

CANADA / JUDGMENT

G.E.I. v. C.G.B.

2023 BCSC 269

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Supreme Court of British Columbia

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2023 BCSC 269 G.E.I. v. C.G.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

G.E.I. v. C.G.B.,

2023 BCSC 269

Date: 20230224

Docket: E30734

Registry: Cranbrook

Between:

G.E.I.

Claimant

And

C.G.B.

Respondent

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for Claimant:

C. Alvarez Gomez

Counsel for Respondent:

A. Grewal

Place and Dates of Trial:

Cranbrook, B.C.

June 9-10, 13-17, July 5-8 and 29, and October 28, 2022

Place and Date of Judgment:

Cranbrook, B.C.

February 24, 2023

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Introduction

- [1] The parties are the parents of a young boy, C., who is the product of the parties' brief and troubled relationship: they met in Vancouver in October 2016; began living together on or around February 7, 2017; and married on March 18, 2017. C. was born in Vancouver on December 7, 2017, and the parties separated shortly thereafter, on January 29, 2018.
- [2] During their relationship, neither party was a citizen or permanent resident of Canada. The claimant is from Lebanon, and has Lebanese citizenship. His first language is Arabic. He came to Canada in 2015. He started to learn English after moving to Canada. When the parties met, the claimant was working in Canada as a hair stylist on a work visa and was living with his brother in Vancouver. At the time, the claimant was not yet a Canadian citizen or permanent resident, although he is now a permanent resident.
- [3] The respondent is from Brazil, and has both Brazilian and Portuguese citizenship. Her first language is Portuguese. She came to Canada in 2015 on a student visa to study ESL to improve her English, and then studied program management at BCIT. Her student visa allowed her to work part-time, and she did so in a number of service and retail positions. She got a two-year work permit on August 21, 2017, which expired on May 2, 2019, while she was living in Brazil.
- [4] C. has both Canadian and Brazilian citizenship. He is also eligible for Portuguese citizenship through the respondent. There was no evidence as to whether he has or is eligible for Lebanese citizenship through the claimant.
- [5] On or about April 19, 2018, the respondent took C. to Brazil. She did not return to Canada. The claimant initiated Hague proceedings in Brazil and, after lengthy legal proceedings, the Brazilian court ordered that C. was habitually resident in Canada, and his return to this country. Unfortunately, that did not occur until August 14, 2021.

- [6] The claimant and KS met in September 2018, and have been together ever since. They consider themselves spouses. KS has supported him throughout the Hague proceedings and in legal proceedings here in Canada. They intend to marry once the claimant and the respondent obtain a divorce.
- [7] On February 9, 2021, the Brazilian Court of Appeal upheld the court of first instance's decision that C.'s habitual residence is in Canada, and C.'s return to Canada. On February 24, 2021, the Brazilian court of first instance issued a warrant for the search and detention of C. Instead of facilitating the transfer of C. to the claimant's care, the respondent fled and went into hiding with C. in Brazil. The claimant, through his own diligence, and with the support of his new partner, KS, managed to locate the respondent and C. on August 9, 2021.
- [8] After a series of dramatic events involving the Brazilian authorities, which can only have been highly traumatic for C., the claimant and KS were able to leave Brazil with C. on August 11, 2021, finally arriving at home in British Columbia on August 14, 2021.
- [9] The claimant and KS now live in a community in the Interior of B.C. with C. Under a series of orders from this court, the respondent has had video parenting time, and very limited in-person supervised parenting time with C., since C's return to Canada.
- [10] The fundamental questions to be decided are whether the respondent's guardianship of C. is to be terminated, and if it is not, whether C. will continue to live with the claimant and KS in Canada, or whether he will live with the respondent in Brazil. Depending on the answer to those questions, a number of ancillary issues will also have to be decided, including, what parenting time or access the parent with whom C. does not live will have with C., and the conditions under which such parenting time or access will be exercised.

Credibility and reliability

- [11] Both parties accuse the other of family violence, some of it serious. Their evidence diverges sharply on many key points.
- [12] The credibility and reliability of the parties' evidence will be of obvious importance in deciding both what has happened, and the orders that should be made. In the course of determining the facts, I make the necessary findings on credibility and reliability. I do so in accordance with the principles summarized as follows by Madam Justice Forth in *Mancinelli v. Mancinelli*, 2021 BCSC 94 at paras. 26-29:
- [26] Reliability and credibility are related but distinct concepts. Credibility is an assessment of the trustworthiness of a witness's testimony; reliability considers its accuracy. This involves a witness's ability to accurately observe, recall, and recount the events in issue. If a witness's evidence on a point is not credible, it follows it is unreliable: *United States v. Bennett*, 2014 BCCA 145 at para. 23, citing *Doherty J.A. in R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 526A (C.A.). A reliable witness can make honest mistakes.

- [27] Factors to consider in assessing a witness's credibility include the firmness of their memory, the ability to resist the influence of interest to modify the recollection, whether the witness's evidence harmonizes with independent evidence that is accepted, whether the witness changes their testimony between direct and cross-examination, whether the witness's testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and, with caution, their demeanor: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296.
- [28] The credibility of a witness must be assessed for its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357 (B.C.C.A.).
- [29] There is no requirement that a trier of fact believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part, or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence: *R. v. R. (D.)*, [1996] 2 S.C.R. 291 at para. 93.
- [13] It should be mentioned that both parties testified in English, and that English is neither party's first language. I did not find that either party was hindered by testifying in their second language.
- [14] For reasons which will become apparent in my findings of fact, I approach the evidence of the respondent with great caution. She was frequently evasive under cross-examination. She would feign ignorance or a lack of recall of something until forced to acknowledge it when shown a document. For example, the respondent denied having been written up at work for being abusive to a co-worker, and being given a letter from her landlord for pushing another tenant, until the two letters were shown to her.
- [15] The respondent has been untruthful in court documents sworn in British Columbia. For example, in her first affidavit, sworn January 7, 2022, the respondent said that the claimant did not request information about C.'s health during the court proceedings in Brazil. When asked about that statement in cross-examination, the respondent said that the claimant should have asked for such information in the Hague proceedings, but she did not remember him doing so. The minutes of a hearing before the Brazilian court of first instance on February 18, 2019 show that the claimant asked to receive information about C.'s health. When asked about this, the respondent testified that she did not recall it, but acknowledged it was what the document said. She nonetheless maintained that she did not believe that her affidavit was not true. Further, the claimant's lawyers requested a complete medical report on C's health, as well as information about his health plan and benefits, in a May 2, 2019 submission to the Brazilian court of first instance. The respondent accepted that this was a petition from the claimant's lawyers. She seemed untroubled by the fact she was shown to be untruthful about this issue in her January 7, 2022 affidavit.

- [16] Of even greater concern, I found the respondent to be untruthful in her evidence in this trial on a number of important points, including whether she assaulted KS on July 31, 2019; whether the claimant assaulted her on August 9, 2021; and whether she and her mother assaulted the claimant on that same date. Further, the respondent was untruthful with the claimant when she went to Brazil in the first place, as I find she left Canada with the intention of staying in Brazil and applying for sole custody of C. there, none of which she disclosed to the claimant before leaving for Brazil. In Brazil, she defied the Brazilian court's orders, in particular when she went into hiding after the February 2021 appeal decision upholding the court of first instance's ruling that C.'s place of habitual residence is Canada, and ordering her to give C. to the Brazilian authorities or the claimant so that he could return to Canada, neither of which she did. Her untruthfulness with respect to these events, and her demonstrated lack of respect for judicial authority, have led me to be unable to rely on the respondent's evidence in the absence of independent corroboration.
- [17] By contrast, I find the evidence of the claimant to be generally reliable.
- [18] The claimant's evidence was corroborated on a number of key points by that of his partner, KS, whom I found to be an honest and reliable witness. KS confined her evidence to what she had first-hand knowledge of, was specific, and did not seek to embellish or exaggerate.
- [19] The claimant candidly acknowledged that he breached the no contact order imposed following his July 3, 2017 arrest for assaulting the respondent.
- [20] The claimant's evidence on many key points was consistent with contemporaneous documentation, including photographic evidence. These will be brought out in the course of my reasons, but for example, he testified that he wanted to have parenting time with C. post-separation, but wanted it to occur outside of the former family home because he did not trust the respondent. The respondent generally denied that the claimant wanted parenting time with C., and testified that she just wanted to have him be in C.'s life and to be a father. Yet, when the respondent filed her application in Provincial Court in February 2018, she sought sole guardianship, and when the claimant filed his response, he sought joint guardianship and equal parenting time. The parties' positions in those court filings are much more consistent with the claimant's versions of events than the respondent's. Another clear example is the claimant's evidence about the events of August 9, 2021, which is corroborated in part by the video of the respondent's mother being held back by police officers.
- [21] The claimant was subjected to a vigorous and aggressive cross-examination. He undoubtedly became heated and argumentative at times in response. Given the circumstances, I find his emotional responses in cross-examination understandable, and they do not cause me to doubt the trustworthiness of his evidence. That said, I find that the claimant is a highly emotional person, who prefers to be in charge, and who can find it difficult to control his emotional reactions at times. This likely occurred at times during the parties' relationship, which was brief and turbulent.

- [22] The claimant had a tendency to try to paint himself in the best light possible, and the respondent in the correspondingly worst light. Further, he clearly has an overwhelming interest in this court awarding him primary residence and sole decision-making responsibility for C., if not sole guardianship. I have, therefore, examined his evidence, particularly in relation to events where the parties are the sole witnesses, closely, with a view to determining whether it is in accordance with the preponderance of the probabilities.
- [23] Both parties called some collateral witnesses, with the claimant calling KS's mother, KS's sister-in-law, and the claimant's sister, and the respondent calling four of her friends. All of these were credible and reliable witnesses.

Facts

- [24] The parties entered into a partial agreed statement of facts with attached documents. In making my factual findings, I have incorporated the admissions contained in the agreed statement of facts, in addition to my findings based on the oral and additional documentary evidence led at trial. Included within the admissions was the history of proceedings in the Brazilian courts. Certified translations of the Brazilian courts' decisions were included in the documents attached to the partial agreed statement of facts.

Early history of the parties' relationship

- [25] The parties met in Vancouver in October 2016. At that time, the claimant was approximately 32 years of age, and the respondent was approximately 34 years of age. The claimant was working as a hair stylist in the Lower Mainland on a work permit, and the respondent was working in retail sales and studying at BCIT.
- [26] The parties soon started to look for an apartment together, and moved in together in Vancouver on or about February 7, 2017. They married each other on March 18, 2017. They learned the respondent was pregnant with C. in April 2017. They were both happy about the news.
- [27] The relationship appears to have been stormy from the outset. The respondent testified that they had shouting matches pretty much every week. They were struggling with money. The respondent also testified that the claimant was controlling, and would question her if she came home five minutes late, and that he did not like her to have male friends. She also testified that the claimant would frequently leave the family home, and would sometimes stay overnight with his brother, who lived close by. The claimant agreed the parties argued.

April 2017 allegation of family violence against claimant

- [28] The respondent testified that in April 2017 the respondent came home angry, they had an argument about money, and he pushed her against the wall and told her he was her husband and she had to respect him.

- [29] The claimant had denied these allegations in cross-examination. It was suggested to the claimant in cross-examination that the argument led to a neighbour intervening, and telling the claimant that assaults are not tolerated in Canada. The claimant testified that a neighbour heard a sound and he went outside to speak with him. He denied that the neighbour had to intervene or told him that assaults are not tolerated in Canada.
- [30] The respondent testified that a neighbour heard the argument and knocked on the door. According to the respondent, the neighbour told the claimant that if he touched the respondent, he would have a problem with him. The respondent testified that the claimant left the family home for a few hours after this incident. She testified that she did not call the police about this incident. She said that the respondent can be really charming and persuasive, and he led her to believe it was her fault that he lost his temper.
- [31] I find that the claimant did not assault the respondent in April 2017. They were clearly having a loud argument, and it is likely a neighbour knocked on the door due to the noise. The respondent's evidence about being pushed against the wall was vague. Given the problems with the respondent's evidence generally, I cannot rely on her uncorroborated evidence to find that the claimant pushed her against the wall.
- [32] According to the respondent, their relationship worsened after the April 2017 alleged assault. They continued to have arguments. She testified that in May 2017, the claimant confessed to her that he was doing "a little bit of drugs", and that she got mad in response. The claimant denied doing drugs. There is no persuasive evidence that the claimant was doing drugs, and I do not find that he was.

July 3, 2017 allegation of family violence against the claimant

- [33] An incident occurred on July 3, 2017, in which the respondent says that the claimant assaulted her. The claimant denies doing so.

The parties' evidence

- [34] Both parties testified that they had a loud argument, which appears to have arisen out of the respondent discovering that the claimant went out to a restaurant and spent money.
- [35] According to the claimant, who was cross-examined about this alleged assault, he decided he was going to leave the family home. He told the respondent he was going to his brother's home. His sister-in-law was in contact with the respondent by telephone and text. He went back to the family home with his brother and sister-in-law and started to pack his clothing. The respondent was crying and called the police. She left the apartment. The police then knocked on the door and arrested the claimant for being violent towards the respondent.

- [36] According to the respondent's evidence in direct, the claimant arrived home and was angry. He punched the light switch and threw a bag with his toothbrush in it on the floor. He told her he was done with her. She was trying to calm the claimant down. She was sitting on the couch when the respondent slapped her on the arm, and pushed her face to the side, twice.
- [37] The respondent testified that she was in shock, and left to go for a walk. She thought the claimant did too. She testified that when she got back to their apartment, she called the employee assistance number for her employer to get advice. She testified that she told them what happened, and that they said to call the police. She then called the police. The respondent said that after that, the claimant's sister-in-law came to the apartment and told her the claimant was angry and was at their house. After that, the sister-in-law left. The respondent then called a friend, and asked her to come to the apartment for support. While her friend was there, the police arrived. After the police arrived, the claimant returned. She saw him get arrested while she was in the ambulance getting checked out.
- [38] The respondent was cross-examined about the fact the police occurrence report indicates that she told the police the claimant punched her in the arm, not, as she testified in direct, that he slapped her. She maintained her evidence that it was a slap, not a punch, and could not explain why the police occurrence report says otherwise. I do not think there is a material difference between a slap and a punch in this context, and do not place any weight on this inconsistency.
- [39] The respondent was also cross-examined about the fact the police occurrence report indicates that the claimant was in the apartment when the police arrived, and that respondent met them down in the lobby, not in the apartment. The respondent disputed the accuracy of this aspect of the police report. The respondent was also cross-examined about text message records, which indicate that after the alleged assault she was in text message contact with the claimant, checking her grades, and asking the claimant for information she needed to fill out forms, none of which she mentioned in her direct evidence. The respondent did recall checking her grades and texting with the claimant, but did not recall filling out any forms. She said it was a traumatic day, and that she had wanted to forget about what happened.
- [40] The claimant testified that he spent the night in jail. He testified that he called a legal aid lawyer from the police station. The next day he was in court. The claimant testified that his English was bad at this time, and he did not understand what was happening. He said the judge told him he could leave jail on the condition he did not go back to the apartment or be close to the respondent.
- [41] This was the first of three or four court appearances. On one appearance, the claimant testified that a lawyer, whom he said was the prosecutor, spoke with him and told him there was an option whereby he could do an anger management program, and that the case would go away when he returned to court and showed the certificate of completion. The claimant chose this option. He completed the anger management program, for which he paid

\$850.00.

- [42] On cross-examination, it was suggested to the claimant that he had a lawyer representing him in the criminal proceedings, which he accepted was true.

Alternative measures

- [43] While the claimant did not completely understand the process, it is clear that he entered into alternative measures under s. 717 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Pursuant to s. 717(1)(e), alternative measures can only be used where the person "accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed".
- [44] Counsel for the respondent cross-examined the claimant about whether he took responsibility for assaulting the respondent on this basis, suggesting that he was either lying in the criminal proceeding in accepting responsibility, or in this proceeding in denying that he assaulted the respondent.
- [45] Section 717(3) of the Code provides that "no admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being with by alternative measures is admissible in evidence against person in any civil or criminal proceedings". In light of the provision, I requested submissions from counsel for both parties on whether this line of cross-examination was permissible.
- [46] Counsel for the respondent submitted that the evidence about the claimant taking part in alternative measures was not put forward for the truth that he assaulted the respondent. He submitted that the court could use the evidence that the claimant took part in alternative measures in considering the claimant's credibility. In this connection, he relied on the decision in *Ontario (Attorney General) v. Lok*, 2007 CanLII 30751 (ON SC) [Lok].
- [47] In that case, Lok was charged with offences relating to a marijuana grow operation. He accepted responsibility, and was sentenced to alternative measures under s. 717 of the Code. The Attorney General then pursued civil forfeiture proceedings in respect of cash seized and the house in which the marijuana was alleged to have been grown. In that proceeding, Lok alleged various Charter breaches and asked the court to exclude evidence under s. 24(2).
- [48] At paras. 24-36 of Lok, the court considered s. 717 and whether it was an abuse of process for Lok to now seek to litigate his Charter challenges having accepted criminal responsibility. At paras. 26 and 32, the court noted that the admission of liability was not admissible according to s. 717(3) of the Code. At para. 35, the court stated that Lok had the opportunity to contest the charges in the criminal proceedings but instead chose to accept responsibility. At para. 36, the court concluded that in these circumstances it would be an abuse of process for Lok to now be permitted to pursue his Charter motion.

[49] In my view, the decision in Lok does not assist the respondent in this case. There is no analogy to be drawn between the use of a person's admission of responsibility in the two cases. The fact the claimant must have accepted responsibility for assaulting the respondent in order to enter into alternative measures in the criminal proceeding is not admissible in evidence against him in this proceeding. I find that it is not permissible to cross-examine the claimant about any admission or statement of responsibility in the criminal proceeding in this case. To do so would undermine the clear legislative intention in s. 717 that the fact a person accepted responsibility in criminal proceedings is inadmissible in any other criminal or civil proceeding. I, therefore, do not take into account the fact the claimant accepted responsibility in the criminal proceeding, or any cross-examination related to that acceptance, in determining whether the claimant assaulted the respondent, as alleged by her in the present case.

