter was "controlled" and was being "monitored". Ms. Bergeron also stated the following at para. 19 of her Affidavit:

I have over the years kept my Media Representatives very informed with respect to this case, and I am satisfied that they will respect the sanctity and legal boundaries of this serious matter that requires the immediate redress and preservation of our Justice System. I have chosen to seek the assistance of the Media for many reasons, including the safety issue that surrounds my family, which I feel can be prevented through education and exposure. Especially, in this matter and what appears to be a large CONSPIRACY, and what is a perverted" and disgraceful case. (emphasis in the original)

- [38] In a June 21, 2007 Motion, Mr. Gillstrom requested orders that: (a) the Plaintiff be found in Contempt of the Order of the Honourable Mr. Justice Coultas made December 13, 1996 and of the Honourable Mr. Justice Warren made September 23, 1999; (b) that the Plaintiff be

committed to jail for a term of 40 days; (c) in the alternative, that the Plaintiff be fined in the amount of \$1,500.00; (d) in the further alternative, that the Plaintiff be committed to jail for a term of 40 days but that sentence be suspended on the terms that the Plaintiff keep the peace and be of good behaviour and strictly abide by the terms of all Orders made in this Action; (e) an Order that the Plaintiff pay to the Defendant the costs of this application, the costs of the application of May 4, 2007, and the costs of the application of April 29, 2007 all payable forthwith to the Plaintiff after assessment.

[39] In a July 27, 2007 Motion, Ms. Bergeron requested the following orders:

- (a) An Order to vary the interim custody, guardianship and access Order of the child ... with respect to the original Order of the Honourable Mr. Justice Coultas made December 13, 1996 and in addition to the current standing Order of the Honourable Mr. Justice Warren made on September 23, 1999, with a reappearance on January 5, 2000 for further Orders. A variation of the current standing interim Order made September 23, 1999 where it reads: "THIS COURT FURTHER ORDERS that the defendant, Brian Curtis Gillstrom, shall have custody of the child...and that an Order be made for custody of the child to be awarded to the plaintiff Pursuant to Rule 42(40) and/or those sections in the Family Relations Act and in the inherent jurisdiction of this Most Honourable Court.
- (b) An Order for a "Section 15 report" to be conducted on the child..., with respect to her views and wishes regarding custody and access. The expert and costs shall be determined before the Court. Pursuant to that section of the Family Relations Act and in the inherent jurisdiction of this Honourable Court.
- (c) An Order to set aside in "whole" the one (Order without notice) made on Sunday, April 29, 2007 by the Honourable Mr. Justice Burnyeat. Pursuant to Rule 42(40) and in the inherent jurisdiction of this Honourable Court.
- (d) An Order that the defendant pay child maintenance and for the monthly amount to be determined by the Court. Pursuant to that section of the Family Relations Act and in the inherent jurisdiction of this Honourable Court.
- (e) An Order that the defendant be restrained from directly or indirectly harassing, annoying, or threatening the plaintiff and the child.... Pursuant to that section of the Family Relations Act and in the inherent jurisdiction of this Honourable Court.
- (f) An Order that as part of the Formal Judgment of this Honourable Court, all Peace Officers, including that of any City Police Department and the Royal Canadian Mounted Police, shall forthwith apprehend the child..., and deliver the said child to the plaintiff Brigitte Louise Bergeron. Pursuant to that section of the Family Relations Act and in the inherent jurisdiction of this Honourable Court.

- (g) An Order that for the purpose of locating and apprehending the child, the Peace Officers as mentioned above, may enter and search any place where he or she has reasonable and probable grounds for believing the said child may be. Pursuant to that part of the Family Relations Act and in the inherent jurisdiction of this Honourable Court.
- (h) An Order that all above Peace Officers who on reasonable and probable grounds believe that any party has breached this Order, shall forthwith arrest such person and bring him or her before this Court on the next Court day following the arrest to be dealt with on an inquiry to determine whether he or she has committed a breach of this Order or is in contempt of this Honourable Court pursuant to that part of the Family Relations Act and in the inherent jurisdiction of this Honourable Court.
- (i) An Order restraining and enjoining the defendant from disposing of, encumbering, assigning, or any similar manner dealing with the company.... Further, the defendant shall also be restrained as above in relation to any other assets accumulated since the separation of the said litigants in this matter. These Orders shall stay in effect until there is a disposition of the Plaintiff's interest by the Court, with respect to any and all assets as stated above and Pursuant to that section of the Family Relations Act an in the inherent jurisdiction of this Honourable Court.
- (j) A finding of "contempt" on behalf of the defendant, Brian Curtis Gillstrom with respect to the Orders made June 5, 2006 by the Honourable Mr. Justice Burnyeat and the Orders made September 23, 1999 by the Honourable Mr. Justice Warren. The Court in its inherent jurisdiction to further make an Order for committal and fines with respect to the defendant. With potentially "many" others whom are also involved in this case and implicated in the conspiracy. Pursuant to Rule 56, 56(5) and in the inherent jurisdiction of this Honourable Court. The contemptuous and criminal misconducts On behalf of the defendant, Brian Curtis Gillstrom can be found in the affidavit of the Plaintiff sworn July 26, 2007 in paragraphs 17, 18 and 19.

