

CANADA / JUDGMENT

Gill v. Kaur

2024 BCSC 542

COURT

Supreme Court of British Columbia

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2024 BCSC 542 Gill v. Kaur

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gill v. Kaur,

2024 BCSC 542

Date: 20240404

Docket: E221544

Registry: Vancouver

Between:

Sukhdip Singh Gill

Claimant

And

Jasdeep Kaur

Respondent

Before: The Honourable Justice Shergill

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

September 11-15, 18-21, 25-29, 2023

November 27 and 29, 2023

Place and Date of Judgment:

Vancouver, B.C.

April 4, 2024

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I. Overview

- [1] This case involves parenting issues regarding the parties' four-year-old child M. The father, Sukhdip Singh Gill, resides in Surrey, British Columbia. The mother, Jasdeep Kaur, resides in Spokane, Washington. The parties are at odds about where M. should reside, and what parenting schedule is in the child's best interests.
- [2] A prior court proceeding determined that M.'s habitual residence is in Surrey, B.C.
- [3] Though both parties are agreeable to equal shared parenting time for the other parent, they disagree on how that should be achieved. The father wants M. returned immediately to Surrey (her place of habitual residence), and for all parenting time by both parents to be exercised in Surrey. The mother does not take issue with the father continuing to exercise his parenting time in Surrey. However, she would like to exercise her parenting time in Spokane, and later, Bellingham where she plans to move prior to the child starting kindergarten. Under the mother's relocation proposals, the child would temporarily relocate to Spokane until just before she enters kindergarten, after which she would move to Bellingham where she would be enrolled in school.

II. Issues

- [4] This trial raises four key issues for my determination:
 - a) Should M. be "returned" to her habitual residence?
 - b) Should the mother's application to temporarily relocate M. to Spokane be granted (the "Spokane Proposal")?
 - c) Should the mother's application to permanently relocate M. to Bellingham be granted (the "Bellingham Proposal")?
 - d) What parenting schedule will operate in M.'s best interests, both now and when she commences kindergarten in 2025?
- [5] At the conclusion of the trial, Ms. Kaur withdrew her application for the following relief:
 - a) a declaration under s. 72 of the Family Law Act, [S.B.C. 2011] c. 25 [FLA] that M. is habitually resident in Washington State;
 - b) a declaration that M. is habitually resident in both B.C. and Washington State; and
 - c) an order that M. may "continue to primarily reside in Spokane".

- [6] As many of the issues in this trial turn on the credibility and reliability of the various witnesses, I will address this matter first.

III. Credibility and Reliability

- [7] Credibility and reliability are related but distinct concepts. Reliability involves the accuracy of the testimony of a witness. It engages consideration of the ability of a witness to accurately observe, recall, and recount the events in issue. Credibility centers on the honesty of the witness. It involves an assessment of the trustworthiness of their evidence, based on their veracity and sincerity, as well as the accuracy of the evidence provided: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, leave to appeal to S.C.C. *ref'd* [2012] S.C.C.A. No. 392.
- [8] A witness who is not telling the truth is not providing reliable evidence. However, the reverse is not the case--a credible witness may still give unreliable evidence. Sometimes an honest witness will be trying their best to tell the truth and will believe the truth of what they are recounting, but nevertheless be mistaken in their recollection: *R. v. H.C.*, 2009 ONCA 56 at paras. 41, 53-56.
- [9] The relevant principles to be applied when assessing the credibility of interested witnesses are discussed in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) at p. 357 and *Bradshaw* at para. 186. I have applied those principles here.
- [10] In assessing the evidence of the parties, I have taken into account that an emotionally charged family trial can bring out the worst in people, particularly where a child is concerned. Further, otherwise ordinary events can take on new meaning when examined under the microscopic lens of a trial. I am also aware that parties may have a difficult time recalling past events that were considered at the time to be inconsequential. Even memories of more meaningful events can fade with the passage of time, or be tainted by the human tendency to re-cast past experiences in a different light depending on their present circumstances. For all these reasons, I have avoided making negative findings of credibility where another explanation may be available.
- [11] I generally found Mr. Gill to be a credible and reliable witness. He provided his evidence in a forthright manner, without embellishment. Much of his evidence was corroborated by other reliable documentary evidence. Mr. Gill readily made admissions against self interest. He did not go out of his way to try to disparage Ms. Kaur despite the fact that Mr. Gill clearly does not have a favourable view of Ms. Kaur and does not trust her. Nevertheless, Mr. Gill made efforts to be fair when speaking about Ms. Kaur and acknowledged some of her positive traits.
- [12] There were some discrepancies in Mr. Gill's evidence. Many of these are explained by the passage of time, and do not affect my view of Mr. Gill's credibility.

- [13] There were also some instances where Mr. Gill's recollection of events was contradicted by some documentary evidence or evidence provided at his examination for discovery.
- [14] For instance, during his cross-examination Mr. Gill testified that he and Ms. Kaur did not look into purchasing an investment property in Bellingham together, but rather he alone briefly looked into the idea. However, in his examination for discovery he stated that they looked into it together. When presented with this discrepancy at trial, Mr. Gill was not able to satisfactorily explain it.
- [15] While these types of discrepancies do undermine the reliability of some aspects of Mr. Gill's evidence, I do not consider them as an attempt to mislead the court. Rather, I consider them to be a reflection of the natural human tendency to revise history as time passes.
- [16] I have also considered aspects of Mr. Gill's testimony that respondent's counsel has suggested appear inconsistent with his parenting plans. For example, Mr. Gill testified under cross-examination that he will continue to care for M. full-time when she is with him. However, he also testified that he was needed to be physically present at work and could not simply leave his job at will. Further his sister and business partner testified that while she is supportive of his desire to maximize his time with M., Mr. Gill's decision to take a sabbatical did take a huge toll on her, and how she looked forward to her brother's return to work in 2023.
- [17] Mr. Gill's plans may reflect a certain degree of naivety as to how he will be able to manage his work pressures and keep the business viable if he intends to be at home full-time with M. until she is in full-time school. However, I do not see an inconsistency. I accept Mr. Gill's explanation that as long as he pre-plans it, he can build flexibility into his work schedule that would allow him to be at home with M. when she is in his care, while still fulfilling his work obligations.
- [18] I turn now to Ms. Kaur. I did not find Ms. Kaur to be a credible or reliable witness. Her evidence was frequently contradicted by documentary evidence; internally inconsistent; and at times illogical and bordering on absurd. For example, to absolve herself of all responsibility for the altercation that preceded the parties' separation, Ms. Kaur testified that she threw water on Mr. Gill, not as an act of aggression, but in order to calm him down. She explained that she had seen this being done "in Seinfeld" and "in Friends" and that this "was my last attempt basically to try to deescalate the situation". I find it inconceivable that a highly intelligent person such as Ms. Kaur would rely on something seen in a situational comedy to guide her actions. Rather, I view this testimony as one of many examples of Ms. Kaur refusing to take responsibility for her actions.
- [19] It was virtually impossible to get a straightforward answer from Ms. Kaur on any issue. Many of her responses were vague and non-committal, or reflected attempts to resile from previous statements. For example, she frequently responded with variations of the following statements:

· "Agree and disagree"

- "Yes and no"
- "I don't know"
- "That is taken out of context"
- "You are wrongly interpreting or making assumptions about my words"
- "That's your impression"
- "I swore it to be true but it was not true"
- "My lawyer wrote that, not me"

[20] Ms. Kaur also refused to make concessions, even when confronted with a clear inconsistency. For example, during her trial testimony, Ms. Kaur denied in cross-examination that she thought she was a better parent than Mr. Gill. In her examination for discovery, in response to the same question, she answered "I do think that I'm a better parent." When confronted with this contradiction, Ms. Kaur refused to admit that she was comparing herself to Mr. Gill, saying "I do think I'm a better parent. I didn't say 'than Mr. Gill'".

