
CANADA / JUDGMENT

Buckman v. Wyckham

2020 BCSC 2076

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2020 BCSC 2076 Buckman v. Wyckham

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Buckman v. Wyckham,

2020 BCSC 2076

Date: 20201222

Docket: E191811

Registry: Vancouver

Between:

Andrea Holly Buckman

Claimant

And

Christopher Mark Wyckham

Respondent

Before: The Honourable Mr. Justice Kent

Oral Reasons for Judgment

Counsel for Claimant:

Kristen E. Courtney

Counsel for Respondent:

Chris Carta

Place and Date of Hearing:

Vancouver, B.C.

December 17 & 21, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 22, 2020

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I. introduction

- [1] This family law application requires the court to interpret certain COVID-19 Public Health Orders (the "PHOs") and apply them to former spouses who, since separation, have co-parented their children on an equal-time basis. The father has a new partner in his life. The mother believes that the time the father spends with his new partner breaches the rules of social engagement established by the COVID-19 PHOs and thus poses an intolerable risk to the health of the children. She has withheld the children from the regular parenting time with their father, pending a determination of the matter by the court.
- [2] Both parents have filed competing applications.
- [3] Among other things, the father applies under section 61 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], for:
1. A declaration that the mother has wrongfully denied and continues to wrongfully deny parenting time to the father; and,
 2. An order that he have compensatory parenting time equal to the amount missed on account of that denial.
- [4] For her part, the mother applies for a variety of orders including, among other things,
1. an order determining whether the father qualifies as "an occupant who lives on their own" and his new partner qualifies as an "occupant" of his condominium within the meaning of the PHOs, and whether the father has breached that order;
 2. an order varying the Final Order granted in this action by Justice Betton on December 3, 2020 and entered the following day, which purportedly resolved all of the issues in the family law litigation between the parties; and
 3. An order restraining the father from introducing his children to either his new partner or "the concept of polyamory" generally until the parties have followed the dispute resolution mechanisms agreed upon in their mediated settlement and as embodied in the Final Order or, failing such resolution, as the court has determined the matter.

II. background facts

- [5] The parties started living together in approximately June 2008 and were formally married on September 2, 2011. They separated on February 22, 2019 and will be formally divorced on January 3, 2021, being 31 days following the date of the Final Order. That order was the product of a mediation in September 2020 which purported to resolve all of the issues between the parties.
- [6] The parties have two children, a four-year-old daughter and a six-year-old son. The parents are well-educated; the mother is a biologist who works for an environmental consulting company and the father is an engineer who works for a municipality.

- [7] The Final Order comprises some 75 additional paragraphs following those granting the divorce. Among other things it provides that:
1. Both parties will share joint custody of the children pursuant to the Divorce Act and will share all the parental responsibilities set out in section 41 of the FLA;
 2. They will discuss any significant decisions that have to be made concerning the children;
 3. They will start co-parenting counselling with a specified counsellor on a bi-weekly basis for a minimum of four months, and if such counselling is not thereafter continued they will appoint a parenting coordinator for a minimum period of one year;
 4. If they are unable to agree on any important decision affecting the children, they will work to resolve that disagreement with the assistance of the co-- parenting counsellor or the parenting coordinator, as the case may be, and otherwise they may apply under section 49 of the FLA for directions to resolve same;
 5. They will put the best interests of the children before their own interests;
 6. The parenting time of the children will continue to be equally shared on a 2-2-3 schedule, which will be subject to review from time to time to ensure that it continues to be the best schedule for the children having regard to their ages and the parents' work schedules; and
 7. They will return to mediation with Lisa Hamilton, Q.C., before applying to court to resolve any disputes.
- [8] The parties have each filed two affidavits and there is some dispute regarding their state of knowledge and the precise chronology of events leading to this court application.
- [9] Following separation, the father has become an adherent of polyamory which he describes as "a belief that all genders are equal and that loving, negotiated, individualized, consensual, and egalitarian relationships can include more than the Judeo-Christian 'normality' of a monogamous heterosexual couple." His new partner and her husband evidently subscribe to the same belief, inasmuch as she spends time with and has sexual relations with both men, a situation which has caused some distress for the mother insofar as the introduction to the children of both the concept of polyamory and the father's new partner is concerned. This distress has been heightened by the COVID-19 pandemic and, most recently, the issuance of several PHOs in the province significantly restraining social engagement.
- [10] In his affidavits, the father says he began dating his new partner in November 2019 after he had met her and her husband through a local polyamory support group. He says the relationship developed quickly and that the two of them consider themselves to be in a long-term, deeply loving, committed relationship, one that they plan to pursue for a long time. He says that they consider their partnership to be as strong and as important to them as any monogamous relationship would be, although they are both free to date others if they wish. However he swears none of the three people involved (he, his new partner and her husband) are dating anyone else at this time and they "do not plan to do so during the health