Texts between the parties

[50] Text messages between the parties on July 3, 2017 were introduced into evidence. They show that the parties were arguing by text for about two hours, ending at about 12:30 pm, including about the claimant's lunch bill. There is then a break until shortly after 2:00 pm, when the text messaging resumes. Shortly before 3:00 pm, the respondent happily reported to the claimant that she had got a good grade on her school project. She was then working on forms, for which she needed some information from the claimant. There is then a break in the texts from shortly before 4:00 pm, until shortly before 6:00 pm, when the respondent sent the claimant a lengthy text in which she says that she went for a walk, and discusses their argument and relationship issues. There are then more text messages shortly before 9:00 pm. According to the respondent, the assault occurred at about 1:00 pm. The police report indicates the respondent called the police at about 8:45 pm, and the police arrived shortly after 9:00 pm.

Findings of fact with respect to alleged July 3, 2017 assault

- [51] I find that the claimant did not assault the respondent on this occasion. They clearly had an argument about money, and he decided to leave the family home. I am unable to accept the respondent's evidence that he assaulted her prior to doing so. There are four main reasons for this.
- [52] First, the claimant's account of what happened is more consistent with the police reports in terms of the sequence of events. I prefer his evidence that he returned to the apartment to pack, the respondent was angry with him and called the police and left, and the police arrived and arrested him in the apartment, to the respondent's evidence. The police report indicates that the police met the respondent in the lobby, not the apartment. I do not find her denial of this aspect of the police report credible.

- [53] Second, in giving her account of this evidence in direct, the claimant omitted significant elements of the chronology of events, such as the text messaging between the parties between the alleged assault and the claimant's arrest, including her checking her grades and reporting her results to the claimant and working on forms. To be clear, I am not suggesting that because the respondent was in contact with the claimant between the alleged assault and her decision to call the police that the assault did not occur. Victims of domestic violence may react in many different ways. Rather, it is damaging to her credibility that she omitted those details in her direct evidence.
- [54] Third, as I discuss in further detail below, the claimant called the police to attend when he separated from the claimant in January 2018. He testified that he did so because he wanted to prevent the claimant from making any more false allegations against him. If the claimant had in fact assaulted the respondent in July 2017, resulting in him being charged with assault, it would be most unlikely that he would proactively call the police when he left the respondent for the final time. His doing so is more consistent with the July 2017 allegation having been false.
- [55] Fourth, as I describe in more detail below, the respondent also alleged that the claimant assaulted her when he found her and C. in Brazil, pushing her while she was on her bicycle with C. and causing them to fall. For the reasons I give in considering that incident, I do not believe the respondent's evidence, which I find was untruthful. I am aware that I can accept some, none or all of a witness' evidence, and the fact a person is untruthful on one occasion does not necessarily mean they are untruthful on other occasions. In this case, however, I find that the respondent's willingness to make a false allegation of assault on one occasion, when it suited her purposes to do so, makes her evidence of other allegations of assault unreliable.

Events subsequent to the claimant's arrest

- [56] The parties were soon back in contact with one another, despite the fact the claimant was under a no contact order.
- [57] The claimant testified that he could not go back to the apartment but needed to pay the rent. He did not recall if he gave the rent money to the police or the apartment manager. After that, he testified that the respondent started texting him, sending him intimate messages and telling him she missed him. The claimant readily acknowledged that he broke the court order and started seeing the respondent. He said that, because she was pregnant, he was concerned to get her groceries. They met surreptitiously. He would spend time with the respondent in the apartment, including being intimate.
- [58] The respondent testified that she did not reach out to the claimant, but her friend contacted her to tell her that the claimant had contacted her and was begging her to talk to her, and to make things right. She said that on or about July 7 she sent the claimant a picture of some baby clothing a friend had given her, and he replied. Thereafter, she testified they were in frequent contact by text. She thought it was probably about a week after that they met in

person, at the claimant's request. She testified that she was scared, and that he told her he had been charged and asked her to contact the prosecutor to make the case go away. He told her he was a changed man and wanted to be with her. She agreed to contact the prosecutor because she understood that if he had a criminal charge, he could never get permanent residency, and it was both of their plans to obtain permanent residency in Canada. She also testified that she reached out to the claimant because she wanted her child to have a father.

- [59] Text messages between the parties dated between July 3 and August 31, 2017 were introduced into evidence. The first text in evidence following July 3 is dated July 8, 2017, but it is not possible to tell if the record is complete. As of July 8, 2017, the parties were clearly in contact, and the claimant was providing the respondent with food. On July 9, 2017, they agreed to meet in person. By July 12, 2017, they were intimate.
- [60] On July 18, 2017, the parties were discussing the respondent's police statement. She wanted to know whether the word "punched" was in her statement, and texted that she never said "punched", but had said "slap the arm". The respondent testified this was the truth - she never said the claimant punched her, but rather that he slapped her. They were discussing an email she would send, I infer to the prosecutor. The respondent told the claimant she asked to drop the case. On August 31, 2017, the claimant told the respondent the case had been dropped.
- [61] On or about September 1, 2017, the claimant moved back in with the respondent. According to the respondent, their relationship was fairly good at this time; they did not fight, and they were focussed on the baby.
- [62] On November 1, 2017, the parties moved to an apartment in a suburb of Vancouver to be close to where the claimant was working as a hair stylist.
- [63] Photographs from between June and December 2017 were introduced which show the parties together, apparently enjoying one another's company. I did not find the suggestions made by claimant's counsel in cross-examination of the respondent that she was drinking alcohol and smoking cigarettes in this period, and the respondent's answers to those questions, probative of anything.

C. is born and the parties separate

- [64] C. was born on December 7, 2017. The respondent gave birth by caesarian section. The claimant attended the birth. His mother, brother and sister-in-law were also at the hospital.
- [65] The parties' relationship worsened after C.'s birth. The claimant testified that he could not tolerate the respondent's emotional outbursts. The respondent testified that she had the "baby blues", was struggling to breastfeed, and was crying a lot.

- [66] The respondent testified that the claimant was working all the time, and he did not hold C. very much. The claimant's mother came to stay with the parties for a week or so after C. was born, but she and the respondent did not speak the same language, the respondent did not find her helpful, and the respondent asked her to leave. The respondent testified that the claimant was really angry about that.
- [67] The claimant introduced photographs of himself with C. in December 2017 and January 2018, including attending at the birth and a well baby check up.
- [68] The respondent's mother came to stay with them just before Christmas for about a month to help the respondent after the claimant's mother left. The respondent said that the claimant was at his brother's house a great deal, and was not helping with C. She said it got to the point that they had to file a missing person's report. After that his brother called her to tell her that the claimant was at his house. When he was home, they were arguing.
- [69] On or around January 29, 2018, the parties separated, with the claimant moving out of the family home and removing his name from the rental agreement. The claimant testified that, because of the earlier police involvement in July 2017, and his fear of the respondent making another false accusation of violence against him, he telephoned the police, who at his request attended while he left. He moved back in with his brother in Vancouver.
- [70] Both parties agree that parenting was difficult after separation, although they disagree on the reasons why. The claimant testified that he texted the respondent daily asking about C. and trying to see him. He did not want to go the apartment, because he did not trust the respondent, and would ask the respondent to bring C. to the shop where he was working, which he said was a minute away from the former family home. According to the claimant, the respondent would bring C. when he was hungry or when she knew he was busy working, or she would not bring him at all. According to the claimant, the respondent would not leave C. with him, despite his requests, falsely claiming that he did not know how to feed C. or change his diapers.
- [71] The respondent testified that the claimant did not want to be around C. or care for him. Her evidence was that she kept asking him to be a father and to be in C.'s life, but he refused. She felt that he did not really want to be involved, but only wanted C. brought to him when it was convenient, like when he was on a break from work, and to take pictures, and hand him back.
- [72] According to the respondent she was pretty much by herself raising C. There was no elevator in the building, and it was difficult for her to take C. up and down the stairs. I note there was some dispute as to whether there were two or three flights, but nothing turns on that. She felt isolated in the suburb they had just moved to and did not know anyone there. She was worried about money, and was living on maternity leave benefits and donations from friends and family.

- [73] The respondent testified she did have a small network of friends in Vancouver who would come and help out when they could. Three of those friends testified as part of the respondent's case, and confirmed they would do things like help with groceries or look after C. to give her time to rest. One of those friends also took her on an overnight trip to Washington State on March 31, 2018, after which the respondent stayed at her home for a day.
- [74] The claimant paid \$200.00 per month in child support for four months following separation.
- [75] Both parties introduced copies of screenshots of WhatsApp or text messages in this period. There are problems with the screenshots, which were introduced in a confused fashion, and may not be a complete record of the relevant communications. They certainly reflect poor communication between the parties. The claimant did ask about and request to see C. on a number of occasions, and on at least some occasions the respondent failed to respond or had excuses why the claimant could not see C. The respondent also asked the claimant to be involved in C.'s life and to be a father to him, and was critical of what she saw as his failures in this respect. Their communications seem like ships passing in the night.
- [76] On February 15, 2018, the respondent commenced family proceedings in Provincial Court by way of an application to obtain an order (the "Provincial Court proceedings"). She sought sole guardianship of C., and orders that the claimant's parenting time be supervised, that he take anger management programming, and undergo drug testing. In cross-examination, the respondent testified that she was not seeking to restrict the claimant's parenting time, but she clearly was in the orders sought in this application.
- [77] Both parties completed the Parenting after Separation course in March 2018.
- [78] Both parties filed financial statements in the Provincial Court proceedings in March 2018. The claimant stated his total annual income was \$24,600.00; the respondent stated her total annual income was \$22,048.00, consisting solely of employment insurance benefits.
- [79] The claimant filed his reply in the Provincial Court proceedings on March 20, 2018. He opposed the respondent's application for sole guardianship, and sought equal parenting time and responsibilities.

The respondent travels to Brazil with C.

- [80] The parties agree that the respondent travelled to Brazil with C. in or around April 2018. The respondent testified it was on April 19, 2018. At the time, C. was about four months old.
- [81] According to the claimant, the respondent had started talking about travelling to Brazil in January. The respondent testified these conversations only happened after they separated, but nothing turns on the precise timing. It is clear the respondent wanted to see her family, in particular her father, who was ill, and to have some support.

- [82] The claimant testified that the respondent retained a lawyer to draft a travel authorization and passport application for C. An email from that lawyer to the parties, dated February 2, 2018, indicates that she had been retained by the respondent, asked the claimant to sign a passport application, and that she would prepare a travel consent letter outlining the full details of the respondent's proposed trip. The claimant testified that the documents the lawyer prepared indicated that C. did not have his last name. Because of this, he refused to sign the documents when he went to the respondent's lawyer's office. The lawyer promised to fix this problem. The unsigned travel authorization provided that the claimant would consent to the respondent travelling with C. to Brazil between February and April 2018. The unsigned passport application was for a Canadian passport for C. According to the claimant, he never went back to the lawyer's office to sign these documents.
- [83] Instead, the respondent asked the claimant to sign documents at the Brazilian consulate in Vancouver. The claimant testified that the respondent and someone from the consulate were present and speaking in Portuguese. He testified that the respondent told him he was signing a Brazilian passport application for C. The claimant testified the respondent told him she and C. would leave Canada on April 22, 2018, and would return on May 22, 2018. The claimant testified that he agreed to this. He believed that he signed a travel authorization to that effect.
- [84] The respondent testified that they talked about when she would return from Brazil, but never came to any agreement. Her evidence was that the claimant wanted one month, and she wanted longer, two or three months at the most. She said that nothing was set in stone.
- [85] Documents were introduced into evidence which appear to be an authorization to issue a passport to a minor and travel authorization, on letterhead from the Brazilian consulate in Vancouver. The authorization to issue a passport appears to be signed by both parties, dated April 9, 2018. The travel authorization also appears to be signed by both parties, and a box is ticked off indicating it is valid until the passport's expiry date. C.'s Brazilian passport has an expiration date of April 8, 2019. A copy of a document, which may be C's Brazilian passport application, but no translation was provided, was also introduced into evidence. It shows an expiration date of July 7, 2018.
- [86] It was put to the claimant in cross-examination that he signed documents at the Brazilian consulate which authorized the respondent to travel with C. for one year, and that the respondent would testify to that effect. The respondent testified that he signed documents at the Brazilian consulate, but was very unclear as to what they authorized. The claimant said he did not read all of what he signed. As I understand his position, it is that he was tricked into signing documents authorizing the respondent to travel with C. for a year.
- [87] Counsel for the respondent also cross-examined the claimant about a travel authorization which it was suggested the claimant signed in front of the respondent's former lawyer. The claimant was requested to provide a copy of this document at his examination for discovery. He contacted the respondent's former lawyer requesting copies of the documents she

prepared, and everything he signed, but she did not provide any documents to him, citing solicitor-client privilege. It was suggested to the claimant in cross-examination that the respondent would testify that this document does not exist. The respondent did not give that evidence. It was suggested that the claimant was at fault for not providing the documents in question. Given that the lawyer represented the respondent, the respondent would have had the right to authorize the lawyer to disclose the documents, but she did not do so. I draw no adverse inference against the claimant as a result of him not obtaining the documents.

- [88] The claimant testified that he still does not know what date the respondent actually left Canada for Brazil. He was supposed to give the respondent and C. a ride to the airport, and pick them back up again on their return. He introduced into evidence text messages he sent the respondent on April 19 and 20, 2018, asking to see C. The respondent did not reply. The claimant texted her again on April 27, 2018, asking her to "stop playing" and "blocking my number". The respondent denied blocking the claimant's number. The evidence did not establish whether or not the respondent in fact blocked the claimant's number, but there is no doubt that the respondent did not answer any of these texts or the other texts the claimant sent through the end of May.
- [89] The claimant testified that it was only on May 22, 2018 that he realized the respondent was not coming back to Canada. He surmised this from the fact she was not replying to his texts, and had not returned as agreed. The parties agree that, on or about June 4, 2018, the respondent texted the claimant to advise that she would be staying in Brazil "a little bit longer". Screenshots of messages from the respondent to the claimant of that same date include "Lol so you don't know what you sign now", "Hahahahhahahabha", "Poor you", and "You can read English as well?".
- [90] The respondent gave limited evidence about C.'s travel authorization and passport in direct. It was suggested to her in cross-examination that she tricked the claimant into signing the travel authorization at the Brazilian consulate that expired a year later. She denied doing so. It was suggested that in the June 4, 2018 texts she was mocking the claimant for having signed the authorization, and that they reflected the fact that she had no intention of coming back to Canada. She denied that as well.

The respondent unilaterally stays in Brazil with C.

- [91] In her direct evidence, the respondent said that she changed her mind about staying in Brazil a month after she got there. She had paid her rent in British Columbia for April and May, and still had her things in the former family home. She testified that in Brazil she had lot of support, including financial support, and had been struggling in British Columbia. She said she could not consider living like that any longer. She gave some evidence, that was not really explained, about her work permit being tied to the claimant's, and that he had threatened her about work hours. She testified that she decided to seek legal advice about opening a guardianship application in Brazil.

- [92] The parties agree that the respondent filed for provisional and sole custody of C. in Brazil on May 17, 2018. The respondent testified that she did not tell the claimant about that application because she did not want to have any problems, and just wanted to be safe in Brazil with C.
- [93] On June 4, 2018, a case conference was held in the Provincial Court proceedings. The respondent's then counsel attended as her agent; the claimant attended in person. The record states, under the heading "Interim Consent Order", that "This court orders that the child [C.] born December 7, 2017 be immediately returned to the jurisdiction of this court". This was the same day the parties agree the respondent texted the claimant to tell him she was going to stay in Brazil "a little bit longer". It is also the same day the respondent sent the mocking texts to the claimant.
- [94] The respondent was cross-examined about the June 4, 2018 interim consent order. She denied consenting. When it was put to her that it was on its face a consent order, she allowed that that was what it said. It was then put to her that she was represented by counsel at the case conference, which she agreed to. She said her lawyer went to the hearing, and was representing her, but denied that she was giving her instructions. The respondent was reluctant to acknowledge the fact that she, through her counsel, did consent to the June 4, 2018 order.
- [95] The latest possible date by which the respondent had decided to stay in Brazil with C. was May 17, 2018, when she filed for sole custody of C. in Brazil. Indeed, it must have been earlier than that, as she testified in cross-examination that she retained legal counsel in Brazil on May 11, 2018 for legal advice. Further, the respondent was cross-examined about her counterclaim in this proceeding, in which she pleaded:

The Respondent does not dispute the fact that the child's previous retention in Brazil was done unilaterally by her and without first receiving the consent of the Claimant to do so. The Respondent alleges she was leaving a relationship wherein family violence occurred and was also advised by her former counsel that would have a better chance of arguing for parenting arrangements in Brazil. Unfortunately, the Respondent discovered later that this was incorrect legal advice.

- [96] The respondent testified that it was her former British Columbia lawyer who gave her the advice she would have a better chance of seeking custody of C. in Brazil. She testified that her lawyer gave her that advice in her office in British Columbia. The respondent believed she received this advice in March 2018. She, therefore, received that advice before she left the country. While she received that advice, it was the respondent's decision to leave.
- [97] The respondent agreed in cross-examination that her retention of C. in Brazil was unilateral, and that she went to Brazil without receiving the claimant's consent to retain C. in Brazil.

- [98] I find that the respondent never intended to return to British Columbia with C. She went to Brazil in the belief she would have a better chance of obtaining custody of C. in Brazil, and promptly filed for sole guardianship in that country. She left the country without advising the claimant, and did not respond to his messages in April and May. Indeed, it was only on June 4, 2018 that she told him she intended to stay in Brazil "a little bit longer".
- [99] I further find that the respondent did trick the claimant into signing the travel authorization that was valid for a year, and that her June 4, 2018 texts to him were mocking him for having done so.