[21] There were many significant contradictions between Ms. Kaur's evidence at trial and statements made by her elsewhere. For example, Ms. Kaur testified that Mr. Gill notified her only a few days before the planned move that he was no longer going with her to Seattle in July 2021. However, in her sworn statement filed in the Washington Proceeding[1], she averred that she learned of his plans a few weeks prior to her moving.[2] When presented with the contradiction, Ms. Kaur alleged that her lawyers must have made a "typo", and that "it is a pretty long affidavit and it was written in a very stressful time, so actually there are lots of errors on that affidavit". Ms. Kaur also signed a court filing in the Washington Proceeding which she knew contained false information regarding Mr. Gill. When confronted with this at trial, she blamed her decision to sign this document on her lawyer, saying that she was simply relying on legal advice.

[22] These are but some examples of numerous occasions where Ms. Kaur blamed others for her own mistakes. Rarely did she accept responsibility for her actions or make admissions against self-interest.

[23] Ms. Kaur had a difficult time being impartial and spoke poorly of anyone that did not share her view of events. She was argumentative, rude, and condescending to counsel for Mr. Gill. Ms. Kaur was disparaging towards Mr. Gill and his family, and went out of her way to cast them in a poor light. For example, Ms. Kaur repeatedly asserted that Mr. Gill's family were sexist, treated women badly, and created a hostile living environment for her. Yet the evidence revealed a warm and supportive family environment where women, such as Mr. Gill's own sisters, were given equal opportunities to achieve their educational, career and family goals. I do not discount that sexism can manifest itself in many different ways, and each person's lived experience can be different. However, no reliable evidence was

presented to support the assertions of sexism that Ms. Kaur was making about Mr. Gill and his family.

- [24] For the aforementioned reasons, where there is a conflict between Mr. Gill's evidence and that of Ms. Kaur, I have largely preferred Mr. Gill's evidence. Any exceptions to this general approach are addressed as they arise.
- [25] I turn briefly to the various lay witnesses that testified on behalf of the parties. This Court received viva voce evidence from 16 lay witnesses. I have no significant concerns about any of their credibility. Despite the fact that the friends and family members who testified were emotionally aligned with the party that called them to testify, I did not find any of them to have coloured their testimony to favour one side. Any concerns about the reliability of any of their evidence are addressed elsewhere in these Reasons as they arise.

IV. Background Facts

- [26] Before I set out my findings of fact, I wish to note a few things.
- [27] Two lengthy and thorough Reasons for Judgment in this proceeding were released by Justice Forth on December 1, 2023, and February 3, 2023. They are respectively indexed at Gill v. Kaur, 2022 BCSC 2088 ("Gill 2022"), and Gill v. Kaur, 2023 BCSC 178 ("Gill 2023").
- a) In Gill 2022 the Court dismissed Ms. Kaur's application for a stay of proceedings on jurisdictional grounds, and found that the child's habitual residence is BC, and that jurisdiction should not be declined (the "Jurisdictional Ruling").
 - b) In Gill 2023 the Court made various interim parenting orders (the "Interim Parenting Ruling"), but declined to address the father's application to have the child returned to her habitual residence, and the mother's application for a declaration as to the primary residence of M. These two applications were adjourned to be heard at this trial.
- [28] Neither chambers decision was appealed.
- [29] There is remarkable consistency between the parties' evidence at trial, and the evidence put before Justice Forth. Nevertheless, it is important for this Court to clarify how it is treating the findings of fact made by Justice Forth in the two decisions.
- [30] The Jurisdictional Ruling is in the nature of a final order, and as such, I am bound by the prior court's findings of fact made in relation to it, except for those specific findings that Justice Forth commented on at paras. 18-19 of Gill 2023: Tylon Steepe Homes Ltd. v. Pont, Vancouver Registry S091578, quashed on appeal 2011 BCCA 162 at paras. 1, 22, 25
- [31] Such is not the case regarding the factual findings in Gill 2023, which support the Interim Parenting Ruling. Those findings were made on a limited record, and without the benefit of the parties' oral testimony. As such, they are assailable at trial: K.W. v. N.Q., 2021 BCSC 2495, at paras. 30-36, 84; Routkovskaia v. Gibson, 2020 BCCA 189 at para. 19.

[32] I turn now to the extensive evidence led at trial by the parties. Unfortunately, much of this evidence was irrelevant or superfluous. As the Court was faced with one over-arching issue (what parenting arrangement will best promote the child's best interests), this trial could easily have been completed in less than two weeks. However, the parties took 16 days, much of which time was consumed by the parties re-hashing their relationship and complaining about the other parent's past conduct. Section 16(5) of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), specifically prevents a court from considering past conduct of any person when determining what is in the best interests of the child, "unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order".

A. History of the Parties and the Relationship

- [33] Mr. Gill is 44 years old. He was born in MacKenzie, B.C. where he obtained his formative education. Around 1998, Mr. Gill moved to Surrey to attend Simon Fraser University for a degree in business. He graduated with his degree around 2003. A few years after obtaining his business degree, Mr. Gill began working at SRS Packaging Services. He and his sister Sendip[3] are investors in the business and have been operating it together for almost two decades.
- [34] Mr. Gill was briefly married around 2007, but he and his first spouse separated within a few months, and the marriage ended in divorce.
- [35] Mr. Gill, his parents (father Parmjit and mother Karamjit), and his adult sisters Prabhjot and Karindeep, all live in a large home built on 26 acres of farmland in Surrey. His other sister, Sendip, lives in Langley with her husband and their two children, K. and H. Mr. Gill is a Canadian citizen. He has no legal status in the United States, and no family connection to Washington State (aside from his relationship to Ms. Kaur).
- [36] Mr. Gill has ulcerative colitis, which (amongst other things) affects his immunity and impacts his ability to control his bodily functions. When the condition was first diagnosed, Mr. Gill was in university, and required hospitalization for several weeks. He experienced a significant loss of body weight and was required to be in close proximity to washroom facilities. He was bedridden for about one year. Since around 2018 or 2019, Mr. Gill began receiving infusion treatments for ulcerative colitis. The treatments occur at the hospital every six to eight weeks. While undergoing treatment, Mr. Gill has largely been able to keep his symptoms under control, though they can be exacerbated by stress. His last major flare up was around June 2022, following his arrest in the U.S. due to allegations of spousal violence made by Ms. Kaur.
- [37] Ms. Kaur is 39 years old. She is an American citizen. Since April 2022 she also holds Permanent Resident ("PR") status in Canada. Ms. Kaur was born in India and immigrated to California with her parents and two siblings when she was a teenager. They moved to Spokane in 2001, where she lived with her family before moving to Portland, Oregon, to

attend medical school. After completing her residency in internal medicine in Portland, Ms. Kaur returned to Spokane. She commenced working as an internal hospitalist at Holy Family Hospital in Spokane around August 2013.