restrictions currently imposed due to the COVID pandemic."

- [11] The father says the mother became aware of his new partner in March 2020 and that, indeed, the mother has since sent countless emails and other electronic messages generally disparaging his new partner "in the rudest possible terms." He says he gave his new partner a key and a fob to his apartment in mid-July 2020 and the following month approached a neighbour about renting one of his parking spots for her. His new partner's husband is becoming a full-time student at Leeds University in the United Kingdom and will be moving there for two years sometime in the New Year depending on the COVID-19 situation. His new partner will be staying in BC while her husband is in the UK and she and the father have been actively looking at real estate since late September with the intention of buying a home together next year.
- [12] The father's evidence is somewhat vague regarding the precise amount of time that his new partner has spent and is spending with him in his apartment. She has not yet been introduced to the children and she does not stay there when the children are with their father. One sentence in his first affidavit, which was deleted by an initialled drawn line, stated that the new partner "had been staying here on almost every night that I did not have the children since about the spring of 2020." I infer from this deletion that the new partner spends a majority of her time each month at her husband's home in Vancouver, although I also find that she frequently stays in the father's apartment in Squamish and for some time has kept clothes, toiletries, art supplies, and cookware there.
- [13] Neither the new partner nor her husband have provided any affidavit evidence detailing the particulars of their social distancing practices or any in-person contact with other people (polyamorous or otherwise).
- [14] The husband says, quite accurately, that the information published on the Provincial Health Officer's website is "not clear" on how the PHO restrictions apply to a co-parent whose children only live with that parent 50% of the time. Both he and his new partner interpret the orders and the website information to mean that a person in his co-parenting situation is permitted to include his new partner in his "core bubble" and that they are not violating any health orders by continuing to have in-person contact with each other. He emphasises that he works from home and does not see any friends other than for an occasional walk outside, and that he has virtually no in-person interaction with adults other than his new partner.
- [15] For her part, the mother in her affidavits acknowledges that she has concerns about the impact on the children of a polyamorous lifestyle, particularly if the father is engaging or will engage in multiple romantic relationships simultaneously. She says it is only in the course of this most recent dispute that the father told her he was not actively dating anyone other than his new partner and that neither the latter nor her husband are dating anyone else. The mother says she has no idea if this has always been the case or is just the current state of affairs. She was not previously informed of any plans to move in together.

- [16] The mother says the father has always tried to paint her as a "crazy scorned woman with control issues." She denies this is the case, although she acknowledges that she objects to the father having in-person, in-home visits with his new partner because they are contrary to the PHOs and they introduce an unreasonable risk of COVID-19 infection to both the children as well as herself. She also acknowledges she has withheld the children from parenting time with their father because of this health risk.
- [17] The affidavit materials make occasional reference to the mother also having a new partner. She provided no meaningful details respecting any in-person interactions with this individual.