The claimant tries to have contact with C. and initiates the Hague proceedings

- [100] On June 21, 2018, the claimant texted the respondent to ask her when she was going to bring C. back. The respondent acknowledged that she saw that text, but she did not respond. She knew the claimant was trying to contact her, but she testified that by this time they were talking through British Columbia counsel. At this time, she was still represented by the same lawyer who had represented her at the June 4, 2018 case conference in Provincial Court. There is no evidence as to whether the claimant had by this time retained counsel in British Columbia.
- [101] The claimant testified that he tried to contact the respondent by WhatsApp and text, but his number was blocked. He was completely lost about what to do, and still did not speak English well. He was advised that he could start a Hague Convention proceeding. He decided to do so, and retained a lawyer in Brazil to represent him for that purpose.
- [102] The claimant wanted to have contact with C., and instructed his Brazilian lawyer to try to contact the respondent's Brazilian lawyer to arrange video parenting time, but he did not have any video or other contact with C. for a year, until in or around June 2019, and then only after his lawyer had petitioned the Brazilian court in May 2019.
- [103] The respondent testified that she did not deny the claimant parenting time while she was in Brazil, but this is patently false, both during the first year, and after she went into hiding. In her examination for discovery, the respondent testified that the claimant did not seek parenting time with C. until July 2019. On cross-examination, she testified that she did not recall if he was trying to have contact. The minutes of the February 18, 2019 conciliation hearing in Brazil, which both parties attended, were in evidence. They record that at that hearing the claimant expressed his interest in maintaining contact with C. online, and that the parties' lawyers were to make arrangements for such contact. These minutes were put to the respondent in cross-examination, but she maintained that the claimant made no efforts to have contact with C. until July 2019. She then said that he was trying in February 2019.
- [104] On May 2, 2019, the claimant's Brazilian lawyers made a submission to the Brazilian Court of first instance. They attached to that submission an email to the respondent's Brazilian lawyers, dated March 21, 2019, proposing arrangements for video contact with C. The

respondent accepted on cross-examination that the claimant was trying to have parenting time with C., but she denied that she was not facilitating that occurring. On May 29, 2019, the Brazilian court of first instance ordered the respondent to immediately facilitate video parenting time for the claimant. The respondent finally acknowledged in cross-examination that she was only prepared to facilitate parenting time for the claimant when there was a court order that she do so.

- [105] The respondent denied lying at her examination for discovery about the claimant seeking to have video parenting time with C., and suggested she was maybe confused about dates or just could not remember. I find the respondent did lie at her examination for discovery, and sought to create the impression that the claimant did not seek contact with C., when the opposite was true.
- [106] I find that, until the Brazilian court of first instance made the May 29, 2019 order, the respondent was refusing to permit the claimant to have video parenting time with C.
- [107] The respondent also testified that the claimant blocked her phone after he initiated the Hague proceedings, but this is unbelievable, as the claimant was going to great lengths to try to have contact with C., and blocking the respondent would have been inconsistent with that goal.
- [108] On June 14, 2018, the respondent obtained a provisional order of custody for C. in Brazil, without notice to the claimant.
- [109] On July 23, 2018, the claimant commenced proceedings pursuant to the Hague Convention on the Civil Aspects of International Child Abduction in Brazil (the "Hague proceeding").
- [110] As part of the Brazilian Hague process, the Brazilian Central Authority and the Attorney General's Office advance the Hague proceeding on behalf of the Hague applicant, and the Brazilian Public Prosecutor's Office becomes involved as a neutral third party.
- [111] On September 18, 2018, the parties agree an order was made by the Brazilian Federal Court of first instance. The evidence does not disclose the nature of that order.
- [112] On November 19, 2018, an order was made by the Brazilian Federal Court of first instance. The court noted that the alleged illegal abduction occurred in May 2018 when, without the claimant's consent, the respondent failed to return to Canada with C. The court ordered the respondent not to leave the City of Sao Paulo SP with C. without express judicial authorization. The court ordered a conciliation hearing to occur on November 30, 2018.
- [113] The conciliation hearing did not occur until February 18, 2019. It was unsuccessful. As indicated above, the claimant expressed his interest in maintaining contact with C. online and receiving information about his health. The parties' lawyers were to ordered to make arrangements for contact to occur.

- [114] On May 29, 2019, the Brazilian Federal Court of first instance ordered the respondent to immediately facilitate the claimant's contact with C.
- [115] As mentioned above, it was in or around June 2019 that the claimant first had video parenting time with C. He had not seen C., in person or virtually, for over a year. The claimant testified that it was not like a visit, that he could not see C., and he asked the respondent to ensure the camera was on C. KS testified that the claimant was overjoyed to see C. She said they had a couple of video parenting times after that, but then it dwindled off.
- [116] On July 4, 2019, the respondent testified in the Hague proceeding.

July-August 2019 in-person parenting time and allegations of family violence against the respondent

- [117] The claimant and KS travelled to Brazil in late July 2019. As the claimant was not yet a permanent resident of Canada, he needed a visa to travel to Brazil; as KS is a Canadian citizen, she did not. On July 31, 2019, the claimant testified in person in Brazil in the Hague proceeding. Also on July 31, 2019, the Brazilian Federal Court of first instance ordered, by consent, that the claimant have in-person parenting time with C. in Brazil. The court ordered that: the "visitation will always be accompanied by another person"; C. would be taken by the respondent's mother or two of her friends; the parenting time would occur in a named shopping mall; a schedule was set out, under which the claimant would have parenting time that evening and on each of the four following days, with the length of time increasing each day; and after the claimant returned to Canada, he would have video parenting time with C. three days a week for an hour a day.
- [118] In accordance with the court's order, the claimant had his first in-person parenting time with C. on July 31, 2019.
- [119] There is a dispute in the evidence about what occurred during the claimant's in-person parenting time in Brazil, and specifically, about whether the respondent shoved KS.
- [120] The claimant and KS testified that on July 31, 2019, the first in-person parenting day, the respondent, her mother, the respondent's two friends referred to in the court order, and a man, V., were present. The respondent identified V. as her ex-boyfriend in her evidence. The claimant, his lawyers, and KS were also present. According to the claimant and KS, V. was holding C., and refusing to give him to the claimant. The claimant asked his lawyer to get C., which the lawyer did, who then passed C. to the claimant. The claimant and KS testified that the people who had brought C. to the mall then surrounded them and C.

- [121] The claimant testified that the respondent looked at KS, asked if she had a problem with her, and pushed her on the chest. KS testified that the respondent shoved her, and asked if her she had a problem with her, and that one of her friends pulled the respondent off of her. KS testified that both she and the claimant were shaken. The claimant testified that respondent's two friends gathered her and took her outside.
- [122] The respondent's mother and V. remained, following, watching, videoing and surrounding the claimant's group, and giving them no privacy to interact with C.
- [123] On August 1, 2019, the claimant made a police report regarding the July 31, 2019 parenting time. That same day, the Brazilian Federal Court of first instance made an order in response. The order states that the respondent "acted in a way contrary to what had been agreed to in the hearing". The court noted that the report it received mentions "an act of aggression". The court ordered that the parties must comply with what they agreed to in the previous hearing. The court further ordered that a court-appointed bailiff be present for the next parenting times, and that the bailiff submit a report after each parenting time.
- [124] The claimant testified that the remaining in-person parenting times in Brazil went well. He had a chance to spend time with C. and to get to know him more. They spent time in a family room at the mall where they could play, rest and eat food from the food court.
- [125] The bailiffs submitted reports for the parenting times starting on August 2, 2019. On August 2, 2019, the bailiff reported that the claimant claimed that the respondent's mother was very close to C., making it difficult for him to interact with C. On August 3, 2019, the bailiff reported that the respondent's mother, her husband (the respondent's step-father) and a friend intended to stay close during the parenting time. The bailiff informed them this would not be possible, and after some resistance, they moved away. The visit went well. According to the bailiff's report, there were no difficulties in the August 4, 2019 parenting time.
- [126] The claimant and KS were cross-examined about their evidence that the respondent shoved KS on July 31, 2019. In his October 14, 2021 affidavit, filed in support of his ex parte applications, the claimant gave evidence about the July 31, 2019 in-person parenting time. In his affidavit, he swore that the respondent "attempted to attack [KS] before the Respondent's friends pulled her away". It was suggested to him in cross-examination that this was inconsistent with his evidence at trial that the respondent shoved KS. The claimant denied any inconsistency, and testified that he meant that the respondent shoved KS. He acknowledged he should have said "pushed", and referred to his English not being that good.
- [127] I did not find a material inconsistency between the claimant's evidence in his affidavit and at trial about this issue.

- [128] The respondent acknowledged that she went to the mall. Three of her friends and her mother were also there. She said that V. was just being helpful to her in carrying C., and that her other two friends and her mother were both named in the court order. She appeared to attempt to justify V.'s presence on the basis it was a public place. She testified she brought C. to the mall, and that she believed she went inside and stayed for a few minutes, but did not stay for the parenting time. She denied shoving KS.
- [129] I accept the claimant's and KS's evidence about the events of July 31, 2019, including their evidence that the respondent shoved KS at the mall. The shove described by them is consistent with the generally intimidating behaviour engaged in by the respondent, her friends and family on that occasion. The respondent breached the conditions she had agreed to and which were ordered by the court in even attending at the mall on this occasion. The same is true of V.'s presence. I find that the respondent, aided by her friends and family, attempted to interfere with and spoil the claimant's first in-person parenting with C. in over a year, and that the shove and accompanying remark to KS were part of that attempt.
- [130] The claimant and KS returned to Canada after about a week. The claimant was sad to leave without C. He did not know when the court would make its Hague Convention decision. He was concerned that the respondent was making allegations in the Hague proceeding that he was violent and a drug and alcohol user, and that he only wanted C. to get permanent residency status in Canada for himself and his parents. The claimant denied all those allegations.

Video parenting

- [131] Under the Brazilian court's orders, the claimant was entitled to have video parenting time with C. three times a week for an hour each day after his return to Canada. The claimant testified that the video parenting time was terrible. The cell phone the respondent used for the parenting times was close to the television, which was on high volume. The cell phone would stay there if C. moved away, so the claimant often ended up looking at a blank wall. The claimant sometimes sent the respondent text messages about how he could not see C., which the respondent would respond to in a dismissive fashion.
- [132] The respondent testified that one of the scheduled weekly times conflicted with her work schedule. She denied refusing those parenting times, but said that she was just unavailable. She said that she agreed she should have addressed that with a judge. The time was eventually changed.
- [133] The respondent denied ever denying or interfering with the claimant's video parenting times with C. She testified that she was just trying to keep C. engaged.
- [134] Some text messages between the parties from September 2019 to April 2020 were introduced into evidence; they indicate that there were problems with scheduling the video parenting times. The respondent complained that the claimant did not follow the court

mandated schedule, and the claimant complained that the respondent was inflexible, laughed at him and accused him of being a bad father. KS testified that the respondent would not make C. available for some video parenting sessions, and that when they did connect, it was hard to see C. on the screen, the environment was noisy, and it was very hard to have meaningful time with him.

[135] On November 5, 2019, the parties agree the Brazilian Federal Court of first instance made an order. The nature of it is not clear on the record before this court.

[136] The claimant filed a petition complaining about the problems in the video parenting sessions. On December 9, 2019, the Brazilian Federal Court of first instance made an order varying the schedule of video parenting time for the claimant. It declined the respondent's request that a social worker accompany the parenting time, on the basis it was unnecessary. KS testified that, after this order, the schedule was more adhered to than it was before, although the quality of the calls was not much better.

First level Hague decision is rendered

[137] On February 4, 2020, the Brazilian Federal Court of first instance issued its Hague decision that the habitual residence of C. was in Canada (the "February 4, 2020 decision"). The court held that the claimant consented to the respondent travelling to Brazil on April 17, 2018 to visit her relatives, returning on May 22, 2018. The court noted that the respondent initiated the Provincial Court proceeding in British Columbia, but did not attend the June 4, 2018 hearing at which the Provincial Court ordered that C. return to Canada. The court held that it was lawful for C. to come to Brazil, on a temporary basis, given the claimant's consent, but it was illegal for C. to remain in Brazil until the date of the court's judgment.

[138] The court concluded:

Given the above and everything else on record, given what has been brought before this court to determine the search for and apprehension of the minor [C.], I fully uphold the initial request for the child to be handed over to the Brazilian Central Authority and, on an ongoing basis, to the Canadian Central Authority, for restitution to the territory of Canada, all in accordance with the aforementioned Hague Convention on the Civil Aspects of International Child Abduction, I deem the case to be completed .

[139] The court ordered that the respondent could accompany C. during his return to Canada if she so wished. The court further ordered that the respondent was forbidden from leaving the City of Sao Paulo with C. without the express authorization of the court. The court stated that this order was final and unappealable. The claimant's video parenting time with C. was to continue as previously ordered until C. returned to Canada.

[140] Both parties filed motions for clarification of the court's February 4, 2020 decision, both of which were dismissed on March 24, 2020.

- [141] In February 2020, the respondent travelled to Minas Gerais with her family. It is located outside the state of Sao Paulo, and the respondent admitted in cross-examination that in doing so she did leave the state of Sao Paulo without judicial authorization.
- [142] The claimant and KS thought that C. would return to Canada as a result of the February 4, 2020 decision. They later learned that the respondent could appeal, which she did, and that C. would not return until the appeal was decided.
- [143] On May 5, 2020, the respondent filed an appeal of the February 4, 2020 decision to the Brazilian Federal Court of Appeal. On May 27, 2020, the claimant filed his response to her appeal.
- [144] KS testified that video parenting for the remainder of 2020 up until September was much as it had been previously.

Videos - alleged family violence against C. by respondent

- [145] Both parties recorded some or all of the video parenting times the claimant had with C., initially at least without the knowledge or consent of the other. The claimant relied on two videos of parenting times with C. as evidence of family violence by the respondent against C. The first of these occurred on May 21, 2020, and the second on September 17, 2020. The claimant had also relied on these videos in the Brazilian court proceedings.
- [146] The claimant did not introduce the May 21, 2020 video in his direct evidence. When cross-examined about it, he maintained the position he had taken in the Brazilian proceedings, which was that the respondent assaulted C. by aggressively pulling his arm. In her direct examination, the respondent said that she pulled C. to put him in the front of the camera. The video was played during the cross-examination of the respondent. It shows the respondent pulling C. by the arm to get him in front of the camera, and to say "ciao", and C. crying in response. During her cross-examination, it was suggested to the respondent that C. backed away from her, as if he was afraid of her. She denied this. The respondent denied hurting C., and said that she was pulling him to be in front of the camera to say good-bye to the claimant.
- [147] While the respondent was somewhat harsh in her action of pulling C. by the arm, I do not find that she committed family violence against C. on this occasion. Nor am I able to find that C. backed away from the respondent because he was afraid of her. It is not possible to make such a finding on the basis of a video of an isolated incident.
- [148] The claimant alleged that, in the September 17, 2020 video, the respondent hit C. with the back of her hand, slapping him to the floor. The respondent denied hitting C. intentionally, testifying that she slipped on a carpet and accidentally hit C. as a result.

- [149] The claimant raised his concerns about this incident in the Brazilian Hague proceedings by way of a petition filed September 18, 2020. It was addressed in the February 9, 2021 appeal decision, which I describe below.
- [150] I have watched the September 17, 2020 video. I find that the respondent hit C. in the face with her hand. C. had been playing with the computer, which was interrupting the call, and both the claimant and respondent were telling him to stop doing so. The respondent was clearly frustrated and angry, which was reflected in her comments to the claimant, in particular repeatedly telling him to be careful. I do not believe the respondent's evidence that she slipped on the carpet and accidentally bumped into C. She hit C. in the face and C. fell down. C. did not cry out, and I conclude that the contact was not very hard, and C. was not injured. After seeing that the video call was still going, the respondent picked C. up and gave him a kiss.
- [151] After this interaction, the claimant can be heard on the video speaking to the respondent, saying that her hand came in C.'s face, and the respondent can be heard to reply that she cannot hear the claimant, and asking if he is talking to her. The claimant then asks the respondent to take it easy on C., to which the respondent replies by asking twice whether the claimant is talking to her, and telling the claimant to be careful.
- [152] I find that the respondent engaged in family violence against C. in the September 17, 2020 video.

Events after September 2020

- [153] Returning to the chronology of events, the parties agree that on September 18, 2020, the Brazilian Court of first instance made an order. It is not clear what the nature of that order was from the translation provided.
- [154] KS testified that, after September 2020, video parenting sessions improved, and that sometimes other people, such as the nanny, would take the calls and they would get to see C. more.
- [155] The claimant and KS were hoping they would have C. home for Christmas in 2020. The process took longer than they hoped. The claimant testified that the parties were notified in December 2020 that the appeal decision would be rendered in February 2021. He testified he was ready at any time to travel to Brazil to bring C. back to Canada. Due to the COVID-19 pandemic, travel to Brazil was very difficult and expensive at this time. He and KS nonetheless managed to travel to Brazil in February 2021.

Court of Appeal decision upholds finding of unlawful retention

- [156] On February 9, 2021, the Brazilian Federal Court of Appeal dismissed the respondent's appeal of the February 4, 2020 decision (the "February 9, 2021 appeal decision"). The court held that the respondent committed an unlawful act in retaining C. in Brazil after May 22, 2018 without the claimant's authorization.
- [157] As mentioned above, the Brazilian Court of Appeal addressed two videos which the claimant made of video parenting time with C. In respect of the May 21, 2020 video, the Brazilian court said that the respondent grabbed C. by the arm in a hostile way, with the objective of forcing him to pay attention to the computer and end the video call with the claimant, making C. cry. In respect of the September 17, 2020 video, the court stated that the respondent, when she tried to prevent C. from unduly pressing a computer key, abruptly hit his face, pushing C. aggressively. The court stated that the videos showed aggression and excesses on the part of the respondent in moments of reprimanding, but were not sufficient to demonstrate, by themselves, that C. had been subjected to ill treatment. The court indicated that further consideration of this issue was beyond the bounds of the Hague Convention proceeding before it, and would be for the court of competent jurisdiction to assess in future custody proceedings. I, therefore, do not consider myself bound by the comments of the Brazilian appeal court about these videos.
- [158] After the February 9, 2021 decision the claimant and KS prepared to travel to Brazil as soon as possible, and they arrived in Brazil shortly thereafter, planning to return to Canada with C.

The respondent flees and goes into hiding

- [159] On February 24, 2021, the Brazilian Federal Court of first instance issued a warrant for the search and detention of C.
- [160] On February 24, 2021, after 9:00 p.m., Brazilian police officers went to the respondent's mother's address to execute the warrant. This was the address the respondent had used in the Brazilian Hague proceedings, and she testified that she and C. stayed there frequently, and they each had their own room there.
- [161] The claimant and his lawyer accompanied the police, and waited downstairs while the police went upstairs to the apartment. According to an officer's February 25, 2021 report to the Brazilian Federal Court of first instance, the police were met by the respondent's mother and step-father. Neither the respondent nor C. were present. The respondent's mother and step-father told the police that the respondent did not live there, but frequently came there, and would leave C. there when she went to work. C. had a bedroom at the address. The respondent's mother and step-father declined to provide the police with the respondent's contact information or whereabouts.