[40] In support of her July 27, 2007 Motion, Ms. Bergeron in her July 9, 2007 Affidavit makes abusive statements under oath about the lawyers who had been involved in the matter, swears that someone had been impersonating her and "causing a public disturbance", and alleging that she had become ill as a result of opening mail from counsel for Mr. Gillstrom. She further stated that she had undertaken the unsupervised access of her daughter to "speed up the process". In paragraph 20 of her Affidavit, Ms. Bergeron states:

As stated in my affidavit sworn July 9, 2007, it appears-that there are many individuals that will assist them in their despicable plight. For example, to switch or alter documents at the Court Registry and in my home. These, while further attempting to either bribe, threaten, and intimidate me. Because their efforts have failed and I choose to do right by my daughter and what is my Justice System, they continue to paint an ugly picture of me to many others, and as they falsely represent themselves as "Brigitte Bergeron". And, very sadly I can confirm that my sister ... and ... [names a third party] are on a vicious campaign to further discredit me, within the realm

of my own extended family members as well as others. I am at a loss for words and my heart is absolutely broken by the division of my family. However, my faith in God tells me that I must find forgiveness within this broken heart for my baby sister, and with a sense of great hesitance, I must also eventually forgive the one that have committed these crimes against me and mine. This of course cannot be completed until all the players of this disgusting conspiracy have been accounted for, charged and convicted for such manifested, corpulent and scandalous crime.

- [41] On August 2, 2007, the applications of Mr. Gillstrom and Mrs. Bergeron were adjourned for two full days of hearing on December 17 and 18, 2007. It was also ordered that Ms. Bergeron was in a position to forward letters to the child by sending those letters care of counsel for Mr. Gillstrom on the basis that counsel was not "... in any way obliged to forward any of those letters to the infant, and ... [he] is to review that correspondence to ensure that it does not attempt to influence the infant concerning where she should live.
- [42] In an October 31, 2007 Motion filed December 14, 2007, Ms. Bergeron requested the following orders:
- (a) An Order compelling the defendant's counsel ... and his wife ... to provide for the Court and the Plaintiff, handwritten samples and signatures as indicated in paragraphs 24 and 29 in the affidavit of the Plaintiff's, sworn October 31, 2007. Pursuant to those sections in the Family Relations Act and in the inherent jurisdiction of this Most Honourable Court. (Emphasis in original).
 - (b) An Order directing an independent inquiry and/or an investigation by the Court and others, (relating to the contemptuous and criminal misconducts of potentially "many" individuals who may be involved in the conspiracies of the said criminal actions and as indicated in the Plaintiff's affidavit sworn on October 31, 2007, in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 30, 31, and 32). Pursuant to Rule 56 and those sections of the Family Relations Act and in the inherent jurisdiction of this Honourable Court.
 - (c) A finding of "contempt" on behalf of the defendant, Brian Curtis Gillstrom and his solicitor ... and many other individuals who are involved in the conspiracy. The Court to further make an Order for committal and fines with respect to the defendant and his solicitor, with potentially "many" others whom are also involved in this case and implicated in the conspiracy. Pursuant to Rule 56 and in the inherent jurisdiction of this Honourable Court.
- [43] This motion came about as it was the theory of Ms. Bergeron that counsel for Mr. Gillstrom had forwarded documents to Ms. Bergeron that contained a deleterious and potentially dangerous substance. In her October 31, 2007 Affidavit, Ms. Bergeron also stated:

Some other deceitful and shameless games played by lawyers and the many others included in this matter would be intimidation tactics, extortion, bribery, many threats of shootings, poisonings and abductions, harassments, false representations and/or impersonations, forgery, fraud and the alteration of very important Court documents.