III. the public health orders

- [18] On March 17, 2020, Dr. Bonnie Henry, the chief Provincial Health Officer, declared "a public health emergency" under the Public Health Act, S.B.C. 2008, c. 28 [PHA]. The declaration of a public health emergency unlocks a range of emergency powers under the PHA including the ability to make oral orders that have immediate effect as well as written orders. Persons who fail to comply with the PHOs commit an offence and are subject to prosecution and penalties that include substantial fines.
- [19] In response to an alarming exponential increase in the number of COVID-19 infections and related deaths this fall, a series of PHOs have been made since November 7, 2020 restricting social engagement between British Columbia residents. These orders are posted on the website maintained by the Provincial Health Officer. They have been and continue to be regularly amended, repealed, and replaced. The messaging accompanying these orders, and indeed the language of the orders themselves, is fraught with inconsistency and ambiguity and it is not surprising that reasonable people can reasonably disagree about their interpretation and application in any given circumstance.
- [20] Such confusion was graphically demonstrated this past weekend when the premier of British Columbia himself, relying on advice provided by his Minister of health, announced his intention of spending Christmas Day at home with his wife, his son, and his daughter-in-law, and was obliged to change his plans when it was pointed out to him that such a gathering was actually a breach of one or more of the PHOs currently in force.
- [21] In this particular case the parties have been and still are subject to half a dozen oral or written orders issued in November and December, 2020.
- [22] The November 13 PHO entitled "COVID-19 Prevention Regional Measures" addressed (a) private residences and vacation accommodation, (b) weddings and funerals, (c) group indoor fitness activity, (d) indoor sport, (e) travel related to sport, and (f) workplace safety. The order contained three definitions or defined terms. It stated, in part:
1. No person may have present at a private residence or vacation accommodation, either inside or outside, a person who does not reside with them;

2. No person may be present at another person's private residence or vacation accommodation, either inside or outside; and
3. Despite sections 1 and 2, a person who lives on their own (hereinafter referred to as the "resident") may have up to two other persons present at the private residence or vacation accommodation, if the other persons are individuals with whom the resident regularly interacts. If the other two persons regularly interact with one another, as well as with the resident, they may be present in residence at the same time.

[23] The December 9 and 15, 2020 orders are the most relevant to this application and are entitled "Gatherings and Events." They are divided into different sections labelled A to H. They first set out some 22 defined terms, several of which are in issue in this dispute including:

1. "Event" refers to an in-person gathering of people in any place whether private or public, inside or outside, organized or not, on a one-time, regular or irregular basis, including. . . [Various examples provided] . . . but does not include a gathering or event which is permitted under, and in compliance with another order;
2. "Occupant" means an individual who occupies vacation accommodation or resides in a private residence;
3. "A place" includes areas both inside and outside, an area open to the public and an area not open to the public, . . . [a] private residence, vacation accommodation . . . ; and
4. "Vacation accommodation" means a house . . . apartment, condominium . . . or any other type of living accommodation . . . that is not the occupant's primary residence.

[24] These orders are structured by way of generally imposing blanket prohibitions and thereafter setting out exceptions. Section 9 of the recitals also exempts its application to many activities including such things as going to work, attending school, shopping, accessing health services, and so on.

[25] Section B of the orders addresses "Events" which, it will be recalled from the above definitions, basically means 'a gathering of two or more people anywhere'. Section B should arguably and logically have been the first section of the order because it is the broadest in terms of restrictions. It provides, in part:

1. No person may permit a place to be used for an event except as provided for in this order;
2. No person may organize or host an event . . . ; and
3. No person may be present at an event . . .

[26] If one inserts the definition of "event" in this equation, these provisions basically forbid any 'gathering of two or more people anywhere' unless, of course, such a gathering is otherwise expressly permitted or exempted. The word "gathering" is not defined but in plain English would seem to apply to almost every in-person social interaction whether it be two or more

people living in a home, eating in a restaurant, or going for a walk together. Despite its obvious potential application to parents with children, these orders provide very limited express direction for family units and parenting regimes in all their various forms.

- [27] Section A addresses "private residences and vacation accommodation." "Private residence" is not a defined term (beyond stating that it includes both inside and outside areas) and thus introduces possible ambiguities where a person may use two or more residences from time to time. However, the concept of "primary residence" appears in the definition of "vacation accommodation" and hence this definition captures all residences other than the home where an individual lives most of the time.
- [28] The operative prohibitions and exceptions in Section A of the December 15 order are as follows:
1. No person may host an event at a private residence or vacation accommodation where there is a person present who is not an occupant, except as provided for in sections 2, 5, 6 and 7;
 2. A person who is not an occupant may be present at a private residence or vacation accommodation [For any] purpose that is not social in nature;
 3. No person who is not an occupant may be present at a private residence or vacation accommodation except as provided for in sections 2, 5, 6 and 7;
 4. No occupant may be present at an event in a private residence or vacation accommodation if there is any person present who is not an occupant, except as provided for in sections 2, 5, 6 and 7;
 5. Despite sections 1, 3 and 4, an occupant who lives on their own may have up to two other persons who are not occupants present at the occupant's private residence or vacation accommodation for a social purpose, if the other persons are individuals with whom the occupant regularly interacts;
 6. Despite sections 1, 3 and 4, if the two persons referred to in section 5 regularly interact with one another, as well as with the occupant, they may be present for social purposes at the same time in the private residence or vacation accommodation of the occupant; and
 7. Despite sections 1, 3 and 4, a person who lives on their own may be present for social purposes at one private residence or vacation accommodation with more than one occupant, if the person regularly interacts with the occupants of the private residence or vacation accommodation.

