

CANADA / JUDGMENT

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

2025 BCSC 1343

COURT

Supreme Court of British Columbia

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2025 BCSC 1343 G.E.I. v. C.G.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

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

2025 BCSC 1343

Date: 20250716

Docket: E30734

Registry: Cranbrook

Between:

G.E.I.

Claimant

And

C.G.B.

Respondent

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

Counsel for the Claimant:

M. Matthews

Counsel for the Respondent:

C. Long

Places and Dates of Hearing:

New Westminster, B.C.

August 29-30 and

December 11-12, 2024

Kamloops, B.C.

January 15 and February 10, 2025

Cranbrook, B.C.

April 25, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 16, 2025

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I. Introduction

- [1] This family law proceeding has a complicated history that has created significant issues of mistrust between the parties. It involves the confirmed abduction of the child of the marriage by one parent and a subsequent unlawful relocation of the child by the other parent.
- [2] While the context in which these applications occur is complex and contentious, the ultimate issues before me are straightforward. I must determine, having regard for the best interests of the child, where the child should reside and how parenting time between the parents should be structured.
- [3] The claimant, Mr. E, argues that the child of the marriage, C, should continue to primarily reside with him in Ottawa, Ontario where both have been residing since November 2023. The respondent, Ms. B, contends that C should be returned to live with her in Kimberley, British Columbia because C was unlawfully relocated to Ottawa in contravention of the relocation provisions of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]. Ms. B further asserts that there is evidence that C is unsafe in Ottawa because she alleges that Mr. E has a history of family violence.
- [4] A 13-day trial in June 2022, was held in Cranbrook before Madam Justice Lyster which resulted in an extensive and thoughtful analysis set out in written reasons issued February 24, 2023, and indexed as G.E.I. v. C.G.B., 2023 BCSC 269 [Trial Decision].
- [5] The applications before me arise because of Mr. E's decision, a year and a half after the trial, to relocate to Ottawa. Ms. B brings the application to have C returned to Cranbrook or Kimberley, British Columbia so that she can have parenting time. She also seeks a variation of Lyster J.'s order to allow her more and unsupervised parenting time. As will be repeated many times in these reasons, the focus of my consideration, as it must be in all family law cases involving children, is upon what outcome is in C's best interest.
- [6] In these reasons for judgment, I will first set out some background facts for context. I will then turn to my analysis and determination. I note that Lyster J., unlike me, had the benefit of multiple days of trial as well as the ability to hear testimony from the parties and witnesses and assess credibility. As such, I accept the findings of fact of Lyster J. from the Trial Decision as supplemented by the affidavit evidence put before me on these applications.

II. Facts

A. The Participants

- [7] Mr. E was born and raised in Lebanon. He is a Lebanese citizen and a Permanent Resident in Canada. Mr. E currently resides in Ottawa with C. He is employed by Federal Express and has family members in Ottawa, including, his mother, and his sister and his sister's 10 year old child. It appears his brother intends to move to Ottawa on a permanent basis or already has moved to Ottawa. Mr. E has additional extended family in Lebanon.
- [8] Ms. B was born and raised in Brazil. She has Brazilian citizenship and has Permanent Resident status in Canada. Ms. B currently lives and works in Kimberley, British Columbia, which is approximately a ten-minute drive from Cranbrook, British Columbia. She moved to Kimberley in May 2023. She works as a Project Manager. In these reasons, I note that while I accept that Ms. B wishes to have C returned to Kimberley, my references to Kimberley and Cranbrook may be taken as interchangeable, given their proximity.
- [9] The parties met in Vancouver in October 2016. They married on March 18, 2017. C was born December 7, 2017, and is the only child of the marriage. He is currently seven years old. The parties separated on January 29, 2018. The Trial Decision details a relationship, both before and after C's birth, that was marked by conflict, arguments, and allegations of family violence.

B. Ms. B's Relocation with C to Brazil and Hague Convention Proceedings

- [10] On April 19, 2018, after the breakdown of the marriage, Ms. B travelled to Brazil with C. C was approximately four months old at that time. Ms. B and C remained in Brazil for three and a half years without the consent of Mr. E. Mr. E initiated a Hague Convention on the Civil Aspects of International Child Abduction, Can. T.S. 1983 No. 35 [Hague Convention] proceeding in Brazil, which resulted in a finding that C was habitually resident in Canada and was to be returned to Canada. The Brazilian Court of Appeal affirmed the Court of first instance's decision and Ms. B subsequently fled with C and went into hiding from February 2021 to August 2021. During the six months while Ms. B and C were in hiding, Mr. E had no contact with C: Trial Decision at paras. 163, 164.
- [11] In the Trial Decision, Lyster J. summarized the details of the return of C to Canada from Brazil. One important aspect of the history is that Ms. B filed a police report alleging that Mr. E assaulted her while she was on a bicycle with C by pushing her off the bicycle. Madam Justice Lyster found that this allegation was untrue and concluded, "I find Ms. B filed that police report to buttress her efforts to keep Mr. E from leaving Brazil with C": Trial Decision paras. 55, 213.

C. The Family Law Trial

- [12] After being returned to Canada, C lived with Mr. E and Mr. E's romantic partner, K.S. Mr. E exercised primary parenting time with C, while Ms. B had little contact with C. This was, in part, because Ms. B resided in Vancouver when she returned to Canada and C and Mr. E lived in Cranbrook.
- [13] As referenced above, a trial was held before Lyster J., commencing in June 2022. Madam Justice Lyster ordered the following relief in the Trial Decision:
- a) Both Mr. E and Ms. B are guardians of C;
 - b) C is habitually a resident of British Columbia;
 - c) Mr. E 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;
 - d) Mr. E is to advise Ms. B, in writing, about important decisions regarding C before they are made. Ms. B will have the right to provide any input about such decisions in writing. Mr. E is to consider Ms. B's input, but has final decision-making responsibility;
 - e) Ms. B may have supervised in-person parenting time;
 - f) Ms. B may have video parenting time;
 - g) Ms. B is prohibited from removing the child from Mr. E's home community without the express written consent of Mr. E or further court order;
 - h) Pursuant to s. 227 of the FLA, Ms. B is restrained from attending at or near Mr. E's residence; and
 - i) Pursuant to s. 225 of the FLA, Ms. B will have no communication with Mr. E, K.S. or C except as permitted in the Trial Decision or through counsel.
- [14] Madam Justice Lyster also made the following findings of fact that I find relevant to the applications before me:
- a) Both parties are able to look after C's physical health and emotional well-being. On the evidence, Lyster J. found that C appears to have been healthy and happy in both parties' care: Trial Decision at para. 284;
 - b) 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 had a close and nurturing relationship with K.S., and close relationships with K.S.'s family and Mr. E's family: Trial Decision para. 288;

- c) Ms. B committed three specific acts of family violence: Trial Decision at para. 303. Madam Justice Lyster found that one act in particular, in which Ms. B and Ms. B's mother attacked Mr. E while he was holding C was "serious" and that the event "can only have been traumatizing for C.": Trial Decision at para. 308;
- d) Mr. E had not engaged in family violence and Lyster J. dismissed Ms. B's claims against Mr. E that he did so: Trial Decision at paras. 310 and 311; and
- e) Mr. E is a "highly emotional person, who prefers to be in charge, and can find it difficult to control his emotional reactions at times.": Trial Decision at para. 21.