- [38] Ms. Kaur's father passed away in 2011. Her mother, Sital, runs a gas station in Spokane. Ms. Kaur has a younger brother Inderbir who is a professional basketball player in the European league. Inderbir lives in Spokane and is currently in a committed relationship with a woman who lives in California. Ms. Kaur has an older sister in Auburn, Washington, who is married with two young children. Aside from Mr. Gill and M. Ms. Kaur has no close family connections to BC.
- [39] The parties first met in 2017, through an online dating site called "Shaadi.com". Their first meeting occurred in February 2018. A week later, Mr. Gill's parents travelled with him to meet Ms. Kaur and her mother. The parties agreed to get married with the blessing of their parents.
- [40] The parties' relationship faced hurdles from the outset. The significant source of their friction was where they should live following their marriage. Each of them had established homes and careers in their respective countries. However, despite her hesitation, the evidence leads me to conclude that Ms. Kaur agreed to move to Surrey and apply for PR status in Canada.
- [41] The parties knew that it would not be immediately possible for Ms. Kaur to obtain work in B.C. in her chosen occupation, due to the physician licensing requirements. They agreed that while Ms. Kaur took steps to be licensed in B.C., she would continue working in the U.S. I find that this agreement was arrived at prior to the parties' marriage.
- [42] The parties were married in November 2018, in B.C. Almost immediately the reality of their work and living situation began to have an impact.
- [43] Following their marriage, Ms. Kaur continued to work full-time in Spokane. The full-time work entailed working 2 full weeks per month, working 7 days per week, 12 hours per day. Ms. Kaur split her time between two residences - the residence that she shared with Mr. Gill in Surrey, and her mother's home in Spokane, with whom she resided while working.
- [44] In April 2019, Ms. Kaur switched to part-time work. With this new schedule, she worked 7 consecutive days per month in Spokane, putting in 12 hour shifts each day. During her days off work she would return to their home in Surrey. Due to the distance between Spokane and Surrey, travel between the two cities took approximately one day, whether it was by air or road.
- [45] The parties' child, M., was born in Spokane at the end of January 2020. M. is a dual citizen of the U.S. and Canada.

- [46] Following M's birth, Ms. Kaur took a leave of absence from her work, and commenced a 6-month maternity leave, which ended around July 2020. For the first two weeks following M's birth, Mr. Gill remained in Spokane with the baby and Ms. Kaur. Mr. Gill then returned to work in Surrey. M. remained in Spokane with Ms. Kaur for another month or so, before the two of them joined Mr. Gill in Surrey around March 17, 2020. At this point, the child was about 6 weeks old. The pandemic had just been declared but the borders had not yet been closed.
- [47] M. lived with both her parents in Surrey for the next approximately 4.5 months until July 2020. During this time, she was in both her parents' care. Mr. Gill went off work in 2020 after the pandemic was declared. He did not return to work until 2023.
- [48] The opening of the borders coincided with the end of Ms. Kaur's maternity leave. As Ms. Kaur already had an existing position in Spokane, she returned to her job with Sacred Heart Medical in July 2020. Ms. Kaur resumed her previous schedule of working 7 consecutive days per month. Between July 2020 and June 2021, Ms. Kaur travelled back to Surrey during most of her weeks off, as she had previously done. She would bring M. with her to Spokane during the period that she was working and then return with M. to Surrey during her weeks off work. Factoring in any extra time spent in Spokane following the completion of a one week work shift, and travel time between Spokane and Surrey, Ms. Kaur and M. spent about 60% of their time living in Surrey with Mr. Gill.
- [49] Sometime in 2020, the parties began investigating a potential move for Ms. Kaur to Bellingham, so that she could work closer to Surrey while she was working towards her qualifications to practice medicine in B.C. In furtherance of that goal, Ms. Kaur applied for work in Bellingham.
- [50] Ms. Kaur was offered a job with Sound Physicians to work at St. Joseph Hospital in Bellingham. The job was on a contract basis, meaning that it was without benefits. Ms. Kaur testified that she was not very happy about the terms of the contract because: (a) it contained a "non-compete" clause which prevented her from working for other providers in Bellingham for a period of two years; (b) she needed to provide 30 days of notice to cancel a shift; and (c) the work schedule could not be changed easily. Despite her misgivings, Ms. Kaur signed the contract around August 2020. However, pandemic restrictions made it unfeasible for Ms. Kaur to work there from 2020 to 2021.
- [51] Ms. Kaur decided to apply for a fellowship in late 2020. This decision was made with the view that it would provide Ms. Kaur with greater job opportunities, including the ability to work in B.C.

- [52] In December 2020, Ms. Kaur accepted a one-year fellowship position in geriatric medicine in Seattle. The fellowship was to start on July 1, 2021. The parties had some discussions about what should happen in terms of their living arrangements during the fellowship. They agreed that: (a) Mr. Gill would temporarily leave his work in Surrey and move to Seattle to take care of M. while Ms. Kaur was getting her training; and (b) they would re-visit the issue of Mr. Gill's move if the land borders remained closed (the "Seattle Plan").
- [53] The parties also discussed what would happen after Ms. Kaur's fellowship in Seattle was completed. They agreed that Mr. Gill would return to Surrey with M., while Ms. Kaur relocated to Bellingham so that she could work there while she was waiting to be qualified to work as a physician in BC (the "Bellingham Plan"). The Bellingham Plan would enable M. to see her mother on a regular basis pending Ms. Kaur's final move to Surrey.
- [54] At the end of June 2021, Ms. Kaur moved to a rental apartment in Seattle, to commence her fellowship. However, Mr. Gill and M. did not immediately move with her. The parties disagree on why that was the case. I find Mr. Gill's evidence on this issue to be credible and reliable and conclude that Mr. Gill's decision not to move to Seattle in June 2021, was primarily motivated by his health condition (ulcerative colitis).
- [55] The land borders between Canada and the United States remained closed until sometime in October or November 2021. Between July 2021 and November 2021, M. primarily lived in Surrey with Mr. Gill, and saw her mother on weekends and day visits. Ms. Kaur would meet Mr. Gill at the border, and they would exchange M. for a brief stay with her mother in Seattle.
- [56] By November 2021, the parties' relationship was very strained. Ms. Kaur was upset at the living arrangement and wanted Mr. Gill to move to Seattle in accordance with the Seattle Plan. Around November 13, 2021, the parties had an argument while at the Canada-U.S. border (the "border incident"). Mr. Gill thought that Ms. Kaur was threatening not to return M. after the weekend visit. As such, he refused to hand M. over to Ms. Kaur. The next day, the parties had a long conversation and tried to sort through their difficulties. On November 14, 2021, Ms. Kaur sent Mr. Gill a text message summarizing their agreement regarding Mr. Gill's move to Seattle with M. (the "Revised Seattle Plan"). Mr. Gill sent a text message back stating:

And most importantly for me, our home is here in Surrey where we live now, and we will be coming back here once your fellowship is over. [M.] will be going to school here when she's of age and this is our home base.

[57] Ms. Kaur replied:

In regards to the day care .And off [sic] course to the other points.

- [58] In keeping with the Revised Seattle Plan, Mr. Gill took steps to move to Seattle. Between mid-November 2021 and December 2021, Mr. Gill and M. travelled frequently back and forth between their house in Surrey, and the rental apartment in Seattle. It is unclear when Mr.

Gill fully moved with M. to Seattle, but I find that this had occurred by January 2022. Until June 2022, Mr. Gill and M. lived primarily in Seattle. At this point the parties were still operating under the Bellingham Plan. Although Ms. Kaur's contract with Sound Physicians in Bellingham remained open for her to commence work there after completing her fellowship, Ms. Kaur was still reluctant to work there, for the reasons outlined earlier.