[29] The order does not define the concept of "living on their own" or "regular interaction." One of the issues in dispute in this case is whether a parent who has two small children qualifies as a person "living on their own," whether generally or for the time he/she is not parenting the children, and hence is entitled to socialize with two other people with whom he/she "regularly interacts." Another issue is whether another person can move into that parent's household during the term of the order and hence become an "occupant" of that home.

IV. the government website information

[30] Various pages on the BC Government's website provide information to the public regarding the PHOs. On the page related to the Office of the Provincial Health Officer, one can find all of the currently in-force orders and also access earlier orders on the "archived orders" section of the webpage. Another page entitled "Province-wide Restrictions" not only provides access (links) to the PHOs but also purports to provide "plain English" explanations and examples of their application. Sections titled "Social gatherings" and "Christmas and holiday celebrations" currently state as follows:

Social gatherings

No social gatherings of any size at your residence with anyone other than your household or core bubble. For example:

- do not invite friends or extended family to your household;
- do not host gathering outdoors;
- do not gather in your backyard; and
- do not have play dates for children.

Core Bubble

For most people, their core bubble is their immediate household. An immediate household is a group of people who live in the same dwelling. For example:

- if you have a rental suite in your home, the suite is a separate household; and
- If you live in an apartment or house with roommates, you are all members of the same household.

For others, including people who live alone, their core bubble may also contain a partner, relative, friend or co-parent who lives in a different household. This should be a maximum of two people outside of those living in your immediate household.

Co-parenting

For those who parent from separate households or rely on a family member or close friends for support with things like picking up children after school or delivering essential items like mail, medication or groceries, these activities can continue.

People who live alone

For people who live alone, a core bubble is a maximum of two people you see regularly.

Allowed activities

These activities are not considered a social gathering:

1. Going for a walk. You must make sure a walk does not turn into a group of people meeting outside;
2. Parents carpooling kids to and from school;
3. Grandparents providing childcare; and
4. Public pools and public skating rinks, when not associated with an event, are allowed to continue to operate with a COVID-19 safety plan.

Christmas and holiday celebrations

All December celebrations will look different this year. Celebrate with your immediate household or core bubble. Single people may host their core bubble in their home or go to the homes of people in their core bubble.

- You must not host gatherings with people outside of your core bubble or household
- Do not look for loopholes or excuses to gather
- Consider hosting virtual parties and religious services
- Unwrap gifts over Zoom or Skype

[31] The current dispute was triggered by the PHO issued November 7, 2020 which in turn led to a lengthy email chain between the mother and the father. The latter stated at that time that he "considered his new partner to be part of his household." The mother replied:

she has a husband who she lives with. I am not okay with that exposure. He comes with his own risks. So does she!!!! Both of them have more than "household" contacts. That isn't okay for the kids or me And she is not part of your household. A household are the people you live with. They don't live with others