- [44] The July 26, 2007 and October 31, 2007 applications of Ms. Bergeron were dismissed. The requirement that Ms. Bergeron be provided with two weeks' notice before Mr. Gillstrom was in a position to remove the child from the Jurisdiction was deleted from the September 23, 1999 Order. It was also ordered that Ms. Bergeron was to pay the costs to Mr. Gillstrom totalling \$775.00, payable at \$300.00 per month on the month immediately following the month in which Ms. Bergeron completed the payment of the costs ordered to be paid by her to Mr. Gillstrom in the December 17, 2007 Order. There was also a finding that Ms. Bergeron was in contempt of Court.
- [45] In a February 1, 2008 Motion, Ms. Bergeron sought a number of orders including:
- (a) An Order to partially set aside, vary and/or amend the Orders made on December 17 and 18, 2007, by the Honourable Mr. Justice Burnyeat. In where the Order indicates the commencement of the Plaintiff's payments of costs to the defendant ... must be made by "February 1, 2008".
 - (b) An Order for telephone access or to partially set aside, vary and/or amend the Order made on April 29, 2007, by the Honourable Mr. Justice Burnyeat with respect to the daily telephone access of the Plaintiff's and the child Furthermore, the Order will include that telephone access will allow for the Plaintiff to make the calls nightly to the child at her home number, between the time of 8:30 and 9:00 pm or on a cellular phone number to be provided within 3 days of this Order being delivered on the defendant and/or his counsel.
 - (c) An Order directing the Registry staff to prepare the form of Orders of this application before this most Honourable Court.
- [46] By a February 6, 2008 Order, the February 1, 2008 application of Ms. Bergeron was adjourned generally, transcripts of the Reasons for Judgment were ordered to be provided to Ms. Bergeron and Mr. Gillstrom at no cost, Ms. Bergeron was to deliver a copy of the transcript to a member of the Vancouver Police Department, and Ms. Bergeron was not at liberty to communicate with the counsel for Mr. Gillstrom "... in any way until Constable Riddall has received the aforesaid transcript, such communications to be limited to the delivery of Court documents."
- [47] In a February 27, 2008 Motion, Mr. Gillstrom requested orders that Ms. Bergeron be fined for contempt for wilfully disobeying the September 17, 2007 Order which required her to make payments relating to the costs of Mr. Gillstrom, that Ms. Bergeron be punished for the contempt that was found on September 17, 2007 (the determination of the punishment of which was suspended) and that the punishment be imposed for the contempt of court so that Ms. Bergeron be committed to jail for a period of one year, rescinding orders made

granting Ms. Bergeron indigent status, and that a number of paragraphs in her Statement of Claim be dismissed for want of prosecution.

- [48] In a February 28, 2008 Motion, Ms. Bergeron requested an order that counsel for Mr. Gillstrom "and/or any future legal counsel that will be acting on the defendant's behalf, to be made to follow the provisions of service of Court documents on the Plaintiff, as set out in the Order Reasons ... on February 6, 2008." On March 3, 2008, the applications of Ms. Bergeron were dismissed with costs to Mr. Gillstrom of \$300.00.
- [49] In her February 18, 2009 Motion, Ms. Bergeron requested the following Orders:
- (a) That the child ... who is almost 16 years of age, be brought before the Court to express her wishes, with respect to which parent shall have custody and where she would like to reside. In the event that the child ... chooses to reside with her mother, the Plaintiff will be seeking an Order for interim custody, guardianship and maintenance of the child
 - (b) The Plaintiff shall have specified and reasonable access to the child,...
 - (c) Mr. LeDressay and the Vancouver Police Department, provide for the Court and the Plaintiff any and all information and documentation relating to the supposed harassment of Mr. LeDressay.
 - (d) The Plaintiff shall be at liberty to seek and retain a lawyer outside the jurisdiction of British Columbia. The Order will include that the Law Society of BC would have no jurisdiction in the matter and would be restrained from enforcing any and all of its normal procedures, relating to a potential lawyer secured by the plaintiff. Or alternatively, the Court shall appoint a lawyer by name and/or remove Mr. LeDressay and his law firm, as the defendant's counsel in this matter, due to conflicting and inappropriate conduct.
 - (e) To vary the Orders made by the Honourable Mr. Justice Burnyeat on December 17 and 18, 2007, with respect to costs owed to the Defendant, by the Plaintiff.
- [50] Through the Court Registry, Ms. Bergeron was advised that the Court would not hear that application as the application raised a number of matters which had been before the Court on a number of occasions and there was no indication that the new materials set out a material change in circumstances. As well, it was noted that some of the orders sought by Ms. Bergeron were outside the jurisdiction of the Court. At the same time, Ms. Bergeron was advised that she remained in contempt of an earlier Court Order made.
- [51] In a July 27, 2009 "Request to Appear Back Before a Specific Judge", Ms. Bergeron requested orders as follows: (a) to vary the Order with respect to custody, guardianship and access of the child ... [their daughter] ...; (b) for the Defendant to divulge the whereabouts and/or produce the child for an appearance before the Court; (c) in the event that the defendant refuses to abide by the specified Orders of this Honourable Court, that he (Brian Curtis Gillstrom) be found in Contempt and be punished by way of incarceration and monetary fines to be paid to the Plaintiff (Amounts to be determined by the Court); (d) an enforcement