- [162] According to the police officer's report, they then went to another address, which the claimant's lawyer had received. The doorman told them the respondent was a tenant at that address, and that she had left a little less than an hour and a half earlier. They saw a baby carriage outside in front of the door, but no one answered when they knocked and rang the bell. They left without finding the respondent or C., shortly before midnight.
- [163] The respondent testified that she panicked when the appeal decision was rendered. She said that C. had been three or four months old when she came to Brazil, the claimant was an absentee father, she did not have a work permit, legal status, or a job in Canada, and she did not know how she would support C. in Canada, so she panicked. As a result, she testified, she took C. for six months, until August 2021.
- [164] In cross-examination, she agreed that she went into hiding to avoid the police finding her. She testified that her former Brazilian lawyer tipped her off that the police were on their way, and denied that her mother did so. She fled without any time to pack any of her or C.'s possessions at that house. Neither she nor C. ever returned to that house. She agreed that her father helped pack up that house.
- [165] After fleeing from her house with C. late on the night of February 24, 2019, the respondent first went to stay with one of her friends, and then with another. She denied that she had any direct contact with her parents, because she was concerned that the phones were tapped. She said that her second friend sent messages to her father. She went to Bertioaga, a resort community on the coast, sometime in the summer of 2021, where she stayed in an apartment that she testified a friend of her father set up for her. She testified that she first saw her mother in person on August 8 or 9, 2021, when she met her on the beach. The respondent acknowledged that in the period she was in hiding she did not allow the claimant to have any contact with C.
- [166] When asked in direct what her position on that decision was at trial, the respondent testified that she regretted it. When asked why, she said that, without that decision, the parties would not be where they now are, C. would not be living in the Interior of British Columbia without her authorization, but would be living in Vancouver, she would have been on the flight with him to Canada, and she would not have been apart from him for ten months. She said that ten months had been the worst months of her life. She expressed concern about C. having been removed from his family, his school, his language, and said that it must have been traumatic for him.
- [167] What was striking about the respondent's evidence about her decision to go into hiding with C. is she did not accept responsibility or acknowledge that she was wrong to do so. She regrets that decision, but only insofar as it has subsequently limited her contact with C. She did not indicate, expressly or by implication, that she would not do the same again. While upset at the notion of C. being taken away from her and her family, she had no insight into the fact that by her actions she had taken C. away from the claimant and his family.

- [168] I find that the respondent's mother and step-father directly or indirectly contacted her after the police attended at their address and warned her that the police were coming to her address. I find that the respondent fled with C. to avoid C. being apprehended in accordance with the Brazilian courts' orders.
- [169] The claimant and KS were heartbroken when they could not find C. They took it upon themselves to try to find where C. was. The claimant and KS stayed in Brazil until mid-March 2021 to try to find C., interacting with the Brazilian police, Global Affairs Canada, Interpol and other authorities. The claimant found the process slow, he faced a language barrier as he does not speak Portuguese, and the task was made even more difficult due to the COVID-19 pandemic. They hired private detectives to assist in searching for the respondent and C.
- [170] On March 12, 2021, the Brazilian Federal Court of first instance issued a decision. The court determined that the prohibition on the respondent and C. leaving the country and the City of Sao Paulo without prior court authorization be maintained. In light of the current COVID-19 situation, the court ordered that, once C. was found, he should remain with the claimant in Brazil on a temporary basis until appropriate travel arrangements could be made. C. was to be delivered to the claimant as soon as he was found, and the respondent and her family could have parenting time supervised by a social worker, and video calls. The respondent was requested to comply with this decision within 48 hours by delivering C. directly to the claimant or the police.
- [171] The respondent failed to comply with the March 12, 2021 decision. She remained in hiding. In cross-examination, the respondent testified that she wanted to have a gradual transition, with a social worker. When it was put to her that the March 12, 2021 decision provided for just that, the respondent denied that a social worker was provided. This ignored the obvious fact that she was in hiding and failed to comply with the March 12, 2021 decision under which a social worker would have been involved in the transition.
- [172] After about three weeks, the claimant and KS returned home to Canada. They could not afford to remain in Brazil any longer, KS needed to get back to work, and the claimant's father, who was in Canada at the time, was having heart problems. They continued the search for C. from Canada with the assistance of private detectives in Brazil.
- [173] On May 12, 2021, the Brazilian Federal Court of first instance issued a decision upholding its March 12, 2021 decision. The search and seizure of C. was ordered to be maintained.
- [174] On May 26, 2021, the respondent commenced a special appeal to the Supreme Court of Brazil (the "second appeal"). The second appeal was dismissed on June 23, 2022, in the midst of this trial.
- [175] On July 22, 2021, the Brazilian Federal Court of first instance issued a decision maintaining the search and seizure of C. In that decision, the court referred to the respondent's "unlawful behaviour". She was asked about this decision in cross-examination. When it was

suggested to her the judge found she acted unlawfully, she said that that is what it said. When pressed, the respondent testified that she did not believe she acted unlawfully. This is very concerning evidence in terms of the respondent's willingness to comply with future court orders.

C.'s life in Brazil

- [176] The respondent testified about her life in Brazil with C. She was not specific about time periods. Prior to going into hiding, they essentially lived at three places: her own apartment, her mother's and her father's. She said she had great support from her family. C. is very close to his grandmother, the respondent's mother, his step-grandfather, and his cousins. She introduced photographs which show things like C. happily playing with his cousins, his room at her mother's house, and swimming at her father's house. The respondent says C. is a very happy child, and that he is everything to her. She testified that she would do anything for him.
- [177] Three of the respondent's friends testified about their interactions with the respondent while she was in Brazil. One of them visited her in February 2020, and testified that they were staying in a good apartment in a safe neighbourhood, the respondent was working, and C. was very happy. A second lived in Brazil, and saw the respondent and C. while they were there. She testified that C. was well taken care of, and that he would play with her children. She thought that the respondent was a great mother. She continued to see the respondent after February 2021. Another of them stayed in contact with the respondent from Canada, including between February and August 2021.
- [178] The respondent agreed in cross-examination that she had C. baptized in Brazil without consulting with or advising the claimant of that fact.

C. is located and returned to the claimant

- [179] In July 2021, the claimant and KS returned to Brazil. They had received information from their private detectives that they hoped would lead them to the location of the respondent and C. Once in Brazil, they were in communication with the police, the consulate, and their private detectives. They went to various places hoping they would find the respondent and C. They got a hotel room with a bedroom and laundry so that, if they found C., they would have a suitable place to bring him.

Initial contact and allegation of family violence against claimant

- [180] Finally, on Monday, August 9, 2021, the claimant located the respondent and C. in Bertioğa, Brazil. Bertioğa is a resort area on the coast of Brazil where both the respondent's mother and her father have vacation homes. The claimant and KS had travelled to Bertioğa the day before on the basis of information from the private detectives that the respondent's mother owned a condominium there, and they had located the respondent's mother there.

- [181] The claimant, KS and the claimant's friend, D., who was with them to translate, walked the streets of Bertioga, hoping to see the respondent and C. They were going to leave Brazil in a few days if they did not find C., as they could not afford to stay longer. The claimant felt this might be his last chance to find or see C.
- [182] The private detectives sent the claimant and KS a video, which they were were able to identify as showing the respondent and C. The claimant, his friend, D., and a private detective jumped in a car and started to drive to where they believed the respondent and C. were. They saw the respondent on her bike with C. The military police were also there. The claimant's friend went to speak to the police to explain what was happening.
- [183] There is a dispute between the parties about the following events, with each of them alleging that the other engaged in family violence. In addition, the claimant alleges that the respondent's mother also engaged in family violence.
- [184] The claimant testified that the respondent was approaching the car on her bike, with C. in the bicycle seat, and the claimant opened the car door and stopped her. The claimant wanted to pick C. up and hug him, but resisted doing so, as he did not want any allegations to be made against him. The police asked him to move to the side. KS arrived on the scene with the other private detectives at about this time.
- [185] Then the respondent's family - her mother, step-father, brother, and sister-in-law arrived. The respondent testified that the first person she called was her mother. She had met her for the first time since she went into hiding earlier that day.
- [186] According to the claimant and KS, when the respondent's mother arrived, she lifted C. up from the bench where he was sitting, and started to take him to her car. The claimant started screaming, and the police stopped the respondent's mother. The claimant and KS gave the police papers which explained the situation. The police reviewed the papers, and told everyone they were to come to the police station to sort things out, which they did.
- [187] The respondent testified that while she was riding her bicycle in the bike lane, the claimant suddenly jumped into the bike lane, grabbed ahold of the handle bars and pushed the bicycle. She testified that she fell a little bit, and she held the bicycle so C. would not hit his head.
- [188] The respondent testified that she was hurt in this incident. She reported it to the police the next day. The police report indicates that she said C. hit his head on the car seat and the floor, but the respondent testified in cross-examination that that was wrong, and that C. did not hit his head and was not hurt. The police told her to go to the medical legal institute to have a medical exam. She was referred to a report dated August 12, 2021 that described "multiple injuries, linear, erythematous, on the right flank and right lumbar region, consistent with urticarial reaction; - greenish bruise on the right calf". She testified that those were pretty much her injuries, although she was only feeling her leg, and it was red.

- [189] The claimant denied that he pushed the respondent off her bike or that the respondent or C. ever fell. KS was not present when this incident is alleged to have occurred, as she arrived on the scene shortly after. KS testified that when she arrived she did not see any injuries on the respondent, and that the respondent looked relatively casual and normal. C. was not crying.
- [190] The respondent filed charges against the claimant in Brazil about this alleged incident the next day, after a Brazilian judge had ordered that the claimant could leave Brazil with C.
- [191] Photographs of the respondent and C. after they were found by the claimant at the beach were entered into evidence. The respondent said she had bruises on her right leg, in particular her right calf. I am unable to discern any red marks or bruises on the respondent's leg.
- [192] I find that the claimant did not push the respondent while she was on her bicycle with C. in the bicycle seat. The claimant was desperate to have C. returned to him. The police were present, and I find he would not have pushed the respondent for fear of impeding C.'s return. Further, there is no evidence that the claimant has ever hurt C. - I find that he would not have pushed the respondent while she was on her bicycle with C. in the bicycle seat for fear of hurting C. The evidence is not persuasive that the respondent was injured as she claims, or that any of the injuries described in the report from the medical legal institute were caused by the claimant. I do not find the fact that the respondent filed a police complaint about this matter makes it more likely that the assault occurred. In all of the circumstances, I think it likely that the respondent made this allegation up to buttress her legal application to keep the claimant from leaving Brazil with C.

Events at the police station, and allegations of family violence against the respondent and her mother

- [193] According to the claimant and KS, once at the police station, the police told them and their group to wait outside, while the respondent and her family, together with C., went into the police station. The claimant and KS waited for hours. They did not know what was going on, although every so often a police officer would come outside and give them an update. D., as he was throughout this incident, was translating for them. KS was contacting Canada Global Affairs, the Canadian consulate, and their lawyers, providing them with updates, and started to work on their return to Canada.
- [194] After some hours, KS left with a private detective to go to the hotel. While she was gone, the police told the claimant he could go inside and take C. He signed some papers indicating where they would be taking C. The claimant took C. from the respondent, asking her a few questions at the same time about what C. was eating and whether he had any allergies.

- [195] The claimant hugged and kissed C. Then, according to the claimant, screaming started happening. The respondent's mother jumped on him and screamed at him in Portuguese. An older police officer tried to hold on to the respondent's mother, but she pushed him down. The police got ahold of the respondent's mother, and opened a way for the claimant to walk with C. to the uber car they had waiting.
- [196] The claimant started to record what the respondent's mother was doing on his phone. I have watched the video. The video shows the respondent's mother struggling with three people, at least two of whom appear to be police officers, who are holding her back. C. can be heard crying, and the respondent is saying she is staying and that her mother is not ok.
- [197] According to the claimant, the respondent's mother was screaming to the respondent to go with them in the car. He told her she could not do so. The respondent told him she was going to go with him to the pharmacy to show him something C. needed, but he told her she could text him the information and to please get out of the car. The uber drove one block away and parked to let the respondent out of the car. The respondent was not getting out of the car. The claimant did not want to touch her, so he asked his friend D. to hold C. while he ran back to the police station to get help. His two lawyers had arrived by this time, and the claimant told them the respondent was trying to take C., and that her mother had parked in front of the uber in an apparent attempt to block their get-away. He then ran back to the uber, where he saw the respondent trying to take C. He grabbed C. from her and tried to run back to the police station with him. At this point, the respondent's mother grabbed him by the neck against the wall, while the respondent punched him in the ribs. Three or four police officers arrived on the scene. His lawyer tried to make a video, but the respondent grabbed his phone. KS had not been with the claimant at this time, as she had left to get a suitcase, and the claimant called her to let her know what was going on and to ask her to come back. She arrived back at about this time. The police managed to grab the respondent, and told the claimant to go to his lawyer's car, which he, KS, C. and D. did.
- [198] A photograph taken that night was entered into evidence which appears to show red marks on the claimant's neck. He says this is from the respondent's mother grabbing him by the neck. KS confirmed that the claimant had red marks on his neck, although she was not there to see how they were created.
- [199] The claimant was cross-examined about his evidence regarding the respondent and her mother's actions at and near the police station. In the following paragraphs I consider some of that cross-examination.
- [200] It was suggested to the claimant that in his account of this incident in his October 14, 2021 affidavit he did not mention that the uber drove a block away. I do not find this to be a material omission, particularly in light of the fact that he did mention running back from the uber to the police station, which certainly implies the uber had driven some distance away from the police station.

- [201] In his affidavit, the claimant had sworn that he suffered broken ribs and a broken xiphoid process during the attacks by the respondent and her mother, and that he had his injuries examined at hospital after he returned to British Columbia. It was suggested to him in cross-examination that he did not have broken ribs. An Emergency/Outpatient Record from an Interior hospital dated August 25, 2021, is attached to the claimant's affidavit, and refers to "bruised/crushed [illegible - likely xiphisternum]/ribs". Xiphisternum is another term for xyphoid process. The distinction between broken ribs and a broken xyphoid process is not a meaningful one in this context. The claimant was also questioned about the length of time he took to get his injuries assessed. Given the context, the claimant's exhaustion after the events in Brazil and the travel to Canada, and the fact that the claimant's attention was understandably upon C. and helping him transition, I do not accept that the delay in getting medical attention throws any doubt on the fact he was injured in the area of his ribs/xyphoid process by the respondent and/or her mother. KS testified that when their lawyer hugged the claimant later on the night of August 9, 2022, the claimant yelled with pain in his ribs. I accept the claimant's evidence about his injuries, and that they were caused by the respondent and her mother.
- [202] The claimant was also cross-examined about how the assaults he described the respondent and her mother committing against him would have been witnessed by four police officers, yet neither of them had been charged with any crimes in relation to these events. The claimant testified that he did not pursue any charges against them, and did not know if any charges were laid. It was put to him that the respondent would testify that there were no charges against her and that she would introduce documents to support that. A certified document from the Brazilian police indicating that the police had not found any police report showing the claimant was the victim of a physical assault was introduced into evidence.
- [203] I do not find the fact that the claimant did not pursue charges against the respondent or her mother for the alleged assaults damaging to the credibility or reliability of his evidence about those assaults. There are many reasons a person may choose not to pursue criminal charges. In this case, the claimant was in a foreign country where he could not speak the language. His focus was on getting C. back to Canada, not pursuing criminal charges in another country. As for why the Brazilian police may not have independently pursued charges, no expert evidence was provided about how the Brazilian police and judiciary function, and I am not prepared to speculate about why the Brazilian police may not have independently pursued charges against the respondent or her mother.
- [204] The respondent denied assaulting the claimant on August 9, 2021. She also denied seeing her mother assault the claimant or any police officers. She testified that it was a long night waiting for the military and civil police to check documents. She was calm with C. The respondent testified that she knew she had to give C. to the claimant, and told C. he would be going with his father and it would be fine. She testified that her mother and step-father were there, and her mother was very emotional because she did not think it was right for C.

to be removed like that. She saw her mother being held by the police officers. Her mother was screaming that she did not want C. to go, and that it was not right. C. was nearby, and was screaming "mommy". In direct, she denied being there when the video of her mother was taken, however, which makes no sense, as her voice can be heard on the recording. In cross-examination, she said she was present, and was asking to have her mother be respected. No explanation was provided by her for the discrepancy in her evidence in direct and cross.

- [205] In cross-examination, the respondent acknowledged getting into the uber with the claimant and C., although she said it was at D.'s request. She also acknowledged telling the claimant she wanted to go to the pharmacy, and that the claimant told her to get out of the car. She denied that she was trying to prevent the claimant from leaving, saying she just wanted to be close to her son. She believed the claimant did leave her in the car with D., but she could not say where he was going. When the claimant came back, she said that she did not know what her mother was doing, and did not recall her trying to pull the claimant out of the car, and did not hear her make any threats to the claimant. She denied trying to remove the claimant's hands from C., or punching him in the torso. When it was put to the respondent that she had not given a full account of what happened, she said that it was really traumatic, and that it was torture to see her son screaming.
- [206] The respondent's mother did not testify, despite having been on the respondent's witness list. The court was told the respondent made the decision not to call her. While there had been logistical issues in having the respondent's mother testify remotely from Brazil and obtaining an interpreter, those issues were not referred to in connection with the decision not to call her, which was unexplained. I draw an adverse inference against the respondent for failing to call her mother as a witness. She was an important participant in these events, including being alleged to have tipped off her daughter that the police were searching for C., and assaulting police officers and the claimant. I infer that she was not called as a witness by the respondent because her evidence was not likely to have been of assistance to her. Even in the absence of that adverse inference, I would come to the same factual conclusions.
- [207] I do not find that the claimant "made the whole thing up". I find that the events of August 9, 2021 unfolded substantially as he and KS testified. There are photographs and videos that corroborate some aspects of his evidence. KS gave evidence which corroborates those aspects she witnessed. The respondent testified about these events, but her version of events lacked detail, was internally inconsistent at times, and amounted to little more than a blanket denial. She acknowledged only what she had to acknowledge, because it was caught on video, which was her mother being held back by the police.
- [208] The respondent refused to acknowledge that it was her refusal to obey court orders that led to this event. She said that everyone involved had to be blamed, including the claimant. She said it was not the right thing for a child to be ripped from his mother's arms. She even said that the claimant had pretty much done the same thing as she did in going into hiding.

However, the fact is that none of these events would have occurred had the respondent voluntarily complied with the Brazilian court's orders. By going into hiding with C., and only giving him over to the claimant when she had no option due to the involvement of the police, the respondent caused C. unnecessary trauma. This was family violence.