- [32] The parties' positions essentially remain the same, although the father's tactics changed from time to time. He has tried to convince the mother that a balance must be struck between restrictions on his lifestyle and the reduction of COVID-19 risks. He stated that the risk of his continued contact with his new partner is very low given that all involved took their COVID-19 responsibilities very seriously and have ceased all other in-person social interactions. The mother was not convinced then and she remains unconvinced now.
- [33] I will not review here all the communications that occurred directly between the parties, their respective lawyers, or with the counsellor with whom the parties consulted. At one point in mid-November the father seemed to concede "it is now clear that only people with whom one resides are allowed in the home" and that his new partner would not be coming back to visit him "until permitted to do so in accordance with future PHOs and directives." However, on December 4, 2020 the father changed his position and he sent a lengthy email to the mother in that regard. Among other things, he quoted some of the statements found on the government website and more particularly referred to above and stated that his new partner was part of his "core bubble" with whom he was permitted to have interaction.
- [34] A debate ensued regarding whether the mother and father were properly characterized as "people who live alone" in light of the fact that they also lived with their children. The father then again changed tack, advising that he and his new partner "have decided that she will simply move in and be an occupant," acknowledging that the mother had "forced his hand" on the timing of "introducing [the new partner] to the kids" and adding that he "would be telling them about her as soon as possible." Later the same day the father advised the mother "It's already happened. I've informed the landlord, she's talked to [her husband]. It's done. And it's real. She is an occupant of this residence."
- [35] As a result of these communications the mother refused to turn the children over to the father for parenting time on December 7, 2020. As consultation with the counsellor failed to produce a resolution, these court applications have ensued.

V. Analysis and determinations

- [36] It is not necessary for me to decide every single interpretation issue raised by the parties. I will, however, resolve certain questions for the purposes of present and future guidance on the parenting issues in the circumstances of this particular case.
1. Is the father's new partner an "occupant" of his apartment?
- [37] I start with the difference between a "private residence" and "vacation accommodation." The word "vacation" generally implies the use of accommodation while away on holiday or for recreational purposes. However, the definition expressly defines the category as "any other type of living accommodation that is not the occupant's primary residence."

- [38] The evidence before me establishes that the father's apartment is his "primary residence" and that is very probably also the case with the premises where the mother makes her home. As well, I find on the evidence before me on this application that the father's new partner spends more than 50% of her time at the home she shares with her husband in Vancouver and hence this latter property is her "primary residence." The children are "occupants" of both parents' respective residences. These findings, however, are not the end of the matter. The status of the father's new partner remains to be determined.
- [39] It is clear that the father's new partner has spent and continues to spend a reasonably significant amount of her time at the father's apartment. There appears to be a genuine and long-term relationship between the two and not just a series of casual encounters. She has a key and a fob and thus has ready access. She either already has or will shortly have a parking spot. She keeps personal belongings there including clothes, toiletries, and cookware. In short, she is living in the father's apartment when she is not living at her home in Vancouver. For her, the father's apartment is "living accommodation" which is not her "primary residence" that she regularly "occupies." In these unique circumstances, while she has a "private residence" in Vancouver, the new partner is also "an individual who occupies vacation accommodation" when she spends time with the father in Squamish and she is thus an "occupant" of his apartment for the purposes of the PHOs.
- [40] It follows from these findings that:
1. The father is not breaching sections A(1) or B(1) of the December 15 PHO; and
 2. The new partner is not breaching section A(3) and B(3) of the December 15 PHO when that partner is spending time at the Squamish apartment.
- [41] To the extent the mother relied upon such breaches, without more, as the basis for denying the father's parenting time with their children, she was in error, although given the ambiguities which riddle the PHO regime, one is not inclined to judge her harshly.
- [42] I might also add that, as the saying goes, what is "sauce for the gander is also sauce for the goose:" should the mother either now or in the future be in a similar long-term relationship with a new partner, the father cannot object to a similar outcome in her favour should the same PHO regime be in place.
2. The co-parenting regime, COVID-19 and the impact of new partners
- [43] One of the key points raised by the father on this application was that any breach of the PHO regime did not necessarily or automatically mean there existed a risk of harm to the children significant enough to justify denial of parenting time for the father. He argued that any harm flowing from the alleged breach must outweigh the harm caused by the absence of such valuable parenting time. He also argued that, in any event, the mother has not established any risk of harm to the children arising from the presence of the father's new partner in either his life or that of the children.