Order, directing the RCMP to investigate the whereabouts of ... [their daughter] and to deliver up the child to her mother in the Province of British Columbia in the event that she is located; (e) Order of Endorsement for any Court jurisdiction at which place the child is located; (f) that the Defendant pays for any and all future and prior legal fees of the Plaintiff. ; (g) that the Defendant be restrained from disposing of, encumbering, assigning, or in any similar manner dealing with the family assets; (h) Plaintiff is awarded full control of the above family assets and the companies known as "Paramount Limousine Services Ltd. and Corporate Livery Services".

[52] That application was heard on August 27, 2009, but was adjourned generally pending this application by Mr. Gillstrom that there should be a declaration that Ms. Bergeron is a vexatious litigant.

[53] In opposition to this application, Ms. Bergeron in her October 19, 2009 Affidavit states:

Mr. LeDressay made an error in the Notice of Motion that was served on me, by referring to the Affidavit as being sworn on June 14, 1997. Or perhaps it was just another ploy to mislead the Court. As already mentioned in prior ... Affidavits, in that particular Affidavit the defendant exhibits an ICBC document [of the wife of counsel]. After careful review, comparing the signatures and investigating the authenticity of the ICBC document, I am satisfied and confident that this document is just one of many examples of fraud and perjury, committed on behalf of the defendant and his questionable lawyers in this matter. Given their history over the last thirteen and a half years and the "illegitimate" documentation that they have exhibited in prior Affidavits, with numerous statements and acts of fraud and perjury, it would be foolish to take their intentions at face value or to simply "roll with the punches".

...

I welcome this desperate application against me and look forward to their lame excuses for delaying my application, which is pending before Your Lordship and furthermore, their excuses for wasting the Court's and my time. I am hoping that I am given another opportunity to perforate and dispel what the defendant and Mr. LeDressay put forward as being the truth. They have alleged for many years now that I suffer from mental instabilities. Furthermore, blaming that I have wasted the Court's time and the taxpayers' dollars, while painting me with the ugly brush as being the troublemaker in this matter with malicious, vexatious and selfish intentions when seeking justice for ... [their daughter] and the rest of my family members. They are "part and parcel" to the questionable conducts in this case that is filled with injustices of a very serious criminal nature and of sheer greed, while all along obstructing with the natural course of justice.

The defendant's criminal misconducts in this matter are certainly worthy of scrutiny and serious punishment. But in my opinion, the misconduct of Mr. LeDressay as an officer of our Courts are most definitely worthy of equal punishment and scrutiny. Mr. LeDressay obviously continues to partake in the aiding and abetting of his client's criminal behaviours and who is a childhood and long-time friend of the defendant's. Not to mention of course, the fact that Mr. LeDressay is the defendant's corporate lawyer relating to our businesses and other family assets that are still in

dispute. Although Mr. LeDressay's true and preferred legal practice is corporate law, he has evidently extended his practice to include family law and even perhaps criminal law to a degree, according to his position in this family matter, which raises many questions and begs for further investigation.

...

Because of this case and its criminal activity that surrounds us, I have had to bring our safety concerns to the attention of the RCMP, with respect to the breaking and entering of our home and the fact that my mail has been tampered with, among other concerns. As reported, important government and police letters etc. were being opened in my mailbox. I told my landlady, ... that I reported these concerns to the RCMP, that I changed my locks and needed to redirect my mail to a P.O. box address and would be obliged to give her the RCMP file numbers. Because of the security breaches and the fact that my landlady was not taking my concerns seriously and was behaving rather strangely, I was left with no other option other than bringing her before the Residential Tenancy Board.