The claimant, KS and C. leave Brazil

- [209] D. drove the claimant, KS and C. to the police station in Sao Paulo, where they arrived a little after 11:00 p.m. Their lawyers followed in a separate vehicle. The drive from Bertioiga took them an hour and 45 minutes or two hours. The claimant wanted to speak to the officer in charge of the case to ask if they could move to a different address. C. slept on the claimant's chest on the trip. The officer was not there, so the police that were there told them they had to go back to the address they had given the police in Bertioiga.
- [210] The claimant and his group therefore went to D.'s address. When they got there they saw the respondent's father and his girlfriend. They wanted to see C. The claimant told them C. was doing fine, and he was not going to bring him down, nor was he going to let them up. They stayed the night at D.'s.
- [211] The claimant testified that the police sent officers to protect them the next day. They were not permitted to move to the hotel. Then the police took them to the Canadian consulate. Officials at the consulate worked to find them tickets to fly home to Canada. The tickets were very expensive. Consulate officials also provided C. with an emergency passport. They had to leave as soon as possible because the situation was so risky. Once they had their travel documents in hand, the police escorted them to the hotel, where they spent the night of August 10, 2021.
- [212] On August 10, 2021, the Brazilian Federal Court of first instance issued two decisions. In the first, the court ordered the immediate return of C. to Canada. Until C.'s return, he was to be in the claimant's sole custody. Various orders were made to ensure that the claimant and C. could travel to Canada as soon as possible, including letting them move from the claimant's friend's home to the hotel. In the second, the court dismissed the respondent's application to reconsider the first decision. The respondent remained entitled to accompany C. during his return to Canada if she wished to do so.
- [213] Also on August 10, 2021, in between the two court decisions being rendered, the respondent went to the police to file the complaint against the claimant in which she alleged he pushed her on her bicycle, which I have already dealt with. I find the respondent filed that police report to buttress her efforts to keep the claimant from leaving Brazil with C.

- [214] On August 11, 2021, the claimant, KS and C. left Brazil to return to Canada. According to the claimant and KS, Brazilian police picked them up from the hotel and transported them to the airport, where special arrangements were made to keep them safe, including keeping them in a secure area all day, with police, bailiffs, consular officials and a CBSA representative staying with them the entire time.
- [215] The claimant, KS and C. finally flew out of Brazil. They travelled to Canada via Germany. Their flight landed in Toronto, and they then flew to Calgary. They finally arrived at their home in British Columbia mid-day on August 14, 2021, having spent three days in transit. C. did well on the trip. They were met by RCMP officers in Toronto who escorted them through customs.
- [216] The respondent testified that she went to the airport on August 11, 2021. The respondent did not accompany C. to Canada. The claimant did not contact her to tell her when they were flying to Canada. Nor did any Brazilian or Canadian authorities.
- [217] On August 12, 2021, the Federal Civil Court of Sao Paulo ordered the claimant to provide the respondent with his means of contact information to allow the respondent to receive updated news about C.'s return to Canada. The court noted that the respondent's entry into Canada was a matter that did not depend upon its authorization and was a matter of sovereignty of Canada.
- [218] On August 16, 2021, the claimant provided the Brazilian court with his address in British Columbia.

Events since C. returned to Canada

- [219] Since August 14, 2021, C. has lived with the claimant and KS in their home in the Interior of British Columbia. At the time of his return to Canada, C. was not yet three years old.
- [220] The claimant and KS bought their home in the Interior from the Lower Mainland in early 2021 and moved there March 2021. KS has relatives in the area, and he and KS loved the area and small town life. Their spacious home sits on an acreage outside of town.
- [221] The claimant and KS testified about the steps they have taken to help C. settle in his new home. He has his own room in their home, which they have decorated for him. The claimant potty trained C. C. is enrolled in soccer classes, and has made friends there. They have worked with a social worker to assist with C.'s transition. C. has his British Columbia health card, and sees a dentist. At the time of trial, he was in preschool and scheduled to begin kindergarten in the fall.

- [222] KS testified about their daily routine. She works from home, and the claimant looks after C. during the day while she works. KS looks after C. after work. The claimant does almost all the cooking. They eat meals together. KS is responsible for bath time and C.'s bedtime routine. On the weekends they do arts and crafts and take C. to his soccer games. They both try to drop off C. at preschool, and the claimant usually picks him up after school.
- [223] KS is clearly an involved caregiver in C.'s life. She loves him. She was cross-examined about what the effect of the order sought declaring the claimant to be C.'s sole guardian would be, and whether she was trying to replace the respondent as C.'s mother. KS testified that it would not make her C.'s guardian. She testified that she comes from a blended family, and that she is another parent for C. who loves him and looks out for him. It is not her decision whether the respondent is removed as C.'s guardian.
- [224] When C. first moved to British Columbia, he knew almost no English, but he has since learned the language. KS's mother, who is a retired special education teacher, came and stayed with them for a few weeks to help teach C. English.
- [225] KS's mother has also visited them in person, and FaceTimes with them a couple of times a week, during which she will sing songs or say rhymes to C. KS's mother and the claimant's mother looked after C. during the trial. KS's brother and sister-in-law live relatively close to the claimant, KS and C. She sees C. every six to eight weeks for a few hours. Both KS's mother and her sister-in-law testified in this trial; it is clear that they are both actively involved in C.'s life.
- [226] The claimant's sister lives in another province and, at the time she testified, was planning to travel with her family to British Columbia to visit the claimant, KS and C. She and her son FaceTime with C. two or three times a week for up to a couple of hours. She described her son as being like C.'s elder brother. She testified that her mother (who is also the claimant's mother) is in Canada on an extended visa, and they are working to have her live in Canada permanently. They are considering moving together to where the claimant, KS and C. live.
- [227] The claimant testified that when C. first arrived, he used to pinch people to express his feelings, but they and the social worker have worked with him on that behaviour, and he now hugs and squeezes rather than pinches to express himself. The claimant is also seeing a psychologist to help him with stress and child rearing.
- [228] KS testified that she reached out via social media to some Portuguese speaking people in their community and tried to make friends with them so C. could be among people who spoke his first language. They had two play dates with two different mothers and their children. KS said that soured when she learned the respondent had contacted both people she had met and said things to them. Screenshots between KS and one of these people, and between the respondent and that person, were entered into evidence. They do not suggest that the respondent said anything untoward. However, KS did not feel comfortable or safe pursuing the relationships after learning that the respondent had contacted the people she

had reached out to.

- [229] KS testified that she and the claimant were also contacted by several other people connected with the respondent.
- [230] The claimant testified that after they got to Canada, he video-called the respondent so she could see C. He did not think it was a good experience for C., as the respondent was crying in front of him, which made C. upset. According to the claimant, the respondent asked C. where he was, and he responded with a phrase in Portuguese which translates as "Uncle's House". The claimant told the respondent that this is what C. had been taught by her - to call him uncle, not father. He also testified about C. using a phrase in Portuguese which the claimant understands to mean "no father". It was suggested to him in cross-examination that the phrase actually means "father no". The claimant does not speak Portuguese, and was relying on what others have told him, or Google translate, to translate these phrases. In the absence of any expert evidence about the Portuguese phrases used by C., I am unable to come to any conclusion on this point.
- [231] In this context, it was suggested to the claimant in cross-examination that C. missed the respondent. The claimant denied that C. missed the respondent after he came to Canada, saying that C. never says that he misses her or wants to see or talk to her. Two videos of the ends of two video-parenting times with the respondent from the late fall of 2021 were shown. At the end of each, when the claimant is saying it is time for the session to end, C. says "no". There is nothing remarkable about these videos; most small children say "no" at times when they do not get their way.
- [232] That said, it is implausible that a three-year-old child would not miss his mother, who had been his primary caregiver for over two years in Brazil. While the respondent showed remarkably poor judgment in retaining C. in Brazil, and failing to comply with the Brazilian court orders requiring C's return to the claimant, I accept that she loves C., and find that C. must have missed her when he came to Canada.
- [233] Sometime in September 2021, the claimant testified he asked the respondent to contact his counsel to arrange parenting times. He wanted everything to be done through the lawyers, with court orders in place.
- [234] On September 7, 2021, the claimant filed his notice of family claim in British Columbia. In his original notice of family claim, the claimant sought an order that both parties be guardians of C., but with him having all decision-making responsibilities, primary residence and all parenting time, except as otherwise agreed upon by the parties. On May 16, 2022, the claimant amended the notice of family claim to seek an order that he have sole guardianship, with the respondent having contact as agreed upon by the parties.
- [235] The claimant's father passed away in Lebanon in September 2021. He did not travel to Lebanon to see his father before he died because he could not take C. with him.

- [236] On October 18, 2021, Justice Smith of this court made an ex parte order in this action on application of the claimant. The basis for this application, and the following one, was, in brief, that the claimant had been advised by the RCMP and/or the CBSA the respondent had entered Canada, and the RCMP had come to his house to warn him that she might come to his house to kidnap C., and he was afraid she would do so. Among other things, Smith J. ordered that C. not be removed from British Columbia without agreement of both parties or further order of this court. The respondent was ordered to surrender C.'s Brazilian and Canadian passports, if one existed, and any identifying documents that could be used to obtain a Brazilian or Canadian passport, to counsel for the claimant. The respondent was further ordered not to apply for a passport, travel or identification documents for C. from the Canadian or Brazilian authorities without the written consent of the claimant or further order of this court.
- [237] On October 20, 2021, I made an ex parte order on application of the claimant. Pursuant to s. 183 of the Family Law Act, S.B.C. 2011 [FLA], the respondent was restrained from directly or indirectly communicating with the claimant, KS or C., except through counsel. The respondent was further restrained from attending at, near or entering the claimant's home. The respondent was further restrained from following the claimant, KS or C. If the respondent had not provided claimant's counsel with C.'s passports and identifying documents as ordered by Smith J. by October 22, 2021 at 12:00 p.m., any peace officer in British Columbia was ordered, at the request of the claimant or his counsel, to seize those documents from the respondent.
- [238] The claimant testified that on another occasion after they returned to Canada with C., an RCMP officer arrived at their house. She told them someone had made a complaint, and that she was there to check on C. Nothing more came of this incident.
- [239] On November 4, 2021, Master Elwood conducted a judicial case conference, with counsel for both parties attending. On consent, and an interim and without prejudice basis, he ordered that the respondent would have video parenting time with C. for 15 minutes three times a week. The claimant was entitled to have a translator present, but the parenting time was to occur regardless of the availability of a translator. My ex parte order was varied to provide that the respondent could communicate with the claimant, KS and C. during those parenting times, or through counsel. Typical conduct orders were made requiring, among other things, that the parties put C.'s best interests before their own. The respondent was ordered to give the claimant reasonable advance notice, through counsel, of any plans to travel to the claimant's home community.
- [240] The claimant testified that he does his best in facilitating the video-parenting time ordered. He stays by the lap top to keep it open, and teaches C. not to close it (which will hang up the call). He keeps the camera always on C., and encourages him to talk to the respondent and show her what he is playing with. KS is often present during video-parenting times, and confirmed this evidence.

- [241] The claimant testified that he does not think that the respondent's video parenting time with C. goes very well. He says she does not show an interest in C. When C. told her about his first day at school, she did not react positively, which upset C. He is also critical of the respondent's clothing choices, which he does not think are appropriate for C. He feels he has to stay with C. all the time during video-parenting sessions, to make sure he does not come to harm. KS testified about a few interactions between C. and the respondent during video-parenting times that she was uncomfortable with, such as the respondent making comments to other people who are present about C. and questioning C. about where he was when the family was staying at a local hot spring, and on another occasion questioning whether he was at home. She said that the claimant does not usually intervene, but has on occasion. She said that it is hard to know where the line is.
- [242] The claimant also testified that on a few occasions the respondent has contacted him outside of parenting times about parenting sessions, which he feels is a breach of the court's orders.
- [243] In January 2022, C. started pre-school. The claimant told the respondent C. would be starting preschool, but did not consult her about it.
- [244] In January 2022, the respondent applied to vary Master Elwood's November 4, 2021 order. Among other things, the respondent sought to move C. to Vancouver. She did not seek in person parenting time in the community in which C. lives. The claimant applied to vary Justice Smith's order to allow him to travel to Alberta with C. On March 4, 2022, Justice MacIntosh heard the two applications. On an interim and without prejudice basis, MacIntosh J. increased the respondent's video-parenting time to 25 minutes four times a week. Justice Smith's October 18, 2021 order was varied to permit the claimant to take C. to Alberta when the claimant had dental surgery.
- [245] A week prior to trial, the respondent applied for extensive unsupervised in-person parenting time during trial. Her counsel raised the application at the outset of the trial, but it was not finally decided at that time. On June 30, 2022, I conducted a case planning conference in the midst of this trial. At that time, I ordered that the respondent was to have supervised in-person parenting time with C. on five specified dates for one hour each while she was in the claimant's home community. I made detailed orders designed to ensure that any risk of the respondent abducting C. was minimized to an acceptable level.
- [246] As matters turned out, the respondent was to complete only two of the five of the supervised parenting times due to C. contracting COVID-19. This occasioned a post-trial application, which I deal with below.
- [247] The claimant chose where C. would go to school for kindergarten starting in September 2022 without consulting the respondent. It is the claimant's and KS's local catchment school. Their plan is to initially drive C. to school, but to have him start taking the school bus when the time is right.

- [248] The claimant advised the respondent where C. would be going to school in mediation sometime prior to trial. The claimant expressed reluctance about telling the respondent things like the address of where C. will be going to school, or his medical appointments, due to his fear that the respondent would abduct C. He denied, however, that he wishes to cut the respondent out of C.'s life or to have no relationship with C. There is no court order currently in place about who has the right to make important decisions regarding C.
- [249] The respondent testified that she did not look into the school C. would be going to because he already has a school in Brazil.
- [250] The claimant and KS provide the respondent with weekly updates about C. and his activities. One update was entered into evidence. It gives information in English and Portuguese about C.'s health, soccer and school, and includes four photographs of C engaged in various activities. The respondent testified that she thought it was a really weak and sad report, but acknowledged she had not raised any deficiencies in the reports with the claimant.

Respondent's circumstances since C. returned to Canada

- [251] The respondent returned to Canada on or around October 19, 2021. I believe she remained in Canada through the conclusion of the trial, living in the Vancouver area. She travelled to the Interior for the trial. The respondent did not have the legal right to work in Canada, but was able to work remotely from Brazil while in this country.
- [252] The respondent testified that she has received support from domestic violence organizations, and that she has seen a psychologist to address depression, and to obtain support in dealing with the court process and being without her son. She denied having anger management issues or requiring any help to address same.

Orders sought

- [253] At my request, both parties provided details of the orders sought by them, as well as their alternative positions on guardianship and parenting arrangements in the event their primary positions on those issues were not accepted.

Claimant

- [254] The claimant seeks the following declarations and orders:

1. An order of divorce pursuant to s. 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA];
2. A declaration that C. is habitually resident in British Columbia;
3. An order pursuant to s. 39(3) of the FLA that the claimant is C.'s guardian, and an order terminating the respondent's guardianship pursuant to s. 39(3) of the FLA;
4. An order that the respondent have twice monthly video contact with C. for 45 minutes;

5. An order that the respondent may have in-person contact with C. only if all of the following conditions have been met:
 - a) the respondent speaks in English or is accompanied by a certified translator, at her own cost;
 - b) the contact is supervised, and takes place at a specified agency, and is arranged and paid for by the respondent;
 - c) the respondent surrenders her passport(s) to the court registry;
 - d) the respondent surrenders any and all identifying documents for C., including his Brazilian National ID card and original Brazilian birth certificate, to the claimant; and
 - e) the respondent posts security of at least \$50,000 to be held in trust by her counsel, the claimant's counsel, or the court;
 6. An order that the respondent may have in-person contact with C. during the summer school break as follows:
 - a) for up to two hours a day;
 - b) for up to six days over a two week period;
 - c) on not less than two weeks' notice to the claimant, consent not to be unreasonably withheld;
 7. An order that the claimant will send a monthly update to the respondent, which will contain pictures and details about C.'s life and milestones.
- [255] In the alternative to the respondent's guardianship being terminated, the claimant sought an order that he have all decision-making responsibility with respect to C. under s. 16.3 of the DA and all s. 41 parental responsibilities for C. under s. 40(3)(a) of the FLA. In addition, under this alternative position, the claimant sought an order that he have primary residence and all parenting time of C. except when the respondent has parenting times as set out above.
- [256] In addition, the claimant sought the following orders:
1. An order that the requirement to obtain the respondent's consent for the claimant to apply for a passport for C. be dispensed with;
 2. An order under s. 16.1(9) of the DA that the respondent is prohibited from removing C. from the claimant's home community without the express written consent of the claimant or further court order;
 3. An order that the requirement to obtain the respondent's consent for the claimant to travel with C. is dispensed with;

4. An order under s. 227 of the FLA that the respondent is restrained from attending at the claimant's residence;
5. An order under s. 225 of the FLA that the respondent will have no communications with the claimant, his spouse or C. outside of any contact, or in the alternative, parenting time;
6. A declaration that the claimant is a resident of British Columbia and has a gross income of \$0;
7. A declaration that the respondent is found to be a resident of British Columbia and has a gross annual income of \$54,000;
8. An order that the respondent pay the claimant the sum of \$5,577 in retroactive child support for the period August 9, 2021 to July 9, 2022;
9. An order that the respondent pay the claimant the sum of \$507 per month commencing on July 9, 2022 and continuing on the 15th day of each month, for so long as C. is eligible for support under the DA or until further agreement of the parties or court order;
10. An order that the respondent pay the sum of \$1,440 in retroactive s. 7 expenses for the period August 9, 2021 to July 9, 2022;
11. An order that the respondent pay the sum of \$240 per month commencing July 15, 2022 and continuing on the 15th day of each month thereafter for C.'s special or extraordinary expenses;
12. An order that no spousal support is payable by either party;
13. An order that the parties will each retain all assets and liabilities in their names;
14. An order dismissing the respondent's application to relocate to Brazil; and
15. Costs, with submissions to be made in writing.

Respondent

[257] The respondent consents to a divorce order being made. She does not pursue any orders relating to property division.