D. Mr. E's Travel to Lebanon and Relocation with C to Ottawa

- [15] After the Trial Decision, Ms. B, who had been living in Vancouver, moved to Kimberley, presumably to be closer to C.
- [16] In the Trial Decision, Lyster J. ordered that Ms. B only have supervised parenting time with C. In the time following the Trial Decision, Ms. B alleges that Mr. E would not approve a supervisor and so Ms. B rarely had any in-person parenting time. Mr. E denies this allegation and says that he legitimately did not approve of the supervisors proposed by Ms. B.
- [17] Additionally, sometime after the Trial Decision, the relationship between Mr. E and K.S. ended. Indeed, given the affidavit evidence put before me on this application by K.S., it appears that the relationship between her and Mr. E ended on bad terms sometime in early 2023. Specifically, K.S. has made allegations of family violence against Mr. E.
- [18] On May 9, 2023, Mr. E provided notice pursuant to s. 16.91 of the DA to Ms. B of his intention to relocate to Ottawa with C (the "First Notice of Relocation"). On June 6, 2023, Ms. B responded saying that she opposed the relocation. In the relocation objection, Ms. B indicated that she was willing to care for C on a full-time basis if Mr. E moved to Ottawa, or on a "50/50 basis in Kimberley if [Mr. E] wishes to remain in BC."
- [19] On August 27, 2023, Mr. E travelled with C to Lebanon. Mr. E informed Ms. B of this travel either shortly before he left or while he was en route. He did not provide advanced notice and did not seek Ms. B's input on this decision. Mr. E stated that he believed that he could make that decision based on the Trial Decision which gave him final decision-making authority for C. While Mr. E asserts that the trip was originally only to be a short stay, lasting to September 24, 2023, Mr. E and C never returned to British Columbia from Lebanon and Mr. E relocated with C to Ottawa directly from Lebanon on or about November 15, 2023.
- [20] On September 29, 2023, Ms. B obtained an ex parte order before Justice MacDonald ordering that C be returned to British Columbia (the "MacDonald Order"). Ms. B served the MacDonald Order on Mr. E. It has never been set aside, nor has Mr. E brought an application to set the MacDonald Order aside. However, I accept that the application before me requesting that C remain in Ottawa has the effect of seeking to vary MacDonald J.'s order.

[21] On November 3, 2023, Mr. E provided Ms. B a second notice to relocate (the "Second Notice of Relocation"). As set out in the DA, the party intending to relocate must provide notice to the other parent at least 60 days before the intended date of relocation, and the party being served with a relocation notice has 30 days to respond. I find as a fact that Mr. E relocated C to Ottawa on November 15, 2023, which is before the expiration of the 30 days to allow Ms. B to object and before 60 days of the intended relocation which is required under s. 16.9(1) of the DA.

[22] I was provided with a document purporting to be Ms. B's objection to the Second Notice of Relocation. In the objection, Ms. B states:

Furthermore, I am open to discussing the relocation to Ottawa and exploring details of a parenting plan. I acknowledge and consent to the relocation under the condition of mutual agreement, as delineated in the attached comprehensive offer named "Agreement for Parenting Arrangements Between [Ms. B and Mr. E]". I am eager to finalize a comprehensive parenting arrangement that prioritizes [C's] best interests and guarantees a stable and nurturing environment for his upbringing.

[23] Ms. B's objection to the Second Notice of Relocation is dated November 7, with the last three digits of the year illegible. Common sense suggests that it was dated November 7, 2023, four days after it was served upon Ms. B. However, there is no evidence before me that the objection to the Second Notice of Relocation was ever served upon Mr. E before December 4, 2023, which is the time during which the DA allowed her to respond to that notice.

[24] On the contrary, I was provided with many communications between Mr. E and Ms. B from November and December 2023 that appear to indicate that both parties were excited about C's move to Ottawa. It appears from the messages that Mr. E expected Ms. B to move to Ottawa as well. For example, in a text exchange on November 29, 2023, Mr. E indicated that he sent her a list of apartments in Ottawa and suggests that he can tour them on behalf of Ms. B. Ms. B replied that she is going through the lists of rental accommodation preparing a proposal for what it might take for her to move to Ottawa. As I understand it, the proposal was that if Ms. B moved to Ottawa she would have more parenting time with C. It appears the proposal was not agreed to, and on December 2, 2023, Ms. B referenced the Second Notice of Relocation and stated that:

Hi [Mr. E] you sent this one on the 3rd of November, so until tomorrow is the response, let me know what time tomorrow we can have a calm moment to go over the agreement

thank you.

[25] I find as a fact that Mr. E served the Second Notice of Relocation on Ms. B on November 3, 2023. I also find that Ms. B did not file her objection within 30 days.

- [26] Mr. E alleges that Ms. B came to Ottawa in December 2023 to have parenting time with C that was supervised by Mr. E. Mr. E further affirms that at no time during that visit did Ms. B "demand the return of the child to Cranbrook."
- [27] The back and forth between the parties regarding relocation continued into February 2024. The parties continue to communicate about the proposed agreements and apartments. I accept that, based on the text message and email communications, Ms. B was willing to move to Ottawa if she would have equal parenting time with Mr. E of C.
- [28] It is also apparent from the communications during this time that Ms. B was frustrated that Mr. E would not allow her to have the video or telephone contact with C that she requested. From my review of the text exchanges, Ms. B's frustration was legitimate as Mr. E appeared to be controlling and ungenerous with facilitating the contact between Ms. B and C that was ordered in the Trial Decision.

E. Additional Relevant Facts

- [29] I accept that to some extent, Ms. B absented herself from parenting time with C from August 2021 to May 2022. As stated above, although Mr. E and C resided in Cranbrook after C returned from Brazil in August 2021, Ms. B did not reside in Kimberley until May 2022, because she was residing in Vancouver after returning from Brazil.
- [30] I also accept that Ms. B has not made any child support payments for C and is in arrears. Nor has Ms. B paid the cost award made against her resulting from the trial before Lyster J.
- [31] It is with that factual background for context that I turn to outline the relevant law governing these applications.

III. Law

A. Guiding Legal Principles - Relocation

- [32] The parties were married, as such, the provisions for relocation under the DA apply. Relocation is defined in s. 2 of the DA as:

a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility -- or who has a pending application for a parenting order -- that is likely to have a significant impact on the child's relationship with

- (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or
- (b) a person who has contact with the child under a contact order

- [33] Section 16.9 of the DA provides, amongst other things, that a person who wishes to relocate a child must notify a person who has parenting time, decision making responsibility or contact under a contact order of the intention to relocate at least 60 days before the expected date of the proposed relocation.
- [34] Section 16.91(2) of the DA sets out the notice requirements:
- (2) The form must set out
 - (a) a statement that the person objects to the proposed relocation;
 - (b) the reasons for the objection;
 - (c) the person's views on the proposal for the exercise of parenting time, decision-making responsibility or contact, as the case may be, that is set out in the notice referred to in subsection 16.9(1); and
 - (d) any other information prescribed by the regulations.
- [35] The notice requirement under s. 16.9 of the DA is a crucial part of the scheme for relocations. It allows for the other parent to be notified of a potential relocation and gives them time to respond to that proposal. Importantly, it is also meant to prevent the parent who wishes to relocate from changing the status quo of the child's residency before a court has the opportunity to consider whether relocation is in the child's best interests: *B.M.W.G. v. J.W.G.*, 2022 BCSC 1346 at para. 38 [*B.M.W.G.*]. Creating a new status quo for the child may increase the likelihood that the relocating parent can demonstrate that relocation is in the child's best interests: *D.T.S. v. S.P.M.*, 2022 BCSC 547 at paras. 55-56. As such, there can be an unfairness created if a parent relocates a child before the matter of relocation is litigated. This practice of relocating a child in non-compliance with legislation is unlawful and should be discouraged by courts in strong terms.
- [36] However, Justice Girn in *K.C.M. v. S.J.S.*, 2023 BCSC 435, helpfully summarized jurisprudence that supports that non-compliance with the notice requirements is not fatal to a proposed relocation:
- [55] In *K.P.K. v. S.K.*, 2021 BCSC 1426, the lack of formal notice pursuant to s. 16.9 was not fatal to the applicant's proposed relocation to Alberta. In that case, formal notice under the Divorce Act was not provided prior to the relocation, something which the relocating parent's counsel attributed to the amendments to the Act which implemented the notice requirement. Justice Kirchner found that the non-relocating parent was "certainly aware of the plan and was given a proposed parenting plan", as well as there was no prejudice from the lack of formal notice. Justice Kirchner concluded that "it would not be in the children's best interest to permit this factor to prevent a move that is otherwise in their best interests": *K.P.K.* at para. 126.