- [59] While Ms. Kaur made some other inquiries regarding employment in Bellingham, she also reached out to her previous employer in Spokane. Unbeknownst to Mr. Gill, Ms. Kaur contacted Dr. Rebecca Mallo at Sacred Heart Hospital in Spokane in February 2022. She inquired about returning to work there as a part-time hospitalist starting in August 2022. Within weeks, Ms. Kaur was offered a position. She agreed to return to work at Sacred Heart Hospital on a part-time basis (7 days per month) following completion of her fellowship (the "Spokane Plan").
- [60] Around March 2022, Ms. Kaur reached out to Sound Physicians and inquired about starting work there at the completion of her fellowship. Around April 2022 Ms. Kaur reached out to the Family Care Network in Bellingham and inquired about job opportunities.
- [61] Ms. Kaur received her PR Status in Canada at the beginning of April, 2022.
- [62] Ms. Kaur had a graduation ceremony for her fellowship program on June 9, 2022. Members from both her family and Mr. Gill's family attended the event in Seattle. The parties separated just a week later, on June 16, 2022. The separation was immediately precipitated by an altercation at the Seattle residence, during which Ms. Kaur called the police and alleged family violence on the part of Mr. Gill. Mr. Gill was arrested and charged. He spent 36 hours in jail, before being returned to Canada. Following his release from jail, Mr. Gill was prevented from having any contact with M.
- [63] From the time that Mr. Gill was arrested, to the completion of her internship, Ms. Kaur continued to live at the Seattle residence. Ms. Kaur completed her one-year internship in Seattle at the end of June 2022. In July 2022, she packed her belongings and moved with M. from Seattle to her mother's residence in Spokane. Ms. Kaur did not advise Mr. Gill of this move and did not seek his consent.
- [64] On August 1, 2022, Ms. Kaur began work in Spokane for Sacred Heart Hospital in accordance with the Spokane Plan. Ms. Kaur terminated the contract with Sound Physicians in August 2022, without ever having performed any work under it.
- [65] Ms. Kaur was still living in Spokane when this trial commenced.

B. Court Proceedings

- [66] The history of legal proceedings leading up to this trial is lengthy. It was succinctly summarized by Justice Forth in Gill 2022 at paras. 7-46. Below are the salient features that are relevant to the issues before me.

- [67] On the same day that Mr. Gill was arrested for domestic violence (June 16, 2022) on the strength of the complaint made by Ms. Kaur, Ms. Kaur filed a Petition in the King County Superior Court in Washington, seeking a protection order on behalf of herself and M.
- [68] The following day (June 17, 2022), Ms. Kaur obtained an ex parte temporary protection order, preventing Mr. Gill from contacting her or the child (the "ex parte protection order"). This order also granted Ms. Kaur temporary care, custody, and control of M.; restrained Mr. Gill from interfering with Ms. Kaur's physical or legal custody of M.; and restrained him from removing the child from Washington. In addition, Ms. Kaur obtained for herself and M., a domestic violence no contact order from the Municipal Court of the City of Seattle against Mr. Gill.
- [69] On June 17, 2022, the Municipal Court issued a two-year pretrial restraining order against Mr. Gill in the criminal case ("criminal no contact order").
- [70] Mr. Gill was served with the civil no contact order on June 23, 2022, and a few days later, he was served with the Petition for the protection orders that prevented him from seeing M.
- [71] Mr. Gill filed a Notice of Family Claim in the Supreme Court of British Columbia on June 28, 2022 (the "BC Proceeding"). He sought a divorce, parenting arrangements (including seeking an order that the child be returned to her habitual residence in Canada), child support, spousal support, and property division.
- [72] On June 29, 2022, Ms. Kaur filed a petition for divorce in the Superior Court of Washington, County of King ("Washington Proceeding") through her US Counsel, Hemmat Law Group. She sought orders for divorce, parenting plan, child support, and the division of real and personal property. There was no claim for spousal support. Ms. Kaur further sought a protection order for domestic violence or harassment and a restraining order. The restraining order she was seeking included a restriction on Mr. Gill from going within 500 feet of the respondent's home, workplace, school, daycare or school of the child.
- [73] An automatic temporary order setting financial restraints was issued on June 29, 2022, by the Chief UFC Judge in the Washington Proceeding. On the same day, Judge Keenan became the assigned judge in the Washington Proceeding.
- [74] Ms. Kaur was personally served with the BC Proceeding on June 30, 2022.
- [75] Mr. Gill was served with the Washington Proceeding on July 2, 2022. By operation of the rules of procedure in Washington State, Mr. Gill had 60 days following service to file a response or notice of appearance. There is some dispute as to whether service was properly affected. Assuming that Mr. Gill was properly served, the deadline for the Appearance in the Washington Proceeding was September 1, 2022.
- [76] On July 7, 2022, Ms. Kaur filed a jurisdictional response in the BC Proceeding, arguing that the BC Supreme Court did not have jurisdiction over her, or alternatively, that the court ought not to exercise jurisdiction over the Respondent.

[77] The parties appeared on July 19, 2022, before Commissioner Jonathan Lack of the Superior Court of Washington. The purpose of the proceeding was to hear the petition for a protection order that Ms. Kaur had filed on June 16, 2022. Justice Forth summarized at para. 22 of Gill 2022, what transpired during the proceeding before Commissioner Lack:

Commissioner Lack decided to proceed on the merits of the request for a protection order. Commissioner Lack found that the preponderance of evidence was that neither party had proven that any of the behaviour constituted domestic violence, or fell under the coercive control statute. The petition for a protection order was dismissed on the basis that the respondent had not met her burden of proof showing that there was an act of domestic violence.

[78] The ex parte protection order expired on July 19, 2022. On July 25, 2022, the criminal no contact order was modified to permit the parties to communicate to arrange parenting time for M.

[79] On August 5, 2022, Ms. Kaur filed her application in the BC Proceedings seeking a declaration that B.C. does not have jurisdiction (the "Jurisdiction Application"). The Jurisdiction Application was originally set for hearing on September 27, 2022. However, by agreement of the parties, it was reset for two days commencing on October 26, 2022.

[80] On August 8, 2022, Ms. Kaur's legal counsel emailed Mr. Gill's B.C. counsel, Ms. Specht, and asked her for the name of Washington counsel for Mr. Gill. They also indicated that Ms. Kaur wished to "discuss facilitating contact with [M.] - perhaps over zoom".

[81] On August 31, 2022, Ms. Kaur's counsel signed a motion for default in the Washington Proceeding. Through it, they sought to have the court find Mr. Gill in default for failing to file a response. Ms. Kaur obtained a default order on September 1, 2022, at 2:46 PM. The default order allowed the Washington Court to hold hearings and sign orders without notice to Mr. Gill.

[82] On September 1, 2022, at 4:11 PM, Mr. Gill's Washington counsel, Mr. David Goodwin, filed his Notice of Appearance in the Washington Proceeding, asking that all documents or pleadings be served on Mr. Goodwin. A copy of the Notice of Appearance was served on Ms. Kaur's Washington attorney. Despite this, Ms. Kaur's counsel did not provide any notice to Mr. Goodwin that they had already obtained default judgment in the Washington Proceeding.

[83] On September 9, 2022, the criminal charges against Mr. Gill were dismissed on a "without prejudice" basis, and the no contact order was vacated. On the same day, Mr. Gill filed a response to the Jurisdiction Application, through his B.C. counsel, Ms. Specht.

[84] On September 13, 2022, Ms. Kaur filed an ex parte motion in the Washington Proceeding, seeking temporary orders granting her custodial rights over M.; an order preventing M. from being removed from Washington; and supervised visits for Mr. Gill (the "Custodial Application"). On the same day, Ms. Kaur filed a document titled "Information for Temporary Parenting Plan" (the "Information"). The Information was signed by Ms. Kaur, and stated that the following facts were true:

Respondent has been absent from [M.'s] life for 3 months now. My attorney reached out to Sukhdip's attorney regarding potential visits, however they never responded. Before then, he was not invested in caring for [M.], even though he stayed at home all day while I worked at the hospital. When [M.] went with him to Canada, Respondent's mother and sisters care for [M.], not Respondent. Respondent has very few emotional ties to [M.] because of this. Additionally, Respondent has a history of yelling at me in front of [M.] and physically pushing me around while I was carrying her. Respondent has also taken [M.] to Canada and refused to let me see her, much to [M.'s] distress and against her best interests.