[258] The respondent seeks the following orders:

1. An order, pursuant s. 39 of the FLA, that the claimant and respondent are the guardians of C.;
2. An order, pursuant s. 46 of the FLA or the DA, that the respondent is allowed to move to Brazil with C., and the following orders be made:
 - i. C. will primarily reside with the respondent in Brazil;
 - ii. The respondent will have final say on all decisions affecting C., with the claimant at liberty to apply to the Brazilian court for review;

iii. The claimant shall have liberal and generous access to C. as is in the best interests of C. as follows:

- a) The respondent will pay for one (1) flight for C. from Brazil to Canada (two-way ticket) during the C.'s summer break from school to allow the claimant to exercise parenting time during the child's summer break;
- b) The claimant will pay for one (1) flight for C. from Brazil to Canada (two-way ticket) during C.'s winter break to allow the claimant to exercise parenting time during the C.'s winter break;

iv. The respondent will facilitate video/telephone calls on a regular basis and as often as possible as can be arranged between the parties;

v. If the respondent travels to Canada, she will advise the claimant at least two weeks in advance of her travelling, and allow the claimant to exercise equal parenting time for the duration of her trip;

vi. If the claimant travels to Brazil, the claimant shall advise the respondent at least two weeks in advance, and the respondent will provide the claimant equal parenting time for the duration of the claimant's trip; and,

vii. Should the claimant move to Brazil to reside in the same city as the respondent, the parties will have equal parenting time with C., to be decided between the parties, and if they are not able to do so, it will be on a week on, week off schedule;

- 3. An order that the claimant shall pay the respondent child support pursuant to the Federal Child Support Guidelines [Guidelines];
- 4. An order that the parties will exchange their income documents each year by no later than June 15, and agree to the new child support amount by June 30 each year, with the new amount to take effect beginning July 1 and continuing each year until June 30 of the next year;
- 5. An order that the respondent shall pay to the claimant spousal support pursuant to the Spousal Support Advisory Guidelines on the high end of the scale for an indefinite period of time; and
- 6. Costs.

[259] In the alternative, in the event the court dismisses the respondent's move application, and the respondent moves to Brazil, the respondent seeks a similar order to her primary position, but in the reverse. In the further alternative, if the court dismisses the respondent's move application, and the respondent stays in Canada in the long term, she then seeks equal parenting time, with appropriate conditions.

Analysis of orders to be made

Introduction to analysis

- [260] The primary issues to be decided in this case relate to whether both parties will remain guardians of C., whether the respondent is to be permitted to move to Brazil with C., and more generally what parenting or contact arrangements to be put in place.
- [261] My analysis of these issues must be guided in all respects by C.'s best interests: DA s. 16(1); FLA s. 37(1).
- [262] This case is pled under both the DA and the FLA. Because of paramountcy, the DA takes precedence. However, the doctrine of paramountcy does not prevent a consideration of the application of the FLA in a case in which a divorce is sought. The two pieces of legislation have the same underlying purpose in dealing with parenting matters, which is the best interests of the child, so there is little prospect of real conflict. Where possible, the DA must be interpreted so as not to interfere with the FLA, and paramountcy only applies where the two acts are in conflict: see *B.D.M. v. A.E.M.*, 2014 BCSC 453.
- [263] Section 16(1) of the DA states that the court must consider only the best interests of the child in making a parenting or contact order. Pursuant to s. 16(2), the court must give primary consideration to the child's physical, emotional, and psychological safety, security, and well-being. Section 16(3) sets out the factors to be considered in determining the best interests of the child. Section 16(4) sets out the factors to be considered in assessing the impact of any family violence. Section 16(5) states that the court must not consider the past conduct of the parties unless it is relevant to the exercise of parenting time, decision-making responsibility or contact. Section 16(6) states that, in allocating parenting time, the court shall give effect to the principle that a child should have as much time with each party as is consistent with his best interests.
- [264] The FLA has many analogous provisions. Section 37(1) states that the only consideration to be taken into account when making an order respecting guardianship, parenting arrangements or contact, is the child's best interests. Section 37(2) sets out the factors to be considered in determining the child's best interests. Section 37(4) provides that a person's conduct may only be considered if it substantially affects one of those factors. Section 38 sets out the factors which the court must consider in assessing the impact of any family violence.
- [265] I have no doubt that both the claimant and the respondent love C., and would seek to act in what they believed were his best interests were he to be primarily resident with him.
- [266] There are two fundamental features of this case which make an equal or shared parenting arrangement impossible. The first is practical. The claimant lives in British Columbia, and has no legal right to reside in Brazil. The respondent lives in Brazil, and has no legal right to live in British Columbia. Neither party is in a position to relocate to the other country. Sao Paulo is a long way away from the Interior of British Columbia and, practically speaking, the parent with whom C. does not live will have limited opportunities for in-

person parenting time.

- [267] The second is the respondent's conduct, which I consider insofar as it substantially affects the best interests of C. First, she unlawfully retained C. in Brazil without the claimant's consent. Second, she refused to comply with the Brazilian court orders requiring her to allow C. to go to Canada with the claimant, instead going into hiding, with the assistance of her friends and family. Third, when the claimant found her and C., she did not cooperate in the process of transferring C. to the claimant's care, instead actively participating with her mother in assaulting the claimant and trying to prevent him receiving C.
- [268] Taken together, the respondent's conduct makes it impossible for this court to have any faith that, if she were to be permitted to take C. to Brazil, whether on a temporary or permanent basis, she would comply with this court's orders, and in particular allow C. to return to Canada. Her past conduct leads to the conclusion that, given the opportunity, she would likely once again seek to sever C.'s relationship with the claimant. This has significant implications for the orders this court should make regarding C.'s parenting arrangements, and the respondent's role in his life.
- [269] In saying this, I am not without sympathy for the respondent. She found herself a single mother of an infant in a foreign country, without any significant social or financial supports around her. One can understand why she would have wished to return to Brazil with C., to be with her family and friends. But that does not excuse the respondent's conduct in wrongfully withholding C. from his father, and in actively disobeying court orders. None of that was in C.'s best interests, and her failure to see that fact, then or even now, throws her ability to make decisions in C.'s best interests into great doubt.
- [270] With that by way of introduction, I turn to a consideration of the specific orders sought by the parties.

Orders made by consent or without objection

- [271] By consent, an order for divorce is granted pursuant to s. 12 of the DA, the divorce to take effect on the 31st day after the date of this order.
- [272] At separation the parties had very limited assets. The respondent did not pursue any orders in respect of family property. The parties will each retain all assets and liabilities in their own names. All other property claims are hereby dismissed.
- [273] The claimant did not seek spousal support. The respondent did in her counterclaim, but did not pursue it at trial. There is no basis for either party paying spousal support, and the respondent's spousal support claim is hereby dismissed.

Guardianship

[274] In *J.M.G. v. S.G.*, 2022 BCSC 1218, at paras. 17-20, Madam Justice Norell summarized the principles applicable to an application to terminate a parent's guardianship as follows:

[17] The claimant has asked the court to take a rare and extreme step of terminating the respondent mother's guardianship. This can have profound consequences to the respondent and the children as only a guardian can exercise parental responsibilities and have parenting time. Non-guardians may only exercise contact with a child by agreement or order.

[18] Section 39 of the FLA presumes that each parent will be a guardian of the child. Subsections (1) and (2) of that section state:

39(1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

(2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.

[19] Section 51(1)(b) of the FLA, upon which the claimant relies to terminate guardianship, states:

51(1) On application, a court may

(b) except in the case of a director who is a child's guardian under the Adoption Act or the Child, Family and Community Service Act, terminate a person's guardianship of a child.

[20] In *Lessard v. Mahoney*, 2019 BCSC 551 at paras. 143-148, Justice Fitzpatrick reviewed several cases concerning termination of guardianship and summarized the principles which guide a court in considering such an order:

[148] Accordingly, I accept that an application to remove a parent, presumptively a guardian, under s. 51(1)(b) will be granted only in extreme or rare circumstances and provided that it is in the best interests of the child. In that regard, as an alternative, the court should consider whether it is in the child's best interest to maintain the relationship to a lesser degree by still allowing that parent's involvement in a more limited fashion by the re-allocation of parental responsibilities as set out in ss. 40 and 41 of the FLA.

[275] In support of his position that the respondent's guardianship of C. should be terminated, the claimant relied on two cases: *D.F.S. v. L.K.S.*, 2015 BCPC 363 [D.F.S.] and *G.W.M. v. W.C.M.*, 2015 BCSC 1624 [G.W.M.]. The latter, while not factually analogous to the present case, provides a helpful summary of the applicable principles at paras. 131-40.

- [276] At para. 131 of G.W.M., Mr. Justice Walker noted that the FLA envisions a displaceable presumption that parents who have lived with their children prior to separation remain their guardians. A court may restrict the rights of a guardian through reallocation of parental responsibilities, or by terminating guardianship. A court will, as noted at para. 132, rarely terminate a parent's guardianship, as it will rarely be in a child's interests to do so. It can only occur in the most extreme situations.
- [277] At para. 133, Walker J. stated that a court should first consider whether the reallocation of parental responsibilities can eliminate any risk to a child's best interests. If that can be achieved, then guardianship should not be terminated.
- [278] In making any order regarding guardianship or the reallocation of parental responsibilities, the court must consider only the best interests of the child, as set out in s. 37 of the FLA. A party's conduct can be considered only to the extent it substantially affects the child's best interests. One of the factors to consider in the best interests analysis is the existence of family violence and its impact on the child.
- [279] In G.W.M. at para. 148, Walker J. terminated the respondent father's guardianship because there was no other recourse to protect the children's best interests. At para. 153, he stated that the loss of guardianship was not irretrievable, as a parent who has lost that status may apply for reappointment under s. 51 of the FLA.
- [280] As I have mentioned, there is no factual similarity between the present case and G.W.M. There is considerably more between the present case and D.F.S. The facts of D.F.S. are accurately summarized as follows in the claimant's written submission:

the parties had four children. The mother had been their primary caregiver during the relationship. The mother became convinced the father had sexually abused the youngest daughter and potentially also the older daughter, despite no evidence of abuse being found by any relevant authorities. There was a non-removal order in place because the mother, who was American, had indicated that she wished to take the children to North Carolina. On what was supposed to be the first day of the trial, the mother took the children to the United States. The judge made orders that the father was the guardian of the children and had interim primary residence of them. He also made a protection order. The father had some difficulty entering the United States to retrieve the children, but he was, with the assistance of the courts and local police officers in North Carolina, able to return with them to British Columbia approximately a month and a half after the abduction.

- [281] At para. 93, Judge Skilnick found that both parents were capable of meeting the children's needs, but the principal issue was whether the mother would harm them emotionally by taking unilateral actions to sever their relationships with their father. At para. 95, he found the mother's promises that she would maintain the children's relationships with their father if she were allowed to relocate with them to the United States were not credible. At para. 107, he held that it was in the children's interest to make their future abduction as difficult as possible, and that terminating the mother's guardianship would accomplish that goal. He

concluded at para. 107:

It is an unfortunate step, but regrettably it is one necessitated by the [mother]'s prior removal of the children, and her mistaken belief about her ability to decide which orders she will and won't follow. It is the result of the choices she has made.

[282] In response, the respondent relied on *S.P. v. M.W.*, 2017 BCSC 1723 at para. 34 for the proposition that guardianship should only be terminated in the most extreme situations, and only after an analysis of whether it is possible, through a reallocation of parental responsibilities, for it to remain in the child's best interests for the parent to remain a guardian.

[283] With those principles in mind, I turn to a consideration of whether this court should terminate the respondent's guardianship of C. I do so through the lens of the best interest factors set out in s. 37(2) of the FLA.

Child's health and emotional well-being

[284] I accept that both parties are able to look after C.'s physical health and emotional well-being. On the evidence, he appears to have been healthy and happy in both parties' care.

[285] Of great concern in this regard however is the respondent's conduct while she was in Brazil. She failed to facilitate contact between the claimant and C. despite the fact that the claimant clearly wanted to maintain contact with C. C. had no contact whatsoever with the claimant for over a year after the respondent took him to Brazil. Once the Brazilian court ordered video-parenting time for the claimant, it then occurred until the respondent fled and went into hiding in February 2021. After that, C. again had no contact with the claimant until August 2021. Nor did the respondent provide the claimant with information about C.'s health and well-being.

[286] Through her actions, the respondent prevented C. having his father in his life for significant parts of his childhood. This would have been damaging to C's emotional well-being. While the respondent's position in this court is that she would now facilitate the claimant's relationship with C. if she were permitted to move to Brazil with C., her past conduct and lack of credibility in this court makes it impossible for me to trust that she would do so.

Child's views

[287] The court has no evidence of C.'s views. This is to be expected, given his age.

The nature and strength of the child's relationships with significant persons in his life

[288] C. has strong relationships with both his parents. He also has strong relationships with others, both in Brazil and in British Columbia. In Brazil, C. was often looked after by his maternal grandmother, and had close relationships with his cousins. In British Columbia, C. has a close and nurturing relationship with KS, and close relationships with KS's family and the claimant's family.

The history of the child's care

[289] The respondent was C.'s primary caregiver from birth until August 9, 2021. The claimant wanted a greater role in C's life before he was taken to Brazil but the parties were unable to successfully co-parent C. after separation. The claimant certainly wanted a greater role in C's life after he was taken to Brazil, but the respondent's conduct made that impossible.

[290] Since August 9, 2021, the claimant has been C's primary caregiver, together with KS. The respondent clearly would like a greater role in C.'s life. She wrongly blames the claimant for the fact she does not, when the reality is that it is her conduct which has led to the court orders which limit her parenting role with C.

The child's need for stability

[291] C.'s young life has been marked by upheaval and uncertainty. This is of great concern, as a child needs stability in his early years.

[292] The parties separated when C. was only one month old. Then, when he was only four months old, the respondent took him to Brazil, separating him from his father for two and half years.

[293] On the night of February 24, 2021, the respondent took C. in the night from one of the three homes in which they had been living. They left so quickly that the respondent had no time to pack their things. It is unclear where they lived for the next six months: they stayed with two of the respondent's friends for a period of time and, at the end of this six-month period, they went to Bertioaga where they stayed in an apartment arranged by a friend of the respondent's father. In that period, if the respondent's evidence is to be believed, C. did not see his grandparents, his cousins, his former nanny or his school. She maintained contact with her family, but did so surreptitiously via a friend, out of fear that the telephones were tapped.

[294] Since August 2021, C. has had a stable life in the Interior of British Columbia with the claimant and KS.

- [295] The respondent has been solely responsible for the vast majority of the instability C. has experienced to date. She unlawfully retained him in Brazil, and then fled with C. after the Brazilian Court of Appeal affirmed the court of first instance's decision that C.'s habitual residence is British Columbia, and that he should be returned to this jurisdiction.
- [296] The claimant submits that the continued risk of the respondent abducting C. again is relevant to this analysis. I accept that there is a real risk of the respondent unlawfully retaining C. in Brazil or elsewhere if she were permitted to take C. out of this country. Her refusal to obey the orders of the Brazilian courts, and her continuing inability or refusal to accept responsibility for the consequences of her actions, leads me to be unable to rely on her representations that she would do otherwise.
- [297] I find that the risk of the respondent abducting C. in this country is smaller. In Brazil, the respondent was in her home country, where she could speak her first language, and had the support of her friends and family, whom I find actively aided her in her unlawful actions. In Canada, she would not have those advantages. I find that it is possible, through the reallocation of parenting responsibilities, to limit the risk of the respondent abducting C. in this country to a manageable level. I will return to this in my further orders below.

Ability of each person seeking to remain a guardian to exercise their responsibilities

- [298] As I have already stated, I find that both parties are capable of caring for C. I have significant concerns about the respondent's willingness, if given the opportunity, to facilitate and support C's relationship with the claimant.
- [299] I also have some, more limited, concerns about the claimant's willingness to facilitate and support C's relationship with the respondent. There are some positives in the claimant's support of C's relationship with the respondent. In particular, since bringing C. to British Columbia, the claimant has facilitated video-parenting sessions with the respondent. While there have been some difficulties in those sessions, I will make orders below in an effort to improve the video-parenting sessions. He has also, at least since May 2022, been providing the respondent with written updates about C., which are, contrary to the respondent's evidence that they are "sad", helpful and informative.
- [300] I accept that the claimant is fearful of the respondent abducting C., and that given her history, that fear is not entirely misplaced. That said, his continuing demand that the respondent pay \$50,000 in security if she exercises in-person parenting time is, in my view, prohibitive, and would have the effect of severely limiting the respondent's ability to have in-person parenting time with C., which is not in C's best interests, given the strength of his relationship with the respondent. Similarly, I find that the claimant's application to terminate the respondent's guardianship, while based on his fear of her abducting C., would, if ordered, be damaging to C's relationship with his mother. There are other safeguards that can be put in place to ensure that C. can maintain his relationship with his mother, while protecting him from any danger of abduction.

The impact of family violence on the child's safety, security and well-being

[301] "Family violence" is defined in s. 1 of the FLA as follows:

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

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

[302] "Family member" is defined in s. 1 as follows:

"family member", with respect to a person, means

- (a) the person's spouse or former spouse,
- (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
- (c) a parent or guardian of the person's child,
- (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
- (e) the person's child,

and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

[303] I have found that the respondent has committed specific acts of family violence on three occasions. The first was on July 31, 2019, when the respondent shoved KS in the chest during the claimant's first in-person parenting session with C. KS lives with the claimant in a marriage-like relationship, and as such is a family member of C.

- [304] This assault was part and parcel of an effort on the part of the respondent, her friends and family, to intimidate the claimant and KS, and interfere with that parenting session. All of this was done in the presence of C. C. was very young, and had not seen his father in person for over a year at this time. The respondent's conduct on this occasion made what would in any event have been a confusing event for C. unnecessarily traumatic.
- [305] The second was in September 2020, when the respondent was seen on video knocking C. with her hand. C. was not seriously hurt and did not cry. The respondent's evidence that she slipped on a rug and accidentally knocked C. over is not believable. She was frustrated because C. kept shutting the lap top, causing the video call to end. She lashed out in the moment. While not of the most serious order of magnitude, this was an episode of family violence against C. Further, the respondent then told the claimant and KS to "be careful". I find this amounts to a threat, and is further family violence.
- [306] I do not find that the May 2020 video in which the respondent pulled C. by the arm depicts an episode of family violence. While the respondent acted harshly, I do not find that her action on this occasion amounted to "physical abuse".
- [307] The third was on August 9, 2021. I have found that the respondent, and her mother, attacked the claimant while he was holding C. The respondent's mother put her hands around the claimant's neck, and the respondent punched the claimant in the torso. All of this was in the context of the highly traumatic episode, for which the respondent was entirely responsible, of the police having to intervene to ensure that C. would be handed over to the claimant.
- [308] This was a serious episode of family violence by the respondent and her mother, to which C. was directly exposed. C. can be heard crying in the video of the respondent's mother struggling with the police. The entire episode can only have been traumatizing for C.
- [309] Beyond those specific acts, I find that the respondent's conduct in cutting off all contact between the claimant and C. also amounted to family violence.
- [310] The respondent also alleged that the claimant engaged in family violence on three occasions: in April 2017 and July 2017, when she alleges that he assaulted her, and on August 9, 2021, when she alleges that the claimant pushed her off her bike, hurting her leg and endangering C. I have found that the claimant did not push the respondent off her bike on August 9, 2021, and did not endanger C. on that occasion. As for the alleged assaults on the respondent in April and July 2017, I have found the respondent to be an unreliable witness, who has been untruthful under oath. Hers is the only evidence in support of the claimant assaulting her on those occasions, which he denies. I have found that I cannot rely on the respondent's uncorroborated evidence, and find the claimant did not assault her on either of those two occasions.