DISCUSSION AND CASE AUTHORITIES

- [54] Since 1996, Ms. Bergeron has been before the Court and 14 judges of the Court and 4 Masters of the Court regarding various matters. These applications include applications on August 18, 1999, July 31, 2002, January 11, 2006, May 8, 2006, March 21, 2007 and July 27, 2007 that either she have sole custody or that the parties have joint custody of their daughter. The applications of Ms. Bergeron on May 13, 2005, May 24, 2005, January 11, 2006, July 27, 2007 and October 31, 2007 were that Mr. Gillstrom be held in contempt of Court. The January 11, 2006 and October 31, 2007 applications of Ms. Bergeron also include requests that Mr. Gillstrom and others be investigated. Ms. Bergeron was also found in contempt of court on September 17, 2007 relating to the December 13, 1996 and September 23, 1999 Orders of Court that access to her daughter be supervised.
- [55] Ms. Bergeron has continuously made outrageous and unfounded allegations against Mr. Gillstrom, against his counsel and against the wife of the counsel for Mr. Gillstrom. The unwarranted, baseless and defamatory statements made against counsel for Mr. Gillstrom include the suggestion that mail from counsel was somehow poisoning her, that he was guilty of "criminal behaviour", that he was guilty of "fraud and perjury", that he was guilty of "aiding and abetting of his client's criminal behaviours ...", that he and his client were guilty of "deceitful and shameless games" including "intimidation tactics, extortion, bribery, many threats of shootings, poisonings and abductions, harassments, false representations and/or impersonations, forgery, fraud and the alteration of very important Court documents". There is absolutely no evidence before me which would allow me to conclude that the allegations of Ms. Bergeron are anything other than delusional.

[56] Mr. Justice Henry of the Ontario High Court of Justice set out the following principles relating to vexatious proceedings and vexatious litigants in *Re Lang Michener et al v. Fabien et al.* (1987), 59 O.R. (2d) 353 as follows:

- a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[57] Those principles were adopted with approval by Fisher J. in *D.K.H. v. M.M.H.*, [2005] B.C.J. No. 1490.

[58] In reviewing what has occurred here over 13 years, it is clear that there have been endless applications made by Ms. Bergeron to have the Court reconsider a decision made early on that Mr. Gillstrom would have sole custody of their child, that any access to the child by her be supervised, and that Ms. Bergeron was not capable of exercising judgment and common sense in matters affecting her daughter so that she continued to present a risk to the child. Ms. Bergeron has never accepted that result. Despite the refusal of the Court to order either joint custody or sole custody, Ms. Bergeron has brought motion after motion requesting that relief as the child has grown from a 3-year-old to a 16-year-old. It should be plain and obvious to Ms. Bergeron that her application for custody cannot succeed. It should be equally apparent that her child is now old enough to make her own decisions and that moving to be with her mother is not a decision she is prepared to make.

- [59] I am satisfied that there is a vexatious, harassment and oppressive motive for the applications of Ms. Bergeron. I agree with the assessment of Coultas J. that: "... Ms. Bergeron is not capable of exercising judgment in matters affecting her daughter." A number of applications for custody and the regularity of those applications allows me to conclude that the applications are being brought for purposes of harassment and not out of a genuine belief that it would be appropriate for the Court to re-visit and reverse earlier decisions. Ms. Bergeron has also combined her applications with delusional and unsubstantiated allegations about counsel for Mr. Gillstrom and the wife of counsel.
- [60] Despite a number of orders for costs being made against Ms. Bergeron, those costs have not been paid in full. Despite findings that Ms. Bergeron was in contempt of court, that contempt has not been purged. While no appeals have been taken from various decisions of this Court, what amounts to appeals from judicial decisions have been consistently brought by Ms. Bergeron by repetitious applications for relief previously not granted. It is obvious that Ms. Bergeron is not prepared to accept the view of the Court that the welfare and safety of the child is best met by Mr. Gillstrom having custody of the child and that her access to the child be supervised. I adopt the statement made by Coultas J. that the belief that her daughter has been subject to sexual abuse is: "... in defiance of reason and good sense" I have no hesitation in concluding that Ms. Bergeron is a person who has habitually, persistently and without reasonable grounds instituted vexatious proceedings such that an order should be made pursuant to s. 18 of the Supreme Court Act. In all of the circumstances, I order that no further application in this or any other proceedings may be instituted by Ms. Bergeron without leave of the Court prior to her proceeding with any further application.
- [61] In *Kaiser (Re)* (2008), 41 C.B.R. (5th) 200 (B.C.S.C.), Chamberlist J. concluded that an order that someone was a vexatious litigant should not apply to unrelated legal proceedings that were commenced prior to such an order being made: "I have not found any authority for the proposition that a vexatious litigant order may apply retroactively to motions or actions already filed in Court, in the absence of express terms in the order." (at para. 20).
- [62] Accordingly, the order that I make applies not only to future applications by Ms. Bergeron in this or other proceedings, but also to her application dated August 18, 2009 which was adjourned generally on August 27, 2009.

"G.D. Burnyeat J."

The Honourable Mr. Justice G.D. Burnyeat

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