[85] Missing from the Information is any reference to the existence of the BC Proceeding. Nor does the Information mention the fact that Mr. Gill's three month "absence" from M.'s life was precipitated by the altercation that occurred on June 16, 2022, and the subsequent no contact and restraining orders which Ms. Kaur had obtained against Mr. Gill.

[86] On September 14, 2022, Mr. Gill served Ms. Kaur with an application in the BC Proceeding for an "interim-interim without prejudice parenting order", so that he could exercise parenting time with M., whom he had not seen since his arrest (the "Interim-Interim Application"). The application was set for September 27, 2022, at the Vancouver Law Courts, in general chambers.

[87] Ms. Kaur's counsel had scheduled the Custodial Application for hearing for September 14, 2022, but the hearing date was moved by the Washington Court to the afternoon of September 28, 2022. Despite having notice of the Interim-Interim Application, and despite knowing that the Jurisdiction Application hearing was scheduled in B.C. for October, neither Ms. Kaur's Washington attorney nor her B.C. counsel Ms. Riano (who was working in coordination with Mr. Hemmat's office), advised Mr. Gill's lawyers that the Custodial Application had been filed and a hearing date set.

[88] Ms. Kaur did not file an application response to the Interim-Interim Application. Instead, on September 23, 2022, Ms. Riano wrote to Ms. Specht and advised her that she was not available for the September 27, 2022, hearing, and asked that it be delayed to October 26, 2022. Ms. Riano did not tell Ms. Specht that a hearing for the Custodial Application had been scheduled in the Washington Proceeding for September 28, 2022.

[89] On September 27, 2022, Justice Forth was the presider in general chambers where the Interim-Interim Application was scheduled for hearing. She provides the following chronology of events in Gill 2022:

- [34] On September 27, 2022, just prior to appearing in general chambers before me, the claimant found out that the respondent had obtained a default order in the Washington Proceedings on the basis that the claimant had failed to appear within the required time period. He further found out that an order was being sought in the Washington Proceedings the next day at 1:30 p.m. (September 28, 2022).
- [35] Later on September 27, 2022, I was advised that the respondent's counsel was not available for the hearing of the Interim-Interim Application, but was available the week of October 3, 2022. I was further advised that the respondent had filed an ex parte application in the Washington Proceedings that was scheduled to be heard at 1:30 p.m. on September 28, 2022. I requested that the judge hearing the application in the Washington Proceedings be advised of the BC Proceedings. I rescheduled the jurisdictional hearing to October 5 and 6, 2022.
- [36] On September 28, 2022, the claimant's US attorney appeared in court in the Washington Proceedings. The Custodial Application was denied, with Commissioner Judson stating:
- Based on the circumstances discussed at the hearing the court declines to enter a temporary Order or a Temporary Parenting Plan. The parties are directed to contact the assigned Judge regarding a request for stay of this proceeding or further proceedings regarding the family law case in British Columbia.
- [37] Counsel for the respondent in the Washington Proceedings has agreed to vacate the order on motion for default.
- [90] On September 29, 2022, Mr. Gill filed an application seeking a declaration that M. is habitually resident in British Columbia, and that all matters relating to her custody, guardianship, parenting time, and parenting responsibilities, should be determined in the BC Supreme Court ("Declaration Application")[4]. He further sought an order for M. to be returned to her habitual residence of British Columbia, and interim orders for primary residence and sole parenting authority to be granted to the father. The application was returnable on October 5 and 6, 2022.
- [91] Ms. Kaur filed her Application Response on October 3, 2022, opposing all of the relief sought in the Declaration Application.
- [92] A trial date for the Washington Proceeding was set for May 30, 2023. However, the matter was put on hold, pending the determination of the Jurisdiction Application by Justice Forth.
- [93] Trial dates for the BC Proceeding were set for five days, commencing June 12, 2023.

C. Proceedings Before Justice Forth

- [94] The Jurisdiction Application was heard on October 5-6, 2022. Justice Forth ordered that all issues relating to parenting time with the child be adjourned pending her decision on the jurisdictional dispute.

- [95] Following the attendance before Justice Forth, Ms. Kaur agreed to Mr. Gill exercising parenting time with M. from October 9 to 14, 2022. This is the first time that M. saw her father since June 16, 2022.
- [96] The parties were unable to come to an agreement regarding further parenting time for Mr. Gill. On November 3, 2022, Justice Forth ordered that Mr. Gill be permitted to exercise interim-interim parenting time for 10 days, commencing November 5, 2022.
- [97] Justice Forth rendered her Reasons for Judgement on the Jurisdiction Application on December 1, 2022. She held that M.'s "habitual residence is B.C. and that this Court has territorial competence regarding parenting orders concerning the child": Gill 2022 at para. 157 ("Gill 2022").
- [98] In addition to finding that M.'s habitual residence was in BC, Justice Forth concluded that B.C. was the most appropriate jurisdiction to consider all the issues respecting M., and that jurisdiction ought not to be declined by this Court: Gill 2022 at para. 177.
- [99] Justice Forth dismissed Ms. Kaur's Jurisdiction Application: Gill 2022 at para. 179. Justice Forth also seized herself of Mr. Gill's application for interim parenting time: Gill 2022 at para. 180.
- [100] On December 8, 2022, Ms. Kaur filed her Response to Family Claim and Counterclaim.
- [101] On December 16, 2022, the parties appeared before Justice Forth for a further order for parenting time for Mr. Gill. Mr. Gill was granted another two weeks of interim-interim parenting time commencing December 18, 2022.
- [102] On December 30, 2022, Ms. Kaur filed an application seeking, amongst other things: (a) to restrict Mr. Gill's parenting time to 10 days per month pending trial; (b) primary residence with the mother in Spokane; (c) equal sharing of parental responsibilities; and (d) the appointment of a s. 211 report writer ("Mother's Parenting Application").
- [103] The parties returned before Justice Forth on January 20 and 25, 2023, for the remaining relief sought in the Declaration Application as well as the Mother's Parenting Application. Justice Forth issued her Reasons for Judgement on February 3, 2023 in Gill 2023.
- [104] Justice Forth made various orders at para. 94 of her Reasons in Gill 2023, including:
- a) Both the application that M. be "forthwith returned to her habitual residence in Surrey", and the application for a declaration as to the primary residence of M., are adjourned to be heard at the trial of the action.
 - b) The parties are to have equal shared parenting time such that M. is to spend half her time with each parent at that parent's residence.

- c) Travel arrangements and related costs for M. to travel from the Seattle airport to Spokane are to be made/borne by Ms. Kaur, with parenting exchanges occurring at or around the Seattle airport.
- d) The parties are to share the parenting responsibility for M. and consult each other and agree on any extra-curricular activities scheduled for M.
- e) Dr. Elterman is appointed to prepare a s. 211 report concerning, amongst other things, the parenting arrangements that are in M.'s best interests.

[105] Justice Forth did not make any rulings regarding the relocation of M. as Ms. Kaur had not filed a formal notice of relocation. The Court explained as follows in Gill 2023:

[17] I accept that when a parent has unilaterally removed a child from one jurisdiction, absent the consent of the other parent, both the FLA and the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] support that the child should be returned to its habitual residence. In addition, a parent who seeks to relocate must comply with the formal notice requirement of s. 16 of the DA and s. 66 of the FLA before such relocation is permitted: Roman-Manarovici at paras. 11, 15. The respondent concedes that she has not complied with the notice requirements in the DA and FLA. The respondent's counsel confirmed the intention to amend the pleadings to seek a relocation of the Child to Spokane. It is anticipated that this will be an issue before the trial judge. The claimant agrees that any relocation application should be heard at the trial.

[106] Justice Forth's decisions in Gill 2022 and Gill 2023 were not appealed by either party.