- [56] In *B.M.W.G. v. J.W.G.*, 2022 BCSC 1346, at issue was the effect of non-compliance with the formal notice requirement in s. 16.9 of the Divorce Act. Justice Kirchner found as follows:
- [54] Ultimately, as this court has held, the notice requirement is a fundamental element of the relocation scheme under the Divorce Act but an innocent failure to comply with it should not, in the circumstances of this case, override a substantive consideration of what is in VWG's best interests: K.P. at para. 126. In *D.T.S.*, Francis J. found that even where a parent's relocation of a child without notice was done without good faith (which is not the case here), this should not circumvent the court's analysis of what is in the child's best interests.
- [55] Further, s. 16.92(1)(d) of the Divorce Act directs the court to consider as part of the best interests analysis in a relocation whether the person who intends to relocate the child has complied with the notice requirement under s. 16.9. This indicates that, while the notice requirement is mandatory, Parliament anticipated there would be circumstances where a party might fail to comply with it. This does not bring an end to the court's consideration of the relocation but rather requires the court to consider the effect of non-compliance on the child's best interests.
- [56] In my view, the way to address the non-compliance in this case is for me to remain mindful throughout the best interests analysis that BW has changed the status quo and keep in mind how this may affect the fairness to JG.
- [57] JG argues that to ensure BW does not unfairly benefit from the change in status quo induced by the move I must treat her application to relocate as though she never left Salmon Arm. In my view, that goes too far. The obligation to consider VWG's best interests compels me to consider all relevant factors and evidence that bear on that question. However, I agree that I must keep in mind how the playing field has been changed by the move and consider the effect of that on the fairness of the analysis to JG. Ultimately, though, it is the child's best interests that must govern.
- [58] Thus, while the failure to give notice of the proposed relocation is a serious matter, for the reasons I have given I do not agree it is fatal in the circumstances of this case to BW's application to relocate.
- [See also *Lewis v. Eaton*, 2023 BCCA 338 at para 66.]
- [37] However, I also accept that in assessing the merits of a relocation application there should be no presumption in favour of the status quo, as such a presumption detracts from the individual justice to which each child is entitled: *Nunweiler v. Nunweiler*, 2000 BCCA 300, para. 30; *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230, para. 26; *Barendregt v. Grebliunas*, 2022 SCC 22, paras. 123, 128, 137-141.

- [38] In *Barendregt*, the Supreme Court affirmed that, when considering a proposed relocation, 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": *Barendregt* at para. 152. The inquiry is highly fact-specific and discretionary: *Barendregt* at para. 152.
- [39] The Supreme Court, articulating the provisions under s. 16.92(1) of the DA, summarized the factors that a court must consider in determining whether to grant an order to relocate a child:
- [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.
- [154] However, traditional considerations bearing on the best interests of the child must be considered in the context of the unique challenges posed by relocation cases. In addition to the factors that a court will generally consider when determining the best interests of the child and any applicable notice requirements, a court should also consider:
- the reasons for the relocation;
 - the impact of the relocation on the child;
 - the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;
 - the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
 - the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
 - whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

[40] The factors enumerated in s. 16.92(1) of the DA must be considered in conjunction with s. 16(3) of the DA, which generally govern what factors will be considered when assessing the best interests of the child in the context of structuring parenting time arrangements. The factors in s. 16(3) of the DA are as follows:

- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
- (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[41] Finally, s. 16.92(2) of the DA provides that courts are not to consider how the outcome of an application would affect either parties' relocation plans: Barendregt at para. 140. This is because, considering if a parent will move with or without their child can give rise to a "double bind", where the parent must either appear to put their own interests in front of their child, or they risk undermining the strength of their relocation application: Barendregt at para. 140. I accept that the double bind problem applies to both the parent opposing the relocation as well as the parent making the application. This is because a parent's opposition

to the application could appear weaker if the parent indicated they were willing to relocate to be with the child. Conversely, the parent could seem to be putting their own interests before the child, and thus a less caring parent, if they indicated they would not be willing to relocate to be with their child.

- [42] The burden of proof in a relocation application is set out in s. 16.93 of the DA. Where the child spends substantially equal time in the care of each parent, the burden is on the parent who intends to relocate the child that the relocation is in the best interests of the child: s. 16.93(1). If the child spends the vast majority (interpreted as 80% or more) of their time in the care of the parent who is applying to relocate, it is the parent who opposes the relocation who has the burden of proof to show that the relocation is not in the best interests of the child: s. 16.93(2). In any other division of time caring for the child or when parenting arrangements are not set out in a court order or agreement, both parties must demonstrate to the court why the proposed relocation is or is not in the best interests of the child: s. 16.93(3); K.C.M. at paras. 62-65.

B. Guiding Legal Principles - Application to Vary Parenting Time

- [43] Pursuant to s. 47 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], a court may change, suspend or terminate an order respecting parenting arrangements if the court is satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.
- [44] Similarly, s. 17(5) of the DA governs applications to vary a final parenting order or contact order:
- (5) Before the court makes a variation order in respect of a parenting order or contact order, the court shall satisfy itself that there has been a change in the circumstances of the child since the making of the order or the last variation order made in respect of the order, or of an order made under subsection 16.5(9).
- [45] As outlined in the Trial Decision:
- [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.
- [46] In *Gordon v. Goertz*, [1996] 2 S.C.R. 27, 1996 CanLII 191 (S.C.C.) at para. 9, the Supreme Court set out a two-step test for varying a final order relating to parenting time:

- a) First, the parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child; and
 - b) If the threshold is met, the court must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
- [47] What constitutes a material change is not onerous. The court must be satisfied that the change is real, substantial, and one that could not have been contemplated at the time of the original order: Gordon at paras. 11, 13.

IV. Discussion

- [48] Applying the test for whether the court should grant an order to relocate a child to this case is complicated by the fact that Mr. E already relocated to Ottawa with C over a year and a half ago. As such, some of the considerations require a more nuanced analysis. That said, the overarching consideration remains what result will be in C's best interest.
- [49] While there are a number of orders sought by the parties in the notices of applications before me, as discussed above, there are primarily only two issues. First, is it in C's best interest to remain in Ottawa or be returned to British Columbia? Second, what parenting time arrangement is in C's best interest?
- [50] Before embarking on my analysis, I note that these applications spanned several days and were contentious. There is a level of mistrust between the parties based on their past behaviour regarding how each has made decisions about C with no, or limited, consultation with the other parent. Further, the distance between Ottawa and Cranbrook is significant, making travel and contact between the parents and the child difficult and expensive.