- [44] Both parties referred to case law respecting COVID-19 and related parenting disputes, including *Ribeiro v. Wright*, 2020 ONSC 1829, and *Le v. Norris*, 2020 ONSC 1932.
- [45] *Ribeiro* is one of the first such cases and has been frequently cited across the country. In all these cases the courts have emphasized:
1. COVID-19 parenting issues will be decided on a case-by-case basis as each case is different and involves unique circumstances;
 2. the court expects parents to meticulously adhere to all COVID-19 safety measures, including social distancing, use of disinfectants, and compliance with public safety directives;
 3. the court also expects parents to demonstrate sensible insight, meaningful COVID-19 awareness, and all appropriate precautions necessary to protect the children;
 4. the parents must do whatever they can to ensure that neither they nor their children contract COVID-19 - every precautionary measure recommended by governments and health authorities must be taken by both parents and, with their help, by the children; and
 5. Neither parent should do anything that will expose themselves or the child to an increased risk of contracting the virus.
- [46] I agree with these sentiments and the court requires that the two parents in this case abide by them.
- [47] In one of his emails to the mother in early November 2020, the father expressed the following opinions: "I don't believe there is any meaningful risk to the children or to you, even if you or they were to contract COVID. I see this largely as an exercise in public health to protect those (such as my parents) who are at risk." In support of this position, his counsel argued that the admonitions in the early COVID case law should perhaps be given less weight in light of the current data to the effect that infection rates among young children are exceedingly low (approximately 4% of all cases), hospitalizations exceedingly rare (1%), and deaths nonexistent (0%). He submits this, after all, is why the public health authorities are letting children go to school.
- [48] The court emphatically disagrees with these sentiments. The court's role is to ensure the protection and promotion of the best interests of the children as the paramount consideration in parenting decision-making. The science and the data is irrefutable: while vaccines may be increasingly available over the next 9 months or so, COVID-19 is still contagious and continues to cause serious illness and death. Reckless social interactions and gatherings are a major culprit in the transmission of the virus. There has been a rapid increase in cases recently which, if not checked, threatens to overwhelm the capacities of hospitals and other healthcare facilities. Now is not the time to lower the guard.
- [49] Having said that, there is no evidence before me that either the father or his new partner is behaving recklessly. To the contrary, the information before me is to the effect that the father, his new partner, and the latter's husband are all symptom-free, have ceased all other

in-person social interactions in light of the recent PHOs, and that masking, disinfection, and other safety protocols are followed in both their personal and working environments. Provided these measures continue, I perceive little, if any, increased risk to the physical safety of the children arising from their introduction to the father's new partner.

[50] It follows from these conclusions that there are no grounds for varying the parenting regime set out in the Final Order and that, indeed, it must resume immediately. Pursuant to section 61 of the FLA, I also award the father compensatory parenting time equal to the amount missed from December 7, 2020 to the date of this judgement, which additional time shall be agreed to by the parties without varying the pre-arranged Christmas parenting schedule. In the event that even with the assistance of their counsellor, the parents are unable to agree on the scheduling of the compensatory parenting time, the matter will be determined by the parenting coordinator appointed by them.

3. The alternative dispute mechanisms in the Final Order

[51] Paragraphs 7 to 9 of the Final Order provide as follows:

7. By consent, each party will have the obligation to discuss with the other party any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious and moral instruction and general welfare.
8. By consent, the parties will commence co-parenting counselling with Abby Petterson on a bi-weekly basis for a minimum of four months, whereupon the parties will discuss and agree as to whether or not to continue co-parenting counselling. If the parties do not continue with a co-parenting counsellor, unless otherwise agreed, they will, within 30 days, execute a parenting coordination agreement for a minimum period of one year, with renewals as necessary, with a parenting coordinator to be agreed upon, and the cost to be shared in proportion to the parties' incomes.
9. By consent, if the parties are unable to agree on any important decision affecting the children, they will work with the co-parenting counsellor or parenting coordinator, if applicable to resolve the disagreement. If they are unable to resolve the disagreement, the parenting coordinator will make the determination provided it is within one of the prescribed matters under the regulations to the family law act. Otherwise, either party may apply [to the Court] under section 49 of the family law act for directions to resolve the issue in dispute.

[52] Although the settlement agreement between the parties was made on September 17, 2020, technically speaking these provisions in the Final Order did not become operative until December 3, 2020, being the date the order was signed by Justice Betton. It is apparent, however, that consultation with the counsellor, Ms. Petterson, has been and still is ongoing, although she has pointed out to the parties that her "role is not to make decisions but to help parents make arrangements that work best for their children." It was for that reason that she

declined to decide the PHO implications for the parenting regime.