D. Events Leading up to the Trial

[107] On February 14, 2023, Ms. Kaur's Washington Proceeding was dismissed on a without prejudice basis, by consent.

[108] Around March 4, 2023, Ms. Kaur filed an Amended Counterclaim in the BC Proceeding. Despite Justice Forth's ruling on December 1, 2022, and no appeal having been filed, Ms. Kaur sought a declaration that M. is habitually resident in Washington and in the alternative, asked to relocate with M. to Spokane.

[109] Ms. Kaur provided her Notice of Relocation pursuant to s. 16.9(1) of the Divorce Act, on March 14, 2023 (the "Relocation Notice"), seeking to relocate M. to Spokane. Mr. Gill filed his Notice of Objection to Relocation on March 15, 2023 (the "Objection").

[110] On May 9, 2023, Ms. Kaur filed an application to adjourn the June 12, 2023, trial date. The application was denied by Associate Judge Hughes on May 16, 2023.

[111] On May 23, 2023, Associate Judge Vos pronounced a consent order that solicitor-client privilege had been waived in relation to communications between Ms. Kaur and her legal counsel in Washington, Sarah Miller and Steven Hemmat.

- [112] On June 12, 2023, the parties appeared for their 10-day family trial in Vancouver. The trial was adjourned as counsel for Ms. Kaur was not well. It was re-set for 15 days, commencing September 11, 2023.
- [113] On June 26, 2023, Ms. Kaur filed a short notice application seeking an order "over dispute between the parties as to one day of parenting time to achieve equal parenting time between June and September 11th".[5]
- [114] On July 12, 2023, Justice Iyer pronounced an order that Ms. Kaur produce an un-redacted copy of Mr. Hemmat's file, effecting the removal of redactions over communications between herself and her B.C. counsel.
- [115] This trial commenced before me on September 11, 2023. Additional time was required, and the matter did not complete until November 29, 2023.
- [116] Since at least February 2023 to November 2023, the parties have largely adhered to the equal shared parenting schedule put into place by Justice Forth (the "Interim Parenting Schedule"). Under the Interim Parenting Schedule, M. is in the care of her mother in Spokane for two weeks, followed by two weeks in Surrey where she is cared for by her father. The parties have agreed to maintain this Interim Parenting Schedule (with adjustments for holidays) pending further order of this Court.

E. Positions of the Parties

- [117] Ms. Kaur's legal position has evolved over time. Her current position is that the Interim Parenting Schedule put into place by Justice Forth is in M.'s best interests and should continue. Between now and September 2025 when M. will start kindergarten, Ms. Kaur asks that M.'s parenting time with her mother be exercised in Spokane, and parenting time with her father be exercised in Surrey. She also proposes that M. be enrolled in pre-school in both those cities.
- [118] It is Ms. Kaur's stated intention to move to Bellingham by September 2025. Once M. reaches kindergarten age, Ms. Kaur would like to enrol M. in school in Bellingham, so that M. can be closer to her father. Under this regime, M. would stay with Mr. Gill in Surrey during her two weeks with her father but would continue to attend school in Bellingham. This would require Mr. Gill to cross the border and drive M. to school in Bellingham on a near daily basis.
- [119] Mr. Gill is vehemently opposed to M. being required to move back and forth across international borders on a bi-monthly basis. He submits that the Spokane Proposal and Bellingham Proposal are against M.'s best interests, as they create too much instability in M.'s life. Mr. Gill would like M. to live in Surrey on a permanent basis and be enrolled in pre-school in Surrey. His primary position is that Ms. Kaur should move to Surrey, so that the parties can implement a 3-4-4-3 parenting schedule, which he argues is in M.'s best interests. He asks that this Court order M. to be returned immediately to Surrey and dismiss

the mother's applications to relocate M. to Spokane and Bellingham.

F. Adverse Witness

- [120] Stephan Hemmat, Ms. Kaur's legal counsel in Washington State, was called by the Claimant as an adverse witness.
- [121] Mr. Hemmat testified about the family proceedings that were commenced by Ms. Kaur in Washington State; why the default action was taken against Mr. Gill and why Mr. Gill and his counsel were not notified; the relationship between the US attorneys and Ms. Kaur's B.C. counsel; and instructions that were given to him by Ms. Kaur. In particular, he testified about Ms. Kaur's instructions regarding the prosecution of the US proceedings, providing notice to Mr. Gill and his B.C. counsel, and resuming contact between Mr. Gill and M.
- [122] Mr. Hemmat's evidence indicated that the Respondent was kept fully apprised of the various steps in the litigation and was actively involved in instructing Mr. Hemmat and his colleagues.

G. Expert Evidence - Labour Market

- [123] Expert reports were tendered from two labour market experts. Neither expert was called to testify in the trial. Dr. Pieter van den Berg is a registered psychologist and certified vocational rehabilitation professional who was retained on behalf of Mr. Gill. He prepared a labour market report dated May 4, 2023 (the "van den Berg Report"). Dr. Colleen Quee Newell is a registered clinical counsellor and vocational rehabilitation consultant. She was retained by the respondent to prepare a rebuttal report dated May 30, 2023 (the "Quee Newell Report").
- [124] The expert opinions were directed at the Respondent's ability to work in B.C. in her chosen profession. Ms. Kaur testified that she could not work in BC as a physician without getting the necessary licences. She would need to pass the exams for the Royal College of Physicians and Surgeons of Canada, in addition to the BC College of Physicians and Surgeons. According to Ms. Kaur, it would take her three to five years to complete the necessary qualification exams. This timeline accounted for the fact that she would continue working and caring for M. while trying to update her credentials.
- [125] Dr. van der Berg opined that: (a) to practice medicine in Canada, Ms. Kaur requires a medical degree, residency of four years (versus three in the US), passing federal and provincial qualifying exams, among other standards; (b) the provincial regulator may deem her one-year fellowship insufficient to match the additional residency year, and may place her in a provisional class; (c) there are currently 24 job openings for internal medicine specialists in the Fraser Valley; (d) the average income for full-time specialists in internal medicine in British Columbia is \$508,925 for 2020-2021; (e) there are "numerous" open positions for specialists in internal medicine in Bellingham, Washington; and (f) the mean annual income for internal medicine specialists in the US is \$225,270 USD.

- [126] Dr. Quee Newell challenged some of Dr. van der Berg's opinion as follows: (a) the van der Berg Report is missing information on the time involved, such as that Americans must first apply for a training assessment and there are eligibility deadlines the year before the exam, all adding a minimum of one year wait before the test; (b) if Ms. Kaur's fellowship year is not accepted as meeting the additional residency year requirement, an interim provisional registration would limit job prospects in B.C.; (c) the van der Berg Report finding there are 24 internal medicine positions within the Fraser Valley includes many sub-specializations not compatible with Mr. Kaur's training; (d) after overhead, the mean income of internal medicine physicians in B.C. is \$335,013; and (e) it is overly optimistic to conclude, on the basis of two part-time positions requiring full licencing, that there are ample jobs for Ms. Kaur.
- [127] The end result is that while it is quite possible for Ms. Kaur to find work as a licenced physician in B.C., both experts agree that the process for her to get qualified is a long and arduous one.
- [128] On this issue then, I prefer Ms. Kaur's evidence, which was supported by the expert opinions of both labour market specialists and accorded with common sense. Ms. Kaur was not licensed to practice medicine in BC and would have to pass through a number of hurdles which could take several years before that "goal" could be accomplished.