A. Compliance with the Relocation Notice Requirements

- [51] As set out above, on the evidence before me, I find as a fact that Mr. E served the First Notice of Relocation on May 9, 2023. Ms. B filed her objection to that notice on June 6, 2023.
- [52] Mr. E served the Second Notice of Relocation on Ms. B on November 3, 2023. Mr. E proceeded to relocate C to Ottawa on November 15, 2023 -- only 12 days after providing notice to Ms. B. As such, Mr. E did not comply with s. 16.9(1), which requires notification at least 60 days before the intended relocation. The DA provisions are clear in setting their timelines and Mr. E chose not to follow them. That said, Ms. B did not file her objection to the Second Notice of Relocation within the 30 days as is required by s. 16.91, but I recognize that at that time that Mr. E had already relocated with C to Ottawa.
- [53] As a starting point, while there was no authority placed before me on this issue, I conclude that the operative notice of relocation at issue is the Second Notice of Relocation because it both occurred later in time and also corresponds to Mr. E's relocation to Ottawa. That said, I

accept that by his actions, Mr. E has made the proper and expected course of litigation of the relocation as contemplated in the DA impossible because he ignored Ms. B's objection to the First Notice of Relocation and relocated with C to Ottawa before he was permitted to under the DA.

- [54] The situation in the case at bar resembles that discussed in *B.M.W.G.*, namely, that by not following the notice requirements, Mr. E was able to establish a new status quo for C: *B.M.W.G.* at paras. 38, 39. To be clear, I rebuke in the strongest of terms Mr. E's non-compliance with the notice provisions of the DA.
- [55] However, a factor that somewhat attenuates the unfairness to Ms. B of Mr. E's non-compliance with the notice requirement in s. 16.9(1) is the steady flow of communication between the parties discussing Ms. B's consideration of a potential move to Ottawa. While there is still a great concern regarding Mr. E's relocation in contravention of the provisions of the DA, I conclude that, at the very least, the discussions between the parties regarding Ms. B's apparent agreement to the move to Ottawa with her also moving there to be closer to C injected confusion into the process for several months and could support Mr. E's belief that Ms. B did not object to the relocation of C to Ottawa. In this regard, I find as a fact that between September 2023 until about July 2024, the parties had been discussing that Ms. B would move to Ottawa to be closer to C.
- [56] Further, as set out above, while the notice requirements of the DA are important, the focus must remain on what is in C's best interests and not be overshadowed by Mr. E's non-compliance with the notice provisions: *Lewis v. Eaton*, 2023 BCCA 338 at para. 66; *K.P. v S.K.*, 2021 BCSC 1426 at para. 126.

B. Is the Relocation to Ottawa in C's Best Interest?

- [57] Ms. B has the burden of proof to show that the relocation is not in C's best interest. This is because at the time that Mr. E provided notice, C spent the vast majority of his time in the care of Mr. E: s. 16.93(2); *K.C.M.* at para. 63.
- [58] I will now turn to assess whether the relocation is in C's best interests by considering the relevant factors set out in s. 16(3) of the DA. Not all of the factors in s.16(3) apply in this case and there is some overlap between factors. I will then consider the factors set out in s. 16.92(1) of the DA.
1. The Needs of the Child, Given Their Age and Stage of Development Such as their Need for Stability (s. 16(3)(a))
- [59] The need for increased stability in C's life is of paramount importance. C has had a great amount of instability in his young life so far, which includes periods residing in three different countries and five different cities. Further for most of those times C resided almost exclusively with one parent with little or no direct contact with the other parent.

- [60] C was born in Vancouver. He then spent the first half of his life in Brazil speaking Portuguese and for a time being hidden from authorities by his mother. At approximately four years old, he was returned to British Columbia by Court order and lived with Mr. E and Mr. E's romantic partner, K.S. in Cranbrook. A year later he was taken to Lebanon for almost 3 months. Finally, he was taken to Ottawa, where he is being educated in English and French.
- [61] Due to his parents' actions, C's young life has been filled with instability. Madam Justice Lyster remarked on the instability of C's life in the Trial Decision at para. 291, writing, "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." I accept that this conclusion is accurate and that it has been compounded by the extended trip to Lebanon and the relocation to Ottawa.
- [62] As of July 12, 2025, C will have been residing in Ottawa for 605 days or 19 months and 27 days. As I will discuss further below, C has settled into his life in Ottawa. As in B.M.W.G. and K.C.M., I am alive to the fact that Mr. E already relocating C has "changed the playing field" as I am not only considering hypothetical future events: K.C.M. at para. 89; B.M.W.G at paras. 38, 39.
- [63] In addition to the familial relationships that I will discuss below, on the evidence before me, C is doing well at school and has made friends in Ottawa. Given the passage of time and the connections C has made in Ottawa, I find that there is greater stability if C remains in Ottawa and conversely, greater instability in moving him back to Cranbrook or Kimberley, British Columbia. It is not in C's best interest to be uprooted again.
- [64] Further, I note that one of the positive factors found as providing stability in C's life in Cranbrook was the connection and influence of K.S. and K.S.'s family on C. Given the breakdown of Mr. E's relationship with K.S., that stability and connection is no longer present in any significant way for C in Cranbrook. This favours C remaining in Ottawa.
2. The Nature and Strength of the Child's Relationship (s. 16(3)(b))
- [65] At this point in time, since returning from Brazil, C has been living exclusively with his father for a number of years. His contact with his mother has been severely curtailed, primarily as a consequence of her abduction of C to Brazil in his early life. I understand that C has bonds with both parents and I accept that C must have been closely bonded with his mother during his first four years of life when they lived together in Brazil.
- [66] In Ottawa, C has his paternal extended family living in proximity to him including his grandmother, his paternal aunt, and cousin of a similar age. I was provided with a letter dated September 22, 2024, from Mr. E's sister, Z.E., who also lives in Ottawa. She writes in part:

Living in Ottawa has provided [C] with a vibrant life. He enjoys weekends filled with family activities, walks, bike rides and meals shared with loved ones. This sense of community and support is crucial for his growth and happiness .

In Ottawa, he is surrounded by his family, including my husband, his grandfather, and close relatives all eager to support him.

[67] Ms. B does not have extended family in Kimberley, which is, of course, no fault of her own given she moved to Kimberley to be a parent to C.

[68] I accept that due to the recency of living with his father, at this time, C would be bonded with his father more than his mother, but I accept that there is no evidence before me that the bonds between C and his mother are not present, nor do I believe that those bonds could not be strengthened or repaired through more frequent contact. This factor favours having C remain in Ottawa due to the recent years and close contact he has had with his father since C's return from Brazil since October 2021.

[69] Further, the evidence of C's relationships in Ottawa also supports the factor that remaining in Ottawa will enhance stability for C which I discussed above.

3. Willingness to Support the Child's Relationship with the Other Spouse (s. 16(3)(c))

[70] I have concerns that both Mr. E and Ms. B are not supportive of C's relationship with the other parent. Both parents make serious allegations against the other parent, and they have a long history of disharmony and mistrust.

[71] I accept that on the evidence before me, since on or about October 2021, when C was returned from Brazil, Mr. E has not made significant efforts to encourage Ms. B's role in C's life. Indeed, his trip to Lebanon without consultation, his refusal to approve specific supervisors for her visits with C and limiting video calls are examples of his minimization of her contact with C. Further, I note that the video calls and parenting time as well as the need to consult with Ms. B on serious issues were all order by Lyster J., thus his failure to abide by them runs against the order, if not specifically its terms, then at least its spirit.

[72] On the part of Ms. B, I adopt the findings made by Lyster J., that Ms. B is not remorseful of preventing Mr. E from having parenting time in the past when she abducted C to take him to Brazil. Specifically, Lyster J. found:

[338] [Ms. B] is not remorseful about her actions in unlawfully retaining C. in Brazil, failing to facilitate any contact between [Mr. E] 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.

[73] I also have some concern, based on the numerous allegations made by Ms. B against Mr. E that Ms. B has the potential to attempt to reduce Mr. E's presence from C's life if given the opportunity.