[311] The respondent also submitted that the claimant engaged in family violence against her in abandoning her, psychologically manipulating her, refusing her access to C, and in his counsel's cross-examination of her. I do not agree. The claimant chose to leave the respondent. While the separation of parents with a new born infant is most unfortunate, that is not family violence. I do not find that he psychologically manipulated her. As for access, the claimant has provided the respondent with parenting time in accordance with the orders of this court. While the cross-examination of the respondent was lengthy and demanding, it was not disproportionate to the matters in issue in this case.

[312] The family violence the respondent has engaged in is repeated, and has been directed against C., the claimant, and KS. The assaults on the latter two are particularly concerning, given the circumstances in which they occurred, and the fact they occurred in C.'s direct presence.

[313] Despite my findings of family violence against the respondent, I find that safeguards can be put in place to effectively eliminate any risk of a repetition of such behaviour on her part.

Whether the actions of a person responsible for family violence indicate they may be impaired in their ability to care for and meet the child's needs

[314] The respondent denies engaging in any family violence. Her lack of insight into her past actions suggests that she may be impaired in her ability to prevent herself from repeating such actions in the future. While she has received counselling for depression, she has not received any treatment for anger issues or violence prevention, nor does she appear to perceive the need for such treatment. Again, this raises the concern that she may be impaired in her ability to prevent herself from repeating such actions in the future.

[315] Given the respondent's mother's actions on August 9, 2021, I would have significant concerns about her ability to care for C.

[316] Once again, I find that safeguards can be put in place to effectively eliminate any risk of a repetition of such behaviour on the respondent's part.

The appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child

[317] It is manifestly apparent that the parties are unable to cooperate on issues affecting C. The parties have been unable to cooperate on simple accommodations around video-parenting time.

[318] The respondent refused to permit the claimant to take C. to Alberta with him when he required dental treatment. This forced the claimant to have to bring an application in court, which was granted. The respondent's evidence about the lack of healthcare available in the claimant's home community, and how he should be forced to remain there rather than travel to Alberta for healthcare, was most concerning. She seemed to view the matter as just punishment for the restrictions put on her by the Brazilian courts which prohibited her

from leaving Sao Paolo.

- [319] Of similar concern was the respondent's evidence about C.'s school. She complained about the claimant not consulting with her in advance of making the decision where C. would go to school. But when the claimant provided her with information about C's school, she was uninterested in it, because C. had a school to go to in Brazil. This displayed a lack of interest in C.'s life in British Columbia, because it is not in Brazil.
- [320] The respondent's attitude suggests that, as least so long as C. remains in the primary care of the claimant, she will be unable to cooperate to make decisions in C.'s best interests. This will factor significantly in the orders I will make with respect to parental decision-making, but does not lead me to believe that the respondent's guardianship must be terminated.

Any civil or criminal proceeding relevant to the child's safety, security and well-being

- [321] The respondent has initiated, and apparently continues to pursue, criminal proceedings against the claimant in Brazil with respect to the alleged bicycle incident on August 9, 2021. I have found that that incident did not occur as alleged by the respondent, and that the claimant did not assault the respondent or endanger C. on that occasion.
- [322] I do not accept that the respondent has a good faith belief that the claimant assaulted her or endangered C. on that occasion. I find that she laid that complaint to buttress her efforts to keep the claimant from taking C. to Canada, as ordered by the Brazilian courts.
- [323] The respondent's appeals of the Brazilian court's Hague proceeding decisions appear to be at an end with the June 2022 dismissal of her special appeal to the Supreme Court of Brazil. I cannot fault a party for exhausting their rights of appeal, particularly in the absence of any expert evidence about whether her appeal had any arguable merit.
- [324] Of greater concern is the fact that the respondent initiated family proceedings in both British Columbia and Brazil, and pursued them simultaneously. She displayed bad faith in agreeing to the interim consent order in British Columbia Provincial Court on June 4, 2018, which required C. to return to this jurisdiction, when she had already initiated proceedings in Brazil seeking sole custody of C., proceedings which she did not notify the claimant of.
- [325] I find that the respondent is prepared to use litigation to further her agenda of obtaining sole custody of C. in Brazil, with no regard to his best interests. Doing so distracts all of his caregivers, and diverts their resources, from C.
- [326] While this is of significant concern, I do not find that terminating the respondent's guardianship of C. would do much, if anything, to mitigate it.

Conclusion

- [327] As my reasons to this point will have foreshadowed, I have very significant concerns about the respondent's conduct, and her future ability, as predicted by her past conduct, to act in C.'s best interests. She has acted unlawfully in retaining C. in Brazil, and abducted him by fleeing in the night to avoid the police after the Brazilian Court of Appeal ordered his search and seizure. She has engaged in family violence against C., the claimant and KS. She has refused to accept responsibility for her actions, and the court cannot trust that she will not repeat them in the future without significant safeguards being put in place to protect C. All of that said, I conclude that it is possible to safeguard C.'s best interests by the reallocation of parental responsibilities and other orders which will ensure that the respondent cannot further disrupt C.'s need for stability.
- [328] I, therefore, dismiss the claimant's application for an order terminating the respondent's guardianship. I declare that both the claimant and respondent are guardians of C.

Relocation

- [329] The respondent sought an order permitting her to move to Brazil with C. While her written submission outlined four possible scenarios, including one where both parties parented in Brazil and one where both parties parented in Canada, in oral submissions her counsel submitted that it really comes down, on the facts of this case, to whether the respondent will have primary residence of C. in Brazil, or the claimant in Canada. I accept those are the only two scenarios before the court.
- [330] In her testimony, the respondent asked this court to grant an order relocating C. to Brazil, the place he has lived his "entire life". The respondent wants to move C. to Brazil for the same reasons she went there in the first place. She has her own company in Brazil, and there are lots of job opportunities for her in her field, whereas she has been unable to find work in Canada without a work permit. Her parents have lent her over \$50,000.00 to help her. Her father is willing to give her her own two bedroom apartment to live with C. rent-free, whereas at the time of trial she was living in a house with roommates in Vancouver, trying to work remotely. The apartment is close to her mother's home and 15 minutes from C.'s school, where he would study both Portuguese and English. She finds it almost impossible to survive in British Columbia, and has ruled out being able to live in either Vancouver or the Interior with C. She does not believe a child should be removed from the place he lived his entire life, where he has lots of support, a school and his family. The respondent proposes that if C. is allowed to live with her in Brazil, the claimant would have parenting time for approximately a month in July and in December-January each year. The claimant could also have video-parenting sessions pretty much every day after school. The respondent testified that she does not want to prevent C. having a relationship with the claimant and KS.

[331] Extensive submissions were made by the respondent about the appropriate legal framework for this application. She submitted that this court must look at the application as a first instance hearing rather than a relocation application, whether under s. 46 of the FLA, or the *Gordon v. Goertz*, 1996 CarswellSask 199 framework under the DA. She submitted that in either case the applicable test does not change: it is the best interests of the child. She further submitted that a blended analysis, as set out in *K.W. v. L.H.*, 2018 BCCA 204, at paras. 74-93, had to be applied.

[332] The respondent also relied on the decision of the Supreme Court of Canada in *Barendregt v. Frebliunas*, 2022 SCC 22 [Barendregt], for the proposition at paras. 141-147 that family violence is a proper consideration to take into account when assessing a move/relocation matter. She noted the comments of the Court at para. 144 on the difficulty of proving domestic violence, given that it usually happens behind closed doors. Further, the Court notes at para. 146 that the most recent amendments to the DA recognize findings of family violence are a critical consideration in the best interests of the child analysis. She highlighted the Court's conclusion on this point at para. 147:

Because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases.

[333] Barendregt was also relied upon by the claimant, and it is now the leading authority on determining whether a relocation is in the best interests of the child. As set out at para. 148, the same framework applies whether this is viewed as an application at first instance or a variation.

[334] At paras. 152-153, the Court restated the common law relocation framework as follows:

[152] The crucial question is whether relocation is in the best interests of the child, having regard to the child's physical, emotional and psychological safety, security and well-being. This inquiry is highly fact-specific and discretionary.

[153] Our jurisprudence and statutes provide a rich foundation for such an inquiry: see, for example, s. 16 of the Divorce Act. A court shall consider all factors related to the circumstances of the child, which may include the child's views and preferences, the history of caregiving, any incidents of family violence, or a child's cultural, linguistic, religious and spiritual upbringing and heritage. A court shall also consider each parent's willingness to support the development and maintenance of the child's relationship with the other parent, and shall give effect to the principle that a child should have as much time with each parent, as is consistent with the best interests of the child. These examples are illustrative, not exhaustive. While some of these factors were specifically noted under *Gordon*, they have broad application to the best interests of the child.

[335] Applying this framework, it is clear to me that C.'s best interests would not be served by permitting the respondent to relocate with him to Brazil. The reasons for this conclusion have already been effectively set out in my reasons denying the claimant's application to terminate the respondent's guardianship.

[336] The respondent has provided reasons why she wants to move to Brazil with C. I accept that it would be better for the respondent if she were able to relocate with C. to Brazil. It is her country of origin. She has legal status there. She speaks the language. She has richer employment opportunities there. Her family and friends live there. The cost of living is lower. As stated by Justice Fleming in *Nolie v. Reece*, 2016 BCSC 2201, at para. 24:

the courts have repeatedly recognized that career fulfilment and the emotional well-being of a parent are legitimate consideration affecting a child's best interest and as a matter of common sense, children benefit from a parent who is happier, more fulfilled, and more financially secure.

[337] However, for the reasons I have already given, I find that it would not be in C.'s best interests to permit the respondent to relocate with him to Brazil.

[338] The respondent is not remorseful about her actions in unlawfully retaining C. in Brazil, failing to facilitate any contact between the claimant and C. for long periods of time, and disobeying the Brazilian courts' orders, including fleeing the warrant for C.'s search and detention. She regrets only that her actions have separated her from C. She does not have any insight into the wrongfulness of her actions, or their impact on C.

[339] I find that, if permitted to relocate to Brazil with C., the respondent would not support the development and maintenance of C.'s relationship with the claimant. Given the opportunity in Brazil, I find the respondent would likely thwart C.'s relationship with his father. She would be very unlikely, I find, to facilitate C. travelling to Canada to have parenting time with the claimant. If she were to once again sever C.'s relationship with the claimant, she, and C., would be beyond the reach of this court's jurisdiction.

[340] I fully appreciate the Court's comments in *Barendregt* about the difficulties in proving domestic violence, as it often takes place behind closed doors and may lack corroborating evidence. I have found that it is the respondent, not the claimant, who has engaged in family violence in this case. Those findings are a critical consideration in the best interests analysis, and weigh heavily against the respondent's relocation application.

[341] A child is entitled to as much time with each parent as is consistent with their best interests. I recognize that denying the respondent's application will have the effect of sharply limiting C.'s time with her. That is regrettable. However, in all of the circumstances of this case, I conclude that it is in C.'s best interests for him to remain with the claimant in his home community. The respondent's relocation application is, therefore, dismissed.

Habitual residence

[342] The claimant sought a declaration that C. is habitually resident in British Columbia. The Brazilian courts already came to that conclusion, and both parties accepted that that finding was binding on me. It is not clear to me that in the circumstances it is necessary for this court to make the declaration sought. However, for the sake of clarity, I declare that C. is habitually resident in British Columbia.

Parenting arrangements

[343] It follows from my reasons to this point that I find that it is in C.'s best interests for the claimant to have primary residence of C. I so order.

[344] Section 16.1(8) of the DA states that an order "may require that parenting time or the transfer of the child from one person to another be supervised." Judge Skilnick stated in D.F.S. at para. 108 that, in cases of abduction contrary to an existing court order, combined with a refusal to willingly return the child, "the parent's contact with the child thereafter has been ordered to be supervised".

[345] Any in-person parenting time to be exercised by the respondent must be in British Columbia, in the claimant's home community, and must be supervised. Further, the respondent must surrender her passports to the court registry, the RCMP, or another agreed-upon third party for the duration of her parenting time.

[346] Further, the respondent must forthwith surrender any and all identifying documents for C., including his Brazilian and Canadian passports, Brazilian National ID card and Brazilian birth certificate, to the claimant. I would add, in light of concerns raised in the evidence about the possibility that the respondent or her lawyer continued to have copies of C.'s passports and other identifying documents in her possession after Smith J. ordered the respondent to surrender them to the claimant's counsel, that this order includes not only original documents, but all copies, whether in the respondent's personal possession or in the possession of her counsel or other third parties.

[347] I do not agree with the claimant that the respondent must only speak in English or with a translator present during her in-person parenting times. A child's cultural and linguistic heritage is a factor to consider in assessing a child's best interests under s. 16(3)(f) of the DA, and it is in C.'s best interests to continue to be exposed to the Portuguese language, which is one of his mother tongues.

[348] Nor do I agree with the claimant that the respondent should be required to post \$50,000 in security in order to exercise in-person parenting times. Such a requirement would likely be prohibitively expensive, thereby effectively preventing the respondent from exercising in-person parenting time, which will already be expensive for her to exercise, given the costs of travel to British Columbia and supervision. Nor do I consider the posting of security necessary to mitigate the risk of the respondent abducting C. during her in-person

parenting times. The other measures ordered are sufficient to accomplish that objective.

[349] In terms of a parenting schedule, the respondent will be exercising her in-person parenting time in the claimant's home community. It makes sense for the windows of opportunity to correspond with C.'s school schedule. It also makes sense, given travel costs, to maximize C.'s opportunities to spend time with the respondent while she is in British Columbia.

[350] I, therefore, make the following orders with respect to the respondent's parenting time with C:

- a) The respondent may have parenting time with C.:
 - i. provided that it is supervised by an agreed upon supervisor, at a location or locations in the claimant's home community to be agreed upon, and is arranged and paid for by the respondent;
 - ii. the respondent surrenders her passport(s) to the court registry, the RCMP or another mutually agreed upon third party, for the duration of her parenting time; and
 - iii. the respondent surrenders any and all identifying documents for C., both originals and any copies, including his Brazilian and Canadian passports, Brazilian National ID card and original Brazilian birth certificate, to the claimant;
- b) the respondent may have in-person parenting time with C. during the summer school break as follows:
 - i. for up to two hours a day;
 - ii. for up to ten days over a two-week period;
 - iii. on not less than two weeks' notice to the claimant, consent not to be unreasonably withheld; and
- c) in addition, the respondent may have in-person parenting time with C. during the Christmas school break as follows:
 - i. for up to two hours a day;
 - ii. for up to five days over a one-week period;
 - iii. on not less than two weeks' notice to the claimant, consent not to be unreasonably withheld.

[351] At present, it is only with these safeguards in place that the court can be satisfied that the respondent will not use her parenting time to flee with C.

Video-Parenting and related orders

- [352] Both parties criticized the other for the way they facilitated video-parenting times with C. The parties' hostility to one another, and the distrust engendered through the events since they separated, makes it difficult for either one of them to view the other's actions in a positive light.
- [353] For example, I accept that claimant has attempted to focus the camera on C. during video parenting times, and to video C. wherever and whatever he may be doing, such as playing outside. The respondent views this as the claimant trying to control the sessions. The claimant says he is attempting to facilitate the sessions.
- [354] At the same time, there is some truth to the respondent's views. The claimant is hypervigilant when it comes to the respondent's actions and the possibility of any harm to C. This was reflected, for example, in his evidence about the images on the shirt the respondent wore, which he viewed as inappropriate for C., and caused him to feel that he needed to be with C. at all times.
- [355] Some of the problems that have arisen in the video-parenting times that the parties have experienced are inherent in attempting to have meaningful contact with a very young child via video. A young child cannot be expected to have a long attention span or to engage a great deal on a video call. It is to be hoped that as C. gets older, he will be better able to engage with the respondent via video call. It is important that a child-centred approach is taken, that respects the child's wishes regarding what is done during the call, and when it ends.
- [356] Depending on the time of year, there is a three or four hour time difference between Sao Paulo and the community where the claimant, KS and C. live. This time difference can make scheduling video-parenting times more complicated, as work and school schedules need to be worked around.
- [357] Orders have been in place that restrict the parties' communication to during the video-parenting sessions. This has created unnecessary conflict. The parties need to be able to communicate with one another about C., and in particular about video-parenting sessions, outside of those sessions. Given the parties' history, however, there needs to be appropriate safeguards in place about those communications.
- [358] I make the following orders in an attempt to assist the parties in making video-parenting time with C. as effective as possible in maintaining meaningful contact with the respondent. This will be in C.'s best interests:
- The respondent will have four video-parenting times with C. each week, for up to 30 minutes each. Under the Elwood order, as varied by the MacIntosh order, the respondent currently has four video-parenting times each week, for 25 minutes each, so this order is intended to maintain that arrangement, with each session increased to up to 30 minutes. I understand that the parties have, by consent, varied that order so that the three weekday parenting times occur at 4:30 p.m.

Monday, Tuesday and Thursday, and the Saturday parenting time is at 9:00 am. Subject to further court order or written agreement between the parties, they are to maintain their current schedule, with the exception that each parenting time is to be increased as ordered.

- The claimant is to make his best efforts to facilitate each video-parenting time, including ensuring reasonable audio/visual connection, but is not to control the parenting time or unreasonably interfere with the respondent's parenting time. The claimant may delegate this task to KS.
- The respondent may include her family members in her video-parenting times.
- Neither party is to record video parenting times.
- Each video parenting time is to end when C. wishes it to end, even if the scheduled time has not yet ended.
- Parties may engage in reasonable text or email communications with each other outside of video-parenting times about parenting time logistics or other issues regarding C. Neither party is to send more than one text or email in a 24-hour period except in an emergency situation or as consented to by the other party.
- These orders regarding video-parenting times and communication may be varied by the parties' written agreement.