- [53] It is not clear whether the parties have actually executed a parenting coordination agreement and appointed a parenting coordinator. Technically speaking, the order may not oblige them to do so unless and until co-parenting counselling comes to an end. However, notwithstanding the timing contemplated by the Final Order, it might be wise for the parties to proceed with the appointment of a parenting coordinator at this time since I have already directed that any dispute regarding compensatory parenting time will have to be determined by such a parenting coordinator and it may very well be that other disputes will arise which will also have to be resolved through that process. If the parties are able to agree, either with or without the counsellor's assistance, so be it. If they are unable to agree on any given issue, however, the ready availability of a parenting coordinator would likely increase the promptitude of a determination.
- [54] One such issue relates to the manner in which both the father's new partner and the concept of polyamory might be introduced to the children. The father has expressed the view that these are ordinary decisions to be determined by his own good judgement without reference to the mother's (likely obstructionist) preferences and without involving a parenting coordinator. His counsel argued that such determinations may be proscribed by section 6(4) (b) of the Family Law Act Regulation, B.C. Reg. 84/2019 [FLA Regulation], which deals with the jurisdiction of parenting coordinators. I do not agree with these propositions.
- [55] Paragraph 7 of the Final Order refers to "significant decisions" and paragraph 9 refers to "important decisions" affecting the children. There is likely little or no distinction between the two. Paragraph seven offers inclusive but not exhaustive examples of what might be significant subject matters, such as health, education, religious and moral instruction, and general welfare of the children. Paragraph 18 of the order identifies the "introduction of a significant other to the children" as a matter sufficiently significant that it requires "consultation" with the counsellor or parenting coordinator. I am satisfied that the introduction to the children of both the father's new partner and the concept of polyamory generally are sufficiently significant and important decisions that warrant discussion with the mother beforehand and, if necessary, the involvement of the co-parenting counsellor for advice and the parenting coordinator for determination.
- [56] It is true that s. 6(4)(b)(iii) of the FLA Regulation prohibits a parenting coordinator from granting parenting time or contact with the child to another person. However, the introduction to the children of the father's new partner does not have this effect. The new partner has no entitlement to, and indeed is not even claiming, any parenting time or contact with the children. That right is vested in the father alone. In my opinion, if the parties are unable to agree on the manner in which the introduction should be effected, a parenting coordinator has the jurisdiction to make that determination pursuant to s. 6(4)(a) (ix) of the FLA Regulation.

[57] I decline to grant the restraining order referred to in paragraph six of the mother's notice of application filed December 14, 2020. I am not satisfied it is necessary. The father now has the benefit of these reasons for judgement and it is the court's expectation that he will abide by the rulings made herein.

VI. costs and summary

[58] Costs of an application such as this are usually awarded to the "successful party." However, the court retains a discretion to order otherwise in appropriate circumstances. The mother's application was triggered in large measure by the ambiguity that is found in the PHOs which were issued after the Settlement Agreement was made in September. These gave rise to significant interpretation issues about which reasonable people could reasonably disagree. The father made contradictory statements and changing arguments respecting the PHOs. In these circumstances I do not fault the mother for withholding parenting time while she sought the assistance of the court. It is appropriate that each party bear the costs of the proceedings and I make no award in that regard.

[59] In summary, I have made the following determinations and orders:

1. the father's new partner is "an individual who occupies vacation accommodation" when she spends time with the father in Squamish and she is thus an "occupant" of his apartment the purposes of the PHOs;
2. neither the father nor his new partner is breaching the PHOs when that partner is spending time at the father's Squamish apartment;
3. the mother's application to vary the parenting regime set out in the Final Order is dismissed and that regime must resume immediately;
4. pursuant to section 61 of the FLA, the father is awarded compensatory parenting time equal to the amount missed from December 7, 2020 to the date of this judgement, which shall be agreed to by the parties without varying the pre-arranged Christmas parenting schedule. In the event that, even with the assistance of their counsellor, the parents are unable to agree the scheduling of the compensatory parenting time, the matter will be determined by the parenting coordinator appointed by them;
5. the introduction to the children of both the father's new partner and the concept of polyamory generally are sufficiently significant and important decisions that warrant discussion with the mother beforehand and, if necessary, the involvement of the co-parenting counsellor for advice and the parenting coordinator for determination;
6. the mother's application for the restraining order referred to in paragraph six of the mother's notice of application filed December 14, 2020 is dismissed; and
7. each party will bear their own costs.

"Kent J."

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