[74] Given that both parents have exhibited disregard for the other parent's involvement in C's life, I find that this is a somewhat neutral factor in my decision regarding relocation because one party's conduct is not markedly superior to that of the other parent.

4. History of the Child's Care (s. 16(3)(d))

[75] As noted above, both Mr. E and Ms. B have been C's primary caregiver at different times in his life. As I have already discussed, Ms. B was C's primary caregiver since C's birth in December 2017, to on or about October 2021 when he was returned from Brazil. Mr. E has been C's primary caregiver since that point.

[76] While C has spent about equal time with each parent, I find that the fact that he has spent approximately the last three and a half years with Mr. E weighs slightly in favour of relocation.

5. Views of the Child (s. 16(3)(e))

[77] While I was not provided with a s. 211 report providing evidence of C's views, Mr. E submitted that C told him "that he likes Ottawa. He likes his school. He likes his friends. He loves spending time with his cousin. He does not want to return to Cranbrook." However, given C's relatively young age and the fact he has been living almost exclusively with his father for the past three and a half years, I put minimal weight on his views as I have concerns they could be unduly influenced by C's current living arrangements and his bias towards his current circumstances. Further, due to C's living arrangements there would be unfamiliarity and thus possible uncertainty about living with his mother and Cranbrook. I.S. v. D.S., 2010 BCSC 306 at paras. 126 - 128. That said, it is reassuring to me to have some evidence that C appears to be having a positive experience in Ottawa.

6. Cultural, Linguistic and Spiritual Upbringing (s. 16(3)(f))

[78] C is enrolled in a French-immersion program at a private Catholic school in Ottawa. Mr. E emphasizes that Ottawa has better opportunities for C to learn and use the French language than does Cranbrook. I understand that French is a language used by Mr. E and is widely spoken in Lebanon.

[79] Conversely, C spent the first four years of his life learning Portuguese with Ms. B. She complains that he is being distanced from his ability to speak Portuguese and his Brazilian culture by living in Ottawa. However, as I understand her argument it is primarily that it is the prevention of her ability to have meaningful parenting time with C that has impacted their ability to speak Portuguese. In other words, the cultural and linguistic connection for Portuguese and Brazil is with Ms. B and not specifically with Cranbrook or Kimberley, British Columbia.

[80] I find that this factor supports that C remain in Ottawa, but acknowledge that I have concerns that C is being distanced from his mother's culture and linguistic heritage.

7. Plans for the Children's Care (s. 16(3)(g))

[81] Neither party put forward any detailed plans for C's care other than asserting that they would each provide a safe and secure environment for C.

8. Ability and Willingness to Care for and Meet the Needs of the Child (s. 16(3)(h)) and Ability and Willingness to Communicate (s. 16(3)(i))

[82] I adopt Lyster J.'s finding 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: Trial Decision at para. 284.

[83] In respect of the parties ability and willingness to communicate, I find that both parties are deeply mistrustful of the other and have great difficulty in effectively communicating. There appear times when there are positive communications and cooperation between the parties, such as the months when it appeared that Ms. B was planning to move to Ottawa. The discussion appeared hopeful. However, when an agreement could not be reached, the communication broke down. It appears to me, based on the arguments raised at this application, that both parties have difficulties in communicating effectively with the other party with the objective of putting C's best interest before their own.

9. Family Violence (s. 16(3)(j))

[84] Section 2(1) of the DA defines "family violence" as:

any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person -- and in the case of a child, the direct or indirect exposure to such conduct

[85] Both parties allege that the other party has engaged in family violence.

[86] To start, I accept Lyster J.'s conclusion in the Trial Decision that Ms. B has engaged in family violence in the past. I also accept that Ms. B has difficulties with anger that have not been addressed through counselling.

[87] Ms. B's allegations that Mr. E engaged in family violence are a focus of her application and the primary pillar of her argument as to why C should not reside with Mr. E in Ottawa.

[88] Many of the allegations that Mr. E is an unfit parent are set out in an affidavit of K.S., Mr. E's former romantic partner. K.S. provided an affidavit dated January 13, 2025. In the affidavit, K.S. describes incidents of what she considers family violence and poor parenting by Mr. E. The allegations include the following:

- a) On New Years Eve, on December 31, 2022, Mr. E was intoxicated and fired a shotgun (owned by K.S.) into the air several times while speaking to people on the phone in Lebanon;
- b) Mr. E often drove at excessive speeds with C in the car. K.S. also included Mr. E's driving record in her affidavit from 2019 to 2020 to support her claims;
- c) Mr. E threatened C for wetting the bed by saying to C, "If you wet the bed tonight - I'll hang you from the ceiling!" and taunting C about the bed wetting; and
- d) Mr. E spanked C on January 23, 2023.

[89] Mr. E claims that the accusations are meritless and instead reflect the breakdown of their relationship which occurred in February 2023. He admits that he fired a gun into the air on New Years Eve but says that he did so as part of the celebrations that are part of his Lebanese culture.

[90] In my opinion, even if Mr. E believes that his firing of a firearm was not intended to cause fear or alarm in family members, it is nonetheless concerning behaviour and shows some disregard for the safety and security concerns of his family members.

[91] In respect of the allegations that he was violent with C, Mr. E denies that he is violent with C and asks the Court to put little weight on K.S.'s evidence in this application. Although not fatal to Ms. B's claim that Mr. E engages in family violence, I note that Mr. E was reported to provincial authorities, who deemed that there was not a verifiable family violence concern. K.S. reported the alleged spanking incident to the Ministry of Children and Family Development ("MCFD"), but the agency took no actions and closed its file. A complaint was also made to the Children's Aid Society of Ottawa on January 18, 2025, which generally corresponds to when K.S. swears her affidavit. I was not provided with evidence linking the complaint made to the Children's Aid Society of Ottawa to either Ms. B or K.S., but it would appear to be a reasonable inference that one of them is the source of the complaint given its timing. By letter dated March 14, 2025, the Children's Aid Society of Ottawa closed its file on the basis that, "[f]ollowing investigation, the allegations were not verified."

[92] More detrimental to Ms. B's allegations of Mr. E's engaging in family violence are the contradictions in K.S.'s narrative of Mr. E's ability to parent between the trial and the case at bar. In her testimony on June 14, 2022, at the trial before Lyster J., K.S. provided a glowing account of Mr. E's parenting ability:

Q: How have you observed, like, [Mr. E] to be as a parent?

A: This one's easy; right? He is a stay-at-home dad. Right. He dropped everything. He quit working. This is what he does full-time. He is attentive. He pays attention. [C] loves him. Like, he's the main hug - the main hugging person that he can't do without that he runs towards. He is patient. He explains a lot all the time sort why - why do we do something., why might not we do something, would you like that if your friends di that, anything like that. I mean, all the standard things you would expect, but he's very very focused on explaining why, you know, things are the

way that they are. He plays with him a lot. They go outside a lot. [C] loves to be outside.