Parental responsibilities and related orders

- [359] The parties' history makes it clear that they have been unable to cooperate in any aspect of parenting C. Under this decision, C. will be primarily resident with the claimant. In the circumstances, I consider that it will be in C's best interests to allocate all decision-making responsibility regarding C. to the claimant under s. 16.3 of the DA, and all parental responsibilities for C. to the claimant under s. 41 of the FLA.
- [360] Any requirement to obtain the respondent's consent for the claimant to apply for a passport for C. is dispensed with. Further, any requirement to obtain the respondent's consent for the claimant to travel with C. is dispensed with.
- [361] While I have allocated all decision-making and parental responsibilities to the claimant, it is in C's best interests that the respondent be informed of important decisions and matters regarding C., and have an opportunity to provide input prior to a decision being made. I, therefore, order the claimant to advise the respondent in writing about important decisions regarding C. before they are made. The respondent will have the right to provide any input she may have about such decisions in writing. The claimant is to consider the respondent's input, but has final decision-making responsibility.
- [362] The claimant is to send the respondent a written monthly update about C., which will contain photographs and details about C.'s life and milestones.

Conduct and related orders

- [363] Pursuant to s. 16.1(9) of the DA, the respondent is prohibited from removing C. from the claimant's home community without the express written consent of the claimant or further court order.
- [364] Pursuant to s. 227 of the FLA, the respondent is restrained from attending at or near the claimant's residence.
- [365] Pursuant to s. 225 of the FLA, the respondent will have no communication with the claimant, KS or the C. except as permitted in this decision or through counsel.
- [366] The parties will put the best interests of C. before their own interests.
- [367] The parties will encourage C. to have a good relationship with the other parent and speak to C. about the other parent and that parent's partner in a positive and respectful manner.
- [368] To the extent they are permitted to communicate with one another under this decision, both parties will make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of C.
- [369] The parties will not question C. about the other parent or time spent with the other parent beyond simple conversational questions. The parties will not discuss with C. any inappropriate adult, court or legal matters. The parties will not blame, criticize or disparage the other parent or that parent's partner to C.

Child support and s. 7 expenses

- [370] The claimant seeks orders for retroactive and ongoing child support and s. 7 expenses.
- [371] Pursuant to s. 15.1 of the DA, a court may make an order for support and, if doing so, the court shall do so in accordance with the applicable guidelines.
- [372] Pursuant to s. 3 of the Guidelines, the amount payable is the amount set out in the applicable table. Even if the respondent returns to Brazil, the amount payable by her is still calculated using the BC table (see s. 3(3)(b)).
- [373] The claimant submits that the respondent's annual income is \$54,000 and, on that basis, that the amount of child support is \$507 per month.
- [374] The respondent submitted that child support should simply be paid pursuant to the Guidelines once the parenting arrangements are determined. She submitted that the \$54,000 figure relied upon by the claimant was inappropriate given fluctuations in her income. She submitted that it would be better to assess her income on the basis of her May 13, 2022 F8 Financial Statement. It indicates a total income of \$39,000. She also submitted that the parties should be ordered to exchange financial information annually.

- [375] The respondent has two university degrees. She stopped working when she went into hiding in February 2021, and testified she did not return to work until February 2022. This is inconsistent with the evidence of one of her witnesses, who said she helped the respondent get a job in or around June or July 2021. However long she was off work, the respondent testified she was able to afford to do so with her savings.
- [376] At the time of trial, the respondent was working in Vancouver remotely from Brazil. She testified that her income fluctuated, depending in part on the exchange rate. At trial, she testified her monthly income was between \$3,000 and \$4,000.
- [377] I accept that the respondent's income does fluctuate. She has far better employment prospects in Brazil than in British Columbia, and will likely earn a higher income there than she has been able to earn working remotely in British Columbia.
- [378] I am going to base the respondent's current child support obligation on the high end of what she testified she was earning at trial, being \$4,000 per month or \$48,000 per year. Under the Guidelines, this means she must pay \$451 per month, commencing August 1, 2022.
- [379] I agree with the respondent that the parties should exchange financial information on an annual basis going forward. I, therefore, order that the parties will exchange their income and income tax documents each year by no later than June 15, and agree to the new child support amount payable by June 30 each year, with the new amount to take effect beginning July 1 and continuing each year until June 30 of the next year.
- [380] The claimant also sought retroactive child support for the period of August 9, 2021 to July 9, 2022 in the amount of \$5,577. On the basis of the \$451 per month child support I have found payable, and on the basis that the period is from August 9, 2021 to July 31, 2022, I calculate a total of approximately \$5,261 in retroactive child support. I order the respondent to pay \$5,261 in retroactive child support.
- [381] The claimant sought \$240 per month in special or extraordinary s. 7 expenses, and \$1,440 in retroactive s. 7 expenses. The s. 7 expenses claimed were for preschool and soccer.
- [382] The respondent challenged whether the expenses claimed were proper s. 7 expenses, and noted the lack of any receipts for the expenses claimed. She also submitted that the claimant should be imputed with an income, as s. 7 expenses should be shared on a proportionate basis.
- [383] In *L.A.M. v. S.C.M.*, 2020 BCSC 67 [*L.A.M.*] at para. 29, Justice Weatherill laid out a two-pronged approach to assessing whether an expense ought to be considered a s. 7 expense:
- [29] The claimant asserts, and I agree, there is a two-pronged approach in assessing whether an expense ought to be considered an extraordinary expense:

- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
- i. the combined income of the parties;
 - ii. the nature and amount of the individual expense;
 - iii. the nature and number of the activities;
 - iv. any special needs or talents of the children;
 - v. the overall cost of the activities; and
 - vi. any other similar factor that the court considers relevant.
- b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:
- i. the means of the spouses and those of the child; and
 - ii. the family spending pattern prior to separation,
- (McLaughlin v. McLaughlin, [1998] B.C.J. No. 2514 (BCCA) at paras. 81-82; Bodine-Shah v. Shah, 2014 BCCA 191 at para. 66; MacInnis v. MacInnis, 2018 BCSC 1507 at para. 103).
- [384] In Goodhew v. Summers, 2022 BCSC 1080, Justice MacDonald cited L.A.M. with approval at para. 189, and then went on to say at para. 190:
- [190] Overall, for an expense to be considered a s. 7 expense it must meet the threshold of being necessary, reasonable, and affordable. The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: L.A.M. at para. 30.
- [385] At para. 193, MacDonald J. held that extracurricular activities such as softball and volleyball expenses qualified as s. 7 expenses.
- [386] In de la Fuente v. Breen, 2021 BCSC 2000 at para. 63, Justice Blake held that preschool expenses were properly compensable as special expenses.
- [387] Applying these principles, I find that the preschool and soccer expenses claimed qualify as s. 7 expenses.

- [388] I turn to the respondent's submission that an income should be imputed to the claimant. As previously mentioned, the claimant was working as a hair stylist in the Lower Mainland during the parties' relationship. He was earning \$15.00 an hour as a hair stylist. The claimant did not own any real property and was in a bad financial situation when the parties separated.
- [389] The claimant found it difficult to maintain his work while he was focussed on the Hague proceeding and finding C. Due to the start of the COVID-19 pandemic, the claimant was off work between March and June 2020. He returned to work in June 2020, but quit to open a home-based salon that same month, in part because of difficulties associated with scheduling video-parenting times. He closed that business in January or February 2021 before he and KS went to Brazil.
- [390] On his return to Canada in March 2021, the claimant was focussed on getting C. back, and did not focus on his career. It was at this point that he and KS moved to the Interior, where they bought their home. KS is an engineer.
- [391] The claimant is now a stay-at-home father, who is focussed on caring for C. He wants to make up for the time he lost in C's life, gain his trust and provide him with a sense of security. The claimant testified that he intended to return to work after C. started school in September 2022.
- [392] I do not find it appropriate to impute any income to the claimant at this time. His explanation for why he has not been working, both while searching for C. and since bringing him home, is more than satisfactory. I would expect that in the future, if he has not already begun to do so, the claimant will earn an income.
- [393] I, therefore, order the respondent to pay \$240 in s. 7 expenses, starting on August 1, 2022. I also order the respondent to pay \$1,440 in retroactive s. 7 expenses.
- [394] Going forward, the respondent is ordered to pay her proportional share for C.'s special or extraordinary expenses, her share to be determined on the basis of the parties' annually exchanged financial information. The claimant is ordered to provide the respondent with a receipt for any special or extraordinary expenses he incurs for reimbursement.

Post-trial applications

- [395] In October 2022, both parties filed applications which were scheduled to be heard together on October 28, 2022.
- [396] The respondent's notice of application sought orders of contempt for the claimant allegedly breaching previous court orders related to video-parenting time and in-person parenting time, and that the claimant be punished by fine or incarceration or both. In the alternative, she sought orders under the FLA for the claimant to pay for expenses related to her exercising her remaining in-parenting time, as set out in my June 30, 2022 order.

- [397] The claimant's notice of application sought a variety of orders, including that he be permitted to take C. to Alberta without the respondent's consent, child support orders, and document disclosure.
- [398] I heard full submissions on the respondent's application. At the conclusion of the hearing, I made orders to address the fact that the respondent missed three supervised in-person parenting times during the trial due to C. having COVID. I ordered three make-up supervised in-person parenting times, on essentially the same conditions I ordered on June 30, 2022. I reserved on the remainder of the relief sought in the respondent's application.
- [399] There was insufficient time for me to hear the claimant's notice of application. I did make an order varying the MacIntosh order to permit the claimant to take C. to Alberta for medical reasons related to C., the claimant or KS, subject to 48-hours notice being provided to the respondent via her counsel. The remainder of the claimant's application was adjourned with liberty to reschedule.
- [400] These are my reasons with respect to the remainder of the respondent's application.
- [401] The respondent complained about two issues in her application. The first had to do with changes to her video-parenting schedule when C. started school in September 2022. In essence, she alleged that the claimant delayed alerting her to the need to change the video-parenting schedule until September 2, 2022, about four days before C. was to start school. The parties were unable to agree initially on the new weekday time, although they did so about one month later, which she alleged meant that she was without any video-parenting time on weekdays for approximately one month. She alleged that the claimant breached the Elwood and MacIntosh orders in this regard.
- [402] The second had to do with my June 30, 2022 order for the respondent to have supervised in-person parenting time during the trial. She participated the first two times. The claimant refused to bring C. the next three times on the basis that C. had contracted COVID. The parties had been unable to agree to make-up in-person video-parenting times by the time I heard the application.
- [403] In her application, the respondent sought contempt orders, fines and incarceration for the claimant's alleged breaches of these orders. Before me, she did not pursue any remedies such as fines or incarceration. She sought to have me find that the claimant breached the orders.
- [404] I do not find that the claimant breached any of the three orders cited. In respect of the change in the video-parenting schedule, a change was necessary due to C. starting school. Advance notice, and three different options for a new schedule were provided by the claimant. None of those options were convenient to the respondent in light of her work schedule. The parties were unable, though counsel, to negotiate a new schedule until October 4, 2022.

- [405] It is unfortunate that more advance notice was not provided by the claimant, that the options presented were inconvenient to the respondent, and that it took the parties, through their counsel, a month to agree to a new schedule. While unfortunate, and a sad reflection of the difficulties the parties have agreeing about the simplest of matters, none of that constitutes a breach by the claimant of the Elwood and MacIntosh orders that set and varied the video-parenting schedule.
- [406] I turn to the missed supervised in-person parenting times. Section 62(1)(f) of the FLA provides that a denial of parenting time is not wrongful in circumstances the court considers to be sufficient justification for the denial. I am satisfied that the claimant has provided sufficient justification for the denial of in-person parenting time.
- [407] C. had COVID, as indeed did the claimant and KS. I accept the claimant's evidence that when he and C. both tested positive on the morning of the first missed session, he called the supervising agency, and their supervisor confirmed that they needed to wait five days before coming into their office. Through counsel, the claimant advised the respondent of same.
- [408] C.'s illness, particularly in conjunction with the illness of the claimant and KS, is a more than sufficient justification for the denial of the July in-person parenting times.
- [409] The parties, through counsel, attempted to come to an agreement on make-up in-person parenting times for the respondent. They were unable to do so, although the claimant consented to the respondent having three days of in-person parenting time on the same conditions as my previous order. He proposed three different sets of dates during which that could occur.
- [410] At the hearing, I made orders that the make-up in-person parenting times occur during one of the time periods the claimant had proposed.
- [411] While it is once again unfortunate that the parties were unable to come to an agreement on the make-up in-person parenting times prior to this hearing, the failure to agree does not constitute a breach or contempt of my June 30, 2022 order.
- [412] The respondent's October 11, 2022 notice of application is dismissed in its entirety. The parties may address the costs of this hearing in their written submissions on costs of the trial, which I address below.

Summary of orders made

[413] The following summarizes the orders I have made in this decision:

- 1) By consent, an order for divorce is granted pursuant to s. 12 of the DA. The divorce to take effect on the 31st day after the date of this order;
- 2) The parties will each retain all assets and liabilities in their own names. All other property claims are hereby dismissed;

- 3) The respondent's spousal support claim is hereby dismissed;
- 4) I dismiss the claimant's application for an order terminating the respondent's guardianship. I declare that both the claimant and respondent are guardians of C.;
- 5) The respondent's relocation application is dismissed;
- 6) I declare that C. is habitually resident in British Columbia;
- 7) The claimant will have primary residence C.;
- 8) The claimant will have all decision-making responsibility regarding C. under s. 16.3 of the DA and all parental responsibility for C. under s. 41 of the FLA;
- 9) The claimant is to advise the respondent, in writing, about important decisions regarding C. before they are made. The respondent will have the right to provide any input she may have about such decisions in writing. The claimant is to consider the respondent's input, but has final decision-making responsibility;
- 10) The claimant is to send the respondent a written monthly update about C., which will contain photographs and details about C.'s life and milestones;
- 11) The respondent may have in-person parenting time with C.:
 - a) provided that it is supervised by an agreed upon supervisor, at a location or locations in the claimant's home community to be agreed upon, and is arranged and paid for by the respondent;
 - b) the respondent surrenders her passport(s) to the court registry, the RCMP or another mutually agreed upon third party, for the duration of her parenting time; and
 - c) the respondent surrenders any and all identifying documents for C., both originals and any copies, in her possession or in the hands of third parties under her control, including his Brazilian and Canadian passports, Brazilian National ID card and original Brazilian birth certificate, to the claimant;
 - d) the respondent may have in-person parenting time with C. during the summer school break as follows:
 - i. for up to two hours a day;
 - ii. for up to ten days over a two-week period;
 - iii. on not less than two weeks' notice to the claimant, consent not to be unreasonably withheld; and
 - e) in addition, the respondent may have in-person parenting time with C. during the Christmas school break as follows:
 - i. for up to two hours a day;

- ii. for up to five days over a one-week period;
 - iii. on not less than two weeks' notice to the claimant, consent not to be unreasonably withheld.
- 12) The respondent may have video-parenting time with C. on the following terms:
- a) The respondent will have four video-parenting times with C. each week, for up to 30 minutes each. Under the Elwood order, as varied by the MacIntosh order, the respondent currently has four video-parenting times each week, for 25 minutes each, so this order is intended to maintain that arrangement, with each session increased to up to 30 minutes. I understand that the parties have, by consent, varied that order so that the three weekday parenting times occur at 4:30 p.m. Monday, Tuesday and Thursday, and the Saturday parenting time is at 9:00 am. Subject to further court order or written agreement between the parties, they are to maintain their current schedule, with the exception that each parenting time is to be increased as ordered;
 - b) The claimant is to make his best efforts to facilitate each video-parenting time, including ensuring reasonable audio/visual connection, but is not to control the parenting time or unreasonably interfere with the respondent's parenting time. The claimant may delegate this task to KS;
 - c) The respondent may include her family members in her video-parenting times;
 - d) Neither party is to record video parenting times;
 - e) Each video parenting time is to end when C. wishes it to end, even if the scheduled time has not yet ended;
 - f) Parties may engage in reasonable text or email communications with each other outside of video-parenting times about parenting time logistics or other issues regarding C. Neither party is to send more than one text or email in a 24-hour period except in an emergency situation or as consented to by the other party; and
 - g) These orders regarding video-parenting times and communication may be varied by the parties' written agreement.
- 13) The respondent shall pay child support in the amount of \$451 per month, commencing August 1, 2022;
- 14) The respondent shall pay \$5,261 in retroactive child support;
- 15) The respondent shall pay \$240 in s. 7 expenses per month, commencing August 1, 2022;
- 16) The respondent shall pay \$1,440 in retroactive s. 7 expenses;
- 17) Henceforth, the respondent shall pay her proportional share for C.'s s. 7 expenses; her share to be determined on the basis of parties' annually exchanged financial information;

- 18) The parties will exchange financial information each year no later than June 15, and agree to the new child support amount payable by June 30 each year, with the new amount to take effect beginning July 1 and continuing each year until June 30 of the next year;
 - 19) Pursuant to s. 16.1(9) of the DA, the respondent is prohibited from removing C. from the claimant's home community without the express written consent of the claimant or further court order;
 - 20) Pursuant to s. 227 of the FLA, the respondent is restrained from attending at or near the claimant's residence;
 - 21) Pursuant to s. 225 of the FLA, the respondent will have no communication with the claimant, KS or the C. except as permitted in this decision or through counsel;
 - 22) The parties will put the best interests of C. before their own interests;
 - 23) The parties will encourage C. to have a good relationship with the other parent and speak to C. about the other parent and that parent's partner in a positive and respectful manner;
 - 24) To the extent they are permitted to communicate with one another under this decision, both parties will make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of C.;
 - 25) The parties will not question C. about the other parent or time spent with the other parent beyond simple conversational questions. The parties will not discuss with C. any inappropriate adult, court or legal matters. The parties will not blame, criticize or disparage the other parent or that parent's partner to C.
- [414] Both parties requested an opportunity to make submissions in writing on costs after the decision was rendered. Should they be unable to agree on costs, the claimant is to file his submission on costs within three weeks of the date of this decision; the respondent is to file her response on costs within two weeks of the claimant's submission; and the claimant may file his reply within one week of the respondent's response.
- [415] The parties are at liberty to seek to appear before me for any clarification that may be required of this decision by contacting Supreme Court Scheduling within three weeks of this decision.

"L.M. Lyster J."

LYSTER J.

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