H. Expert Evidence - S. 211 Report

- [129] Dr. Michael Elterman is a clinical and forensic psychologist who was appointed by order of the Court to prepare a s. 211 report in this matter. His s. 211 Report is dated April 24, 2023 (the "s. 211 Report").
- [130] In it, Dr. Elterman recommends, amongst other things, that the parties continue their 2 week on/off schedule as ordered by Justice Forth; M. have FaceTime calls every second day with the parent who is not caring for her; and the parties obtain an updated s. 211 report before M. attends kindergarten to determine what changes should be made to the parenting arrangements.
- [131] Dr. Elterman opined that this is a case of "two excellent parents who love their daughter a great deal and want to spend as much time as they can with her." The same is true for the grandparents. M. is closely attached to both her mother and father. Further, he is of the view that if M. starts spending the majority of her time at one location, the other relationship will likely diminish. However, there will come a time when she enters kindergarten where she will need to be in one place.
- [132] Dr. Elterman qualified or altered some of his opinion during his cross-examination, stating that: (a) it was preferable to make the parent move rather than the child; (b) a 3-4-4-3 schedule was better for the child, given her age and developmental needs; (c) it would be best for M. to be settled in one community to give consistency for school, friendships, healthcare, and activities; (d) she will have her cousins for 'the rest of her life' unlike any

playmates she might have in daycare/pre-school; and (e) the primary consideration, above this lifestyle consistency, is that its important for M. to have both parents in her life.

- [133] The parties differ on how much weight this court should place on Dr Elterman's recommendations. The Respondent seeks an order implementing Dr. Elterman's recommendations, including that the existing parenting time schedule continue for the next two years. The Claimant seeks to rely on Dr. Elterman's testimony under cross-examination, which supports the child maintaining a permanent residence in Surrey.
- [134] As a general principle, it is also important to note that a s. 211 report does not bind the court. In considering the s. 211 evidence, the court cannot abrogate its own duty to determine what is in the best interests of the child: *D.L.M. v. A.L.F.*, 2022 BCSC 1874 at paras. 39, 41, 44.
- [135] The court has a duty to determine what is in the best interests of a child where the parties cannot agree: *N.R. v. N.P.*, 2017 BCSC 1962 at para 30. The s. 211 report is part of the evidence that the court should consider in making that determination.
- [136] How much weight to place on the report will depend on the circumstances of each case. A court may come to a different conclusion after cross-examination has been conducted and all of the evidence has been heard: *K.S. v. H.S.*, 2023 BCSC 888 at para. 51; *S.M.M. v. J.P.H.*, 2011 BCSC 287 at para. 38.
- [137] It is troubling that Dr. Elterman's opinion varied so widely between his written report and his testimony in court. It appears that to a large extent, Dr. Elterman's opinion on the best interests of the child was influenced by her current living situation and the feasibility of both her parents residing in the same jurisdiction. I have carefully considered Dr. Elterman's opinion both in his report and given at trial and addressed specific concerns as they arise.
- [138] Where the parties do agree, is that the court should not follow Dr. Elterman's recommendation regarding the deferral of the decision on what should happen with M.'s living arrangements when she enters kindergarten. It is submitted that a delayed decision on the Bellingham Proposal will prolong what is already high conflict litigation and will result in additional costs that the parties are unable to bear. Consequently, the parties have asked this court to rule on both the Spokane Proposal and the Bellingham Proposal. I agree that it is appropriate to do that in this case.

V. Should M. be returned to her Habitual Residence?

- [139] The Claimant seeks an order that M. "be returned to her habitual residence in Surrey". This request flows from the finding made by Justice Forth on December 1, 2022, that M. was habitually resident in British Columbia (and more specifically, Surrey). However, Justice Forth declined to order M.'s return, noting that there was no need to do so at that time as:

[18] The Child has been returned to BC by the respondent when directed to do so for the claimant's parenting time. The situation here is unlike other cases where a child has been removed by one parent and taken to another jurisdiction, thereby depriving one parent from any meaningful contact with the child

[140] Unless both parents consent to the removal or relocation of the child to another jurisdiction, both the FLA and the Divorce Act require that formal notice be given and a court hearing be held before any relocation can be permitted: *Roman-Manarovici v. Manarovici*, 2022 BCSC 1159 ("*Manarovici*"), at para. 11.

[141] Section 16.9 of the Divorce Act stipulates:

16.9 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to undertake a relocation shall notify, at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations, any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention. [emphasis added]

[142] The notice must be provided set out the expected date of relocation, the new address, a proposal for parenting arrangements, and certain other information: *Divorce Act*, s. 16.9(2). On application, the court may provide exemptions from notice.

[143] Mr. Gill argues that Ms. Kaur gave him no notice prior to unilaterally moving with the child to Spokane. Further, despite his repeated requests, she refused to return M. to Surrey. He submits that this conduct amounts to child abduction.

[144] Ms. Kaur denies that she "abducted" M., as Mr. Gill knew and agreed to Ms. Kaur relocating to Spokane. Further, while she admits that she did not provide any notice under the *Divorce Act* until February 2023, Ms. Kaur argues that she was not required to give notice as the child had two residences. There is also some suggestion that Ms. Kaur did not provide notice due to risk of family violence. I will address this latter assertion in the best interests analysis. Suffice it to say that I do not find this assertion, if it is being made, to be supported by the evidence.

[145] I begin first with whether the child was abducted.

A. Was the child abducted?

[146] The terms "child abduction" and "habitual residence" are interconnected concepts which are specifically referenced in the FLA under Part 4, Division 7 "Extrajurisdictional Matters Respecting Parenting Arrangements".

[147] The phrase "child abduction" is not expressly defined in the FLA. However, its meaning can be gleaned from the usage of this term in the jurisprudence and in the Hague Convention on the Civil Aspects of International Child Abduction, (1980) C.T.S. 1983/35, 19 I.L.M. 1501 ("*Hague Convention*").[6]

- [148] Child abduction in the family law context, is the withholding or removal of a child from their place of habitual residence to another jurisdiction, without the consent of the other parent or a court order.
- [149] "Habitual residence" is a legal concept which is defined in s. 72(2) of the FLA. Though s. 72(2) does not specifically use the words "child abduction", I am satisfied that the phrase "removal or withholding of a child without the consent of a guardian," as set out in s. 72(3), refers to the act of child abduction. This is consistent with the jurisprudence, which has found "the unilateral removal to another province by one parent of children formerly co-parented by both parents in a different province amounts to child abduction": Manarovici, at para. 11.
- [150] The parties disagree on whether Mr. Gill provided his consent for M. to move with her mother to Spokane at the conclusion of Ms. Kaur's fellowship. According to Ms. Kaur, the claimant knew of Ms. Kaur's intentions to take M. with her to Spokane, and he expressly agreed to her doing so. Alternatively, it is argued that Mr. Gill acquiesced or delayed in applying for an order, such that M.'s habitual residence had changed pursuant to s. 72(3). The evidence does not support such a finding.
- [151] I reject Ms. Kaur's evidence regarding Mr. Gill's knowledge, consent or acquiescence. I find that Ms. Kaur had changed her mind about moving to Surrey by at least the time the parties separated in June 2022, but did not disclose her true intentions to Mr. Gill. Any reticence on her part to return to Surrey did crystallize into an agreement or acquiescence by Mr. Gill.
- [152] I accept Mr. Gill's evidence that the parties' plan for M. to return with him to Surrey after Ms. Kaur's fellowship ended, remained in place at the date of separation. Their short-term agreement was that Ms. Kaur would live and work in Bellingham while waiting to fulfill the long-term plan of getting her accreditation in B.C. so that she could live and work in Surrey. To that end, Ms. Kaur obtained PR status in Canada, and secured employment in Bellingham.
- [153] At some point prior to the parties' separation in June 2022, Ms. Kaur decided that she no longer wanted to move to Surrey, that she was not going through with the Bellingham Plan, and that she was going to proceed with the Spokane Plan. However, while there is reliable evidence that Ms. Kaur expressed to Mr. Gill her reluctance to move to Surrey, I find that she did not expressly tell Mr. Gill that she had actually decided not to move. Rather, she continued to leave Mr. Gill under the impression that she still planned to follow through with the Bellingham Plan and pursue accreditation in B.C. so that she could live and work in Surrey.