You know, I would - I would say that he is an excellent father and extremely dedicated

- [93] In my view, K.S.'s evidence in support of this application must be approached with caution. Mr. E's and K.S.'s relationship fractured in early 2023 and is now the subject of litigation in Provincial Court. As put by Mr. E's counsel, the person K.S. describes in her recent affidavit after the breakdown of the relationship is not the same person she described at the trial before Lyster J.
- [94] While I accept that Mr. E's behaviour as a parent to C could have markedly changed between the time of the trial before Lyster J. and K.S. providing the affidavits, I find it difficult to accept that Mr. E's behaviour towards C and his ability to parent would have changed so significantly. As I am concerned about the credibility and reliability of K.S.'s evidence, I am unable to rely on it.
- [95] While not significant, I also note that in December 2023, Ms. B appeared willing to have 50/50 parenting time with Mr. E. If she had genuine concerns for C's safety, I do not expect that she would be willing to accept that Mr. E would have any significant parenting time with C. In making this observation, I acknowledge that Ms. B was also in a weakened position to negotiate parenting time because she had no real parenting time with C. As such, I do not put significant weight on her proposal that Mr. E would still have half of the parenting time despite her concerns.
- [96] Family violence accusations are serious, and courts must be vigilant to ensure that children are protected from all forms of family violence. In this case, I find that there is insufficient evidence for me to conclude there was indeed any family violence on the part of Mr. E.
- [97] This factor supports, albeit only moderately, C remaining in Ottawa.
10. Any Civil or Criminal Proceedings (s. 16(3)(k))
- [98] There are no civil or criminal proceedings that relate to C's safety, security or well-being.
11. Reasons for the Relocation (s. 16.92(1)(a))
- [99] Mr. E submits that he has several positive reasons for relocating C and himself from Cranbrook to Ottawa.
- [100] First, Mr. E has better employment in Ottawa, thus securing a better economic future for himself and C. In Cranbrook, Mr. E worked very little if at all. In Ottawa he is employed by Federal Express and earns at least \$45,000 annually.

[101] I am satisfied that this is a legitimate reason for C to relocate to Ottawa from Cranbrook. A relocation that provides a parent with more employment opportunities and economic stability also contributes to the child's wellbeing and is therefore in the child's best interest: Barendregt at para. 171; Burton v. Carter, 2022 BCSC 2004 at para. 52; Duggan v. White, 2019 BCCA 200 at para. 68; K.C.M. at para. 131.

[102] The second reason Mr. E provides for relocation is, as discussed above, what Mr. E describes as a supportive extended family for both him and C in Ottawa.

[103] The third reason is that Ottawa offers the opportunity for C to speak French in a bilingual environment. As noted above, C attends French immersion school in Ottawa and the city has more opportunities to learn and use the French language.

[104] I find that the reasons for relocating are guided by Mr. E's view that it is in C's best interest to remain in Ottawa and that these factors are, indeed, in C's best interest.

12. The Impact of the Relocation on the Child (s. 16.92(1)(b))

[105] I have addressed this point in other factors and will not restate my findings again. However, I note that the most severe negative factor of the relocation is the separation of C from his mother and from the potential of frequent and consistent contact with his mother. I acknowledge and accept that this is a serious and negative consequence of C relocating to Ottawa.

[106] Further, as I referenced above, one of the positive factors in C's life found by Lyster J. in the Trial Decision was the influence of K.S. and her family. Madam Justice Lyster described the relationship as close and nurturing: Trial Decision para. 288. While it is possible that C might have some contact with K.S. if C returned to Cranbrook, in my view, the nature and structure of those relationships have changed in such a significant manner due to the breakdown of the relationship between Mr. E and K.S. that these once positive elements of C's life in Cranbrook do not provide support for C's return to Cranbrook.

13. The Amount of Time Spent with the Child by Each Parent and Level of Involvement by Each Parent (s. 16.92(1)(c))

[107] Since October 2021, C has spent almost all of his time with Mr. E and Ms. B has had relatively limited parenting time with C. As such, the relocation of C to Ottawa does not significantly alter the parenting time arrangements in place prior to the relocation. However, undoubtedly, the relocation effectively forecloses the possibility of frequent and consistent contact between C and Ms. B, due to the distance between Ottawa and Kimberley.

- [108] That said, I recognize that under the Trial Decision, Ms. B was entitled to more parenting time than she actually exercised due to what, I accept, was Mr. E's obstruction to her exercising her parenting time. I also recognize that, by Mr. E relocating C to Ottawa without notice he has "changed the playing field" and made it more difficult for Ms. B to exercise her parenting time.
- [109] Despite the negative impact of Ms. B's ability to have parenting time of C in Ottawa, given that Mr. E exercised almost all of the parenting time of C since October 2021, this factor weighs in favour of relocation.
14. Compliance with Notice Requirements, Orders and Obligations (s. 16.92(1)(d))
- [110] I have addressed the issue of Mr. E's failure to comply with the DA relocation notice requirements above. I will address the parties failure to comply with court orders below under my consideration of s. 16.92(1)(g) of the DA.
15. Existence of an Order Specifying Where the Child is to Reside (s. 16.92(1)(e))
- [111] Ms. B argues that both the Trial Decision and the MacDonald Order require that C live in Cranbrook, British Columbia. As such, she argues that two Justices of this Court have already determined that C should reside in Cranbrook.
- [112] Mr. E disagrees with that interpretation of the orders. I agree with Mr. E for the following reasons.
- [113] First, the Trial Decision only states that C is resident in British Columbia. As such, while it might be presumed C would continue living in Cranbrook, it is open to the parties to apply to relocate with C. There is nothing in the Trial Decision that indicates that C must reside in Cranbrook indefinitely.
- [114] In respect of the MacDonald Order, I conclude that it should not bind the Court regarding where C should reside. The application was sought ex parte by Ms. B. The argument put before MacDonald J. set out that C had been taken to Lebanon, which I note at that time, based on Canadian government reports put into evidence before me, was deemed to be an unsafe environment given military activity and political unrest. As such, it is not unsurprising to me that the Court would grant the undefended application based on that argument especially given the background of the parties parenting of C.
- [115] I put little weight in the fact that there are existing orders that provide that C should be returned to British Columbia. Accordingly, the orders made will, by necessity, vary the MacDonald Order and the Trial Decision to the extent needed to implement my orders.
16. Reasonableness of the Proposal of the Person who has Relocated to Vary the Parenting Time (s. 16.92(1)(f))

- [116] Mr. E has offered to have the reasonable travel expenses of Ms. B, should she wish to visit Ottawa, be deducted from the child support and costs awards she owes to Mr. E. While this offer appears to be reasonable, in my view, it does not go far enough as it effectively requires Ms. B to travel to Ottawa - a city she is unfamiliar with to exercise parenting time with her son. It does not include Mr. E travelling to British Columbia with C or any other compromises on parenting time. Further, as I understand from affidavit evidence before me, while Mr. E has made offers that appear reasonable in the past, his execution of those orders has fallen short. Specifically, Ms. B complains that when she has tried to exercise parenting time in Ottawa it has been undermined by Mr. E.
17. Whether the Parties have Complied with their Obligations Under Family Law Legislation, an Order, Arbitral Award, or Agreement, and the Likelihood of Future Compliance (s. 16.92(1)(g))
- [117] In my view, both Mr. E and Ms. B have been non-compliant with Court orders in the past and I am concerned about their future compliance. The importance of compliance with court orders was well-stated by Skolrood J. (as he then was) in *A.F.S. v. N.L.S.*, 2020 BCSC 26 at para. 75:
- [75] In this regard, there can be no debate about the importance of complying with court orders. Compliance is not a matter of discretion or choice on the part of litigants. Rather, compliance is fundamental to the proper administration of justice and maintenance of the rule of law.
- [Citations omitted.]
- [118] In the Trial Decision, Lyster J. ordered, among other things, that:
- a) Ms. B may have supervised in-person parenting time;
 - b) The child is habitually a resident of British Columbia; and
 - c) Mr. E is to advise Ms. B, in writing, about important decisions regarding the child before they are made. Ms. B will have the right to provide any input about such decisions in writing. Mr. E is to consider Ms. B's input, but has final decision-making responsibility.
- [119] By taking C to Lebanon for approximately three months, Mr. E made it impossible for Ms. B to exercise her in-person parenting time. Also, Mr. E did not notify Ms. B that he was taking C to Lebanon until the day of the flight. As such, failing to advise Ms. B, in writing, about this important decision and not allowing Ms. B the right to provide any input about the decision is a violation of Lyster J.'s order.
- [120] Also, as I found above, in terms of relocating C to Ottawa, Mr. E was non-compliant with the notice requirements for relocation under the DA.

- [121] Ms. B is also non-compliant with court orders. As discussed at length above, she remained in Brazil for three and a half years without the consent of Mr. E and went into hiding with C when the Hague Convention proceeding in Brazil resulted in a finding that C was to be returned to Canada.
- [122] Ms. B has also not paid any child support for C since the Trial Decision. She is in arrears in excess of \$15,000. She has not paid any of the costs ordered in respect of the trial, which I understand is in excess of \$80,000. Child support is the right of the child. Even though I understand that Ms. B believes C was wrongly removed from British Columbia by Mr. E, it does not, in my view, justify her not meeting her obligations to pay child support for C. In effect, this is punishing C and his economic well-being by trying to punish Mr. E for what Ms. B believes is unsatisfactory behaviour.
- [123] Mr. E and Ms. B have both failed to comply with previous court orders, which does not advance either party's position that they will comply with future court orders. The parties' past failure to respect court orders, while troubling to me as a harbinger of whether the parties will comply with future orders, applies equally to both parties and so is neutral.

18. Conclusion - Relocation of C

- [124] Considering the totality of the evidence, I am satisfied that it is in the best interests of C to remain in Ottawa. In my view, he now has a settled routine of life in Ottawa and disrupting this routine again to uproot him to return to Cranbrook would not be in his best interest. I wish to be clear that in coming to this decision, I am not condoning Mr. E's decision to unilaterally move C to Ottawa. This has put Ms. B in a difficult situation in that she has been required to bring applications to the Court to try and have any meaningful contact with her son.
- [125] It may appear that Mr. E is being rewarded for moving C without properly first litigating the relocation issue in British Columbia. I must reiterate that I rebuke his actions in the strongest terms. However, as should be clear from these reasons, 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. Given the factors above, the answer to that question is yes. However, integral to my decision is that Ms. B should have significantly more parenting time with her son.
- [126] I will turn to my analysis and determination of the parenting time arrangements now.

C. Respondent's Application for Change in Parenting Time

- [127] Ms. B's counsel articulated during oral submission that Ms. B, "is looking for meaningful parenting time with her son and that is the ultimate goal of these proceedings." I accept that Ms. B loves and misses C and wants to re-establish a meaningful connection with him.

- [128] Having determined that it is in the best interests of C to remain in Ottawa, I will now address parenting time arrangements going forward. This is of course complicated because of the geographical distance between the households.
- [129] Madam Justice Lyster ordered the following parenting time arrangements for Ms. B at para. 350 of the Trial Decision:
- a) [Ms. B] may have parenting time with C.:
 - i. provided that it is supervised by an agreed upon supervisor, at a location or locations in [Mr. E's] home community to be agreed upon, and is arranged and paid for by [Ms. B];
 - ii. [Ms. B] 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. [Ms. B] 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 [Mr. E];
 - b) [Ms. B] 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 [Mr. E], consent not to be unreasonably withheld; and
 - c) in addition, [Ms. B] 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 [Mr. E], consent not to be unreasonably withheld.
- [351] At present, it is only with these safeguards in place that the court can be satisfied that [Ms. B] will not use her parenting time to flee with C.
- [130] To vary the parenting time arrangements I must be satisfied of two things. First, that there has been a material change in circumstances. Second, that the change will be in the best interest of the child: A.H. v. M.B, 2025 BCSC 873 at paras. 120-122.
- [131] The parenting time arrangements established by Lyster J. were based on C residing in Cranbrook, the same location as Ms. B. Given my decision to allow C to remain in Ottawa, I find there has been a material change in circumstance that, if known at the time, would have resulted in different terms. This allows me to impose a significant change to the parenting time arrangements.

- [132] My review of the Trial Decision indicates that the primary concern leading to the strict and significant restriction of the nature and quantity of Ms. B's parenting time with C was not based on a finding that Ms. B was an unfit parent. It was due to a fear that Ms. B would leave the jurisdiction with C based on her previous abduction of C to Brazil: Trial Decision at para. 351.
- [133] I am satisfied that the passage of time since Ms. B has returned to Canada and her understanding that she cannot flee successfully to Brazil establishes that her risk of abducting C at this time is minimal. Ms. B, in a text message to Mr. E in October 2023, wrote the following:
- I know you expressed concerns of me going to Brazil with [C] and I can ensure that I will not do that. I have no intention to go into another Hague battle. If I only knew. There is no way to go back in time, you know that. So, I guarantee you [C] will remain in British Columbia .
- [134] Given the time, stress, and expense of the previous Hague Convention legal proceedings and the fact they resulted in C being returned, suggests to me that Ms. B is not likely to repeat her past actions. Further, I accept that she believes that it would not be in C's best interest to live a life as a fugitive and to prevent C from having contact with Mr. E - with whom C has now bonded.
- [135] Put simply, if the concerns of Ms. B fleeing Canada with C have lessened to an acceptable level, I do not see there are reasons that she should not have significant and unsupervised parenting time. That said, given she has had limited parenting time of C in the past years, in my view, it would be important to C's best interest to phase in her parenting time and evaluate how it is progressing with a view of steady increase as much as the geographic realities of residing across Canada will permit.
- [136] Ms. B should have generous and unsupervised parenting time with C in order to re-establish and rehabilitate their relationship. To accomplish this objective I order that for the remainder of the summer of 2025, Ms. B will have at least two weeks of uninterrupted and unsupervised parenting time with C in July or August. The two weeks need not be consecutive. The parenting time can occur in Ottawa or in British Columbia. The reasonable cost of Ms. B's travel to Ottawa and her accommodation, or alternatively, of C's travel to British Columbia, will be paid by Ms. B, but deducted from amounts owing by Ms. B to Mr. E in respect of costs or child support arrears.
- [137] Similarly, during C's winter school break (between December 18, 2025 and January 4, 2026), Ms. B will have seven days of unsupervised parenting time with C. The seven days need not be consecutive. The reasonable cost of Ms. B's travel to Ottawa and her accommodations, or alternatively, of C's travel to British Columbia, will be paid by Ms. B, and deducted from amounts owing by Ms. B to Mr. E for costs or child support arrears.

- [138] For clarity, in respect of the reasonable costs of travel, if Mr. E accompanies C to British Columbia to allow Ms. B to exercise her parenting time, Mr. E will pay for his fare. Further, if Ms. B is required to fly to and from Ottawa to collect and return C, the fare will be paid for by Ms. B and then deducted from amounts owing to Mr. E from Ms. B.
- [139] During C's school spring break in March 2026, Ms. B will have uninterrupted unsupervised parenting time with C for seven days, with the same conditions as set out above.
- [140] I will also order that Ms. B have up to 21 additional days of unsupervised parenting time with C during the year, with not more than seven consecutive days at a time as agreed to in writing between the parties. These additional days are to be determined between the parties, with the final say to Ms. B. One purpose of this aspect of the order, while how she exercises her parenting time will be her choice, is to provide Ms. B with an opportunity to exercise her parenting time in Ottawa during C's school time so that Ms. B may experience C's settled routine of life, while he is not on school holidays.
- [141] These parenting time arrangements will continue into future years (i.e. summer 2026, and winter and spring breaks 2026 and beyond) unless agreed to in writing by the parties or by further order of the Court.
- [142] In respect of video calls, the same video calls regime will remain in place for Ms. B and C. Further, while C is having parenting time with Ms. B, Mr. E shall have video calls on the same schedule.
- [143] If there are issues that arise from these parenting time arrangements that the parties are unable to resolve on their own, the parties have leave to appear before me to assist in the resolution of those issues.

D. Restrictions on Possessing Travel Documents

- [144] Given the history of Ms. B's abduction of C, there needs to be some security against Ms. B leaving Canada with C while the new parenting time arrangements are initially exercised. I impose these restrictions to hopefully build trust between the parties and to establish that unsupervised parenting time by Ms. B can succeed.
- [145] I order that before exercising her parenting time, Ms. B shall deliver to an RCMP detachment or Court Registry her passport and any international travel documents and confirm that she has done so in writing to Mr. E. If there are nuances of this procedure that need adjustment, the parties have leave to appear before me for that purpose and I will hear further submissions on that issue.
- [146] Another issue that arose that I understand is in need of resolution in these applications, is whether C's passport should continue to be held by Mr. E's counsel. Given the history each party removing C out of Canada for some time, I am of the view that for a period of approximately 18 months, to December 1, 2026, C's passport should be held at the Cranbrook Registry and no party shall apply for international travel documents for C unless

ordered by the Court. I make this order so that both parties have some comfort that C will remain in Canada while the parties are adjusting to the new parenting and living arrangements. Simply put, my hope is it will reduce some level of stress and worry for the parents in the next year and a half while they adjust to the new parenting time arrangements.

V. Summary of Orders Made

[147] In summary, I order as follows:

A. Variance of Previous Orders

- a) The orders of Madam Justice Lyster issued February 24, 2023, and Justice MacDonald issued September 29, 2023, are varied to the extent required to give effect to this order.

B. Relocation of C

- b) The child of the marriage, C, may be relocated to Ottawa Ontario, and have primary residence with Mr. E.

C. Parenting Time of C

- c) Ms. B will have video parenting time that will be uninterrupted by Mr. E, or others, with C, at a time agreed to between the parties considering what is in C's best interests and schedule, but shall be no less than every second day for 15 minutes, unless agreed to by Ms. B.
- d) Ms. B shall have uninterrupted and unsupervised parenting time with C during the summer months of July or August 2025 for two weeks (14 days) which will occur in British Columbia or Ontario or at another place as agreed to in writing by the parties. The two weeks may be exercised on consecutive days, but need not be consecutive days. The days will be determined between the parties, with the final say to Ms. B.
- e) Ms. B shall have uninterrupted and unsupervised parenting time with C for at least seven days during C's winter school break which will occur during seven of the days between December 18, 2025, and January 4, 2026, which will occur in British Columbia or Ontario or at another place as agreed to in writing by the parties. The seven days may be exercised on consecutive days, but need not be consecutive days. The days of Ms. B's parenting time will be determined between the parties, with the final say to Ms. B.
- f) Ms. B shall have uninterrupted and unsupervised parenting time with C during his spring school break in March 2026 for seven days which will occur in British Columbia or Ontario or at another place as agreed to in writing by the parties. The seven days may be exercised on consecutive days, but need not be consecutive days, the days to be determined between the parties, with the final say to Ms. B.

- g) Ms. B will also have up to 21 additional days of unsupervised parenting time with C during the year, with not more than seven consecutive days at a time as agreed to in writing between the parties. These additional days are to be determined between the parties, with the final say to Ms. B.
- h) Ms. B will be responsible for the costs and accommodations and other reasonable expenses of travelling to Ottawa or transporting C to British Columbia for the summer, winter break and spring break parenting or the additional 21 days of parenting time. These reasonable costs may be deducted from amounts owing by Ms. B to Mr. E for costs or child support arrears. For clarity, these reasonable travel costs includes the cost of Ms. B travelling to and from Ottawa for the purpose of collecting C, if required.
- i) These parenting time arrangements will remain in place into the future beyond 2026 and should correspond to the general dates of C's summer (July or August), spring (March) and winter (late December to early January) school holidays as well as Ms. B's general parenting time of 21 days throughout the year unless varied by written agreement of the parties or further order of the Court.
- j) For further clarity, while there can be additional parenting time to Ms. B in the summer months using a portion of her 21 days of parenting time in addition to her summer parenting time, there must be at least a three week break between those blocks of parenting time to ensure that Mr. E has summer parenting time.
- k) If currently not in her possession, Ms. B's international travel documents will be returned to her. However, in advance of the above parenting time exercised by Ms. B, she will provide any passports or international travel documents to a detachment of the RCMP or to a Court Registry to hold for the duration of her parenting time with C. Ms. B will obtain written confirmation of providing her travel documents to the RCMP detachment or the Court Registry and provide that confirmation to Mr. E prior to exercising her parenting time.
- l) C's passport and any travel documents will be deposited in the Cranbrook Supreme Court Registry and will not be returned to the possession of either party before the earliest of December 1, 2026, or further order of the Court ordering the release of the passport or travel documents to one of the parties.
- m) The parties are not to apply for any travel documents for C before the earliest of December 1, 2026, or further order of the Court allowing the parties to apply for travel documents.
- n) Mr. E will provide a brief written monthly report to Ms. B regarding significant events in C's life including but not limited to school functions, medical and dental issues and appointments, and significant social or psychological events that may impact C.
- o) The remaining relief sought in the applications is dismissed.

[148] Finally, given that this matter has a complicated and extensive history and the orders I am making may require some adjustment to accommodate the needs of the parties and to ensure that the implementation of the terms of the order is in C's best interest, I remain seized of this matter until further order of the Court to deal with issues that arise from these orders.

VI. Costs

[149] The general rule is that cost are granted to the party that is substantially successful: *Gold v. Gold*, 106 D.L.R. (4th) 452, 1993 CanLII 1248 (B.C.C.A.) at para. 19. This accords with rule 16-1(7) of the Supreme Court Family Rules.

[150] Mr. E was successful in his application to have C remain in Ottawa. That said, Ms. B was essentially compelled to bring the application based on Mr. E's relocation of C to Ottawa in non-compliance with the notice requirements. Further, while she was unsuccessful in her application to prevent C's relocation, Ms. B was successful in her application to significantly increase her parenting time of C.

[151] I find that there has been mixed success in these applications. It is appropriate that the parties bear their own costs of these applications.

VII. Conclusion

[152] This is a difficult case. It is clear that both parents want what is best for C. However both parties have not, in my view, shown empathy for the other parent and instead have generally acted based on self-interest.

[153] I urge both parties to do better and attempt to move forward by solely focusing on what is in C's best interests. The parties will need to rebuild trust and some form of cooperative relationship. I expect that, given the past events, this will be challenging. However, I hope that with increased parenting time for Ms. B, the parties can move forward in a more positive and respectful manner.

[154] After Mr. E had moved to Ottawa, one message written by Ms. B struck me as having a hopeful tone. On December 23, 2023, Ms. B emailed Mr. E and the message included the following paragraph:

This trip signifies a new phase in our lives, focusing on co-parenting [C]. I am committed to working together with you to ensure that [C] has the best life possible. I sincerely believe that letting go of the past and moving forward into a new phase of our lives would benefit us all. Do you agree that it's time to embrace the future for the well-being of [C]?

[155] While the parties' actions may not be congruent with the sentiment in this email, this message embodies how the parties should aspire to approach the future. While my orders may give some clarity to the parties moving forward, this is not the conclusion or a form of closure for the parties or for C. I expect that this is only the beginning of the next phase of the parties' efforts to attempt to cooperatively better parent C.

[156] I thank counsel for their submissions.

"Gibb-Carsley J."

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