- [154] I accept Mr. Gill's evidence that he did not know of Ms. Kaur's plans to move to Spokane with the child. I found his evidence on this issue credible, and consistent with the preponderance of probability. I accept Mr. Gill's evidence that he believed that after Ms. Kaur finished her fellowship, M. would return with him to Surrey, and the parties would resume their previous practice of Ms. Kaur working in Washington State and returning to Surrey during her weeks off, while she was waiting to qualify and find work in B.C.
- [155] I am satisfied that when Ms. Kaur made the Spokane Plan, she did so without consulting with Mr. Gill. While it is unclear when Ms. Kaur actually decided she was not going to work in Bellingham, I find that up until the day the parties separated, Mr. Gill still believed that Ms. Kaur was going through with the Bellingham Plan. To that end, Ms. Kaur still had a valid contract with Sound Physicians in Bellingham, which would permit her to work there once she had completed her fellowship. In addition, Ms. Kaur was making inquiries with other groups in Bellingham, including the Family Care Network to explore employment opportunities. Ms. Kaur was more positive about working with Family Care Network than with Sound Physicians, and testified that she felt that the Family Care Network would be a good fit for her given their philosophy.
- [156] In order to establish consent to the relocation, the evidence must be clear and unequivocal: *Kung v. Tang*, 2020 BCSC 2155 at para. 89.
- [157] Even if I was to believe that Mr. Gill knew prior to the separation date that Ms. Kaur planned to move to Spokane with M., I am still unable to find that Mr. Gill agreed to this occurring. Ms. Kaur's own evidence on this issue indicates that Mr. Gill did not provide clear and unequivocal consent. When asked in her direct examination if Mr. Gill had agreed to her working in Spokane post fellowship, and commuting back and forth with M., Ms. Kaur testified "he would go back and forth. It would sort of depend on how things are going in between us [sic] - if things are going well in between us he is understanding, if things are not going well he is not understanding".
- [158] I also do not agree that Mr. Gill acquiesced to Ms. Kaur moving to Spokane with M. The place where the parties would reside was a point of contention since the inception of the relationship. Mr. Gill had strong business and family ties to Surrey, and by his actions, which were consistent throughout their relationship, he evidenced a clear intention to continue to live in Surrey with M. Indeed, Mr. Gill sent a text message to Ms. Kaur in November 2021, confirming with her that they would return to Surrey at the conclusion of Ms. Kaur's fellowship, that Surrey would remain the home base for the family, and that M. would go to school and be raised in Surrey. Ms. Kaur agreed with this point in her text response.

[159] I accept Mr. Gill's evidence that he did not know that Ms. Kaur had moved with M. to Spokane until well after the fact. Indeed, her Washington Proceeding (which was filed at the end of June) indicated that she was living in King County, Washington. Though he did not know M.'s whereabouts, Mr. Gill commenced this action within days of returning to Canada, and through the BC Proceeding sought an order that M. be immediately returned to her habitual residence.

[160] To the extent that it is advanced by the Respondent, I reject the notion that the child has had two habitual residences such that no abduction occurred.

[161] I do not dispute that there is authority for the proposition that a child can have two habitual residences. In *Johansson v. Janssen*, 2021 BCCA 190, at para. 27 the court noted that this "is usually in the context of where parents have joint parenting rights, and the child spends equivalent time in two jurisdictions." The facts of this case do not support M. having two habitual residences.

[162] As noted, Ms. Kaur did not appeal Gill 2022 where Justice Forth found that the child's habitual residence was Surrey. That finding was made on the same evidence that Ms. Kaur relies on to support the two habitual residences notion.

[163] I also do not accept Ms. Kaur's counsel's assertions that she was under a lot of confusion when the parties separated and thus believed that she had the legal right to withhold the child from Mr. Gill. Ignorance of the law is no excuse.

[164] While this may be far from the classic example of the child abduction case, nevertheless, the criteria for abduction have been met. Ms. Kaur moved the child to Spokane without notifying Mr. Gill or seeking his consent. She withheld the child from him against his wishes. When confronted with the allegations that she had abducted the child, she refused to return M. to her habitual residence of Surrey. I conclude that Mr. Gill did not consent or acquiesce to M. relocating to Spokane with her mother.

B. Should the Return Order be Made?

[165] It is Mr. Gill's position that if the Court does not make an order that M. be returned immediately to her habitual residence, the Court will effectively be endorsing the abduction of a child and ruling retroactively on the merits of a relocation application "that was never made": *Manarovici* at para 10.

[166] Ms. Kaur argues that there is no legal purpose to ordering the return of M. to her habitual residence, as Ms. Kaur has acceded to this Court's jurisdiction and has facilitated all parenting time for Mr. Gill as required by the court. It is Ms. Kaur's position that in the unique circumstances of this case, it is legally appropriate for this court to rule on her relocation application without ordering a return of the child to her habitual residence.

[167] In the decision of *Office of the Children's Lawyer v. Balev*, 2018 SCC 16 ("Balev") the Supreme Court of Canada explained the purpose of a return order, as follows:

- [24] The Hague Convention is aimed at enforcing custody rights and securing the prompt return of wrongfully removed or retained children to their country of habitual residence.... The return order is not a custody determination: Article 19. It is simply an order designed to restore the status quo which existed before the wrongful removal or retention, and to deprive the "wrongful" parent of any advantage that might otherwise be gained by the abduction. Its purpose is to return the child to the jurisdiction which is most appropriate for the determination of custody and access.
- [25] Prompt return serves three related purposes. First, it protects against the harmful effects of wrongful removal or retention .
- [26] Second, it deters parents from abducting the child in the hope that they will be able to establish links in a new country that might ultimately award them custody.
- [27] Finally, prompt return is aimed at speedy adjudication of the merits of a custody or access dispute in the forum of a child's habitual residence, eliminating disputes about the proper forum for resolution of custody and access issues...

[citations omitted]

- [168] In addressing the three objectives articulated by the Supreme Court of Canada, prompt return of the child to her habitual residence is no longer possible as it has already been 1.5 years since her abduction. The goal of ensuring speedy adjudication of the merits of a custody or access dispute in the forum of the child's habitual residence, has already been accomplished. The parties appeared before the court in British Columbia for the purposes of determining jurisdiction, and the trial related to parenting issues has been heard in British Columbia. Further, specific deterrence appears to have been achieved as Ms. Kaur has abided by the court orders and acceded to this court's jurisdiction. She has made the child available to the father for all of the parenting time ordered by the Court since October 2022.
- [169] I conclude that in the unique circumstances of this case, ordering the child to be returned to B.C. would serve no purpose, as these Reasons are intended to also resolve the mother's application for relocation.

VI. Should the Respondent be permitted to Relocate M.?

- [170] Ms. Kaur's application for relocation is brought pursuant to s. 16.1 of the Divorce Act, which provides that a court may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, and that order may authorize or prohibit the relocation of the child: ss. 16.1(1) and (7).
- [171] Contrary to the position taken by the respondent when she issued her Relocation Notice, Ms. Kaur now concedes that this Court needs to determine the Relocation Application if Ms. Kaur is to continue to exercise parenting time in Spokane with the child. The Relocation Application is split into two parts. First, Ms. Kaur seeks an order permitting her to exercise

parenting time in Spokane, where she currently resides. Second, once the child is of kindergarten age, Ms. Kaur wishes to relocate her from Spokane to Bellingham, where the mother proposes to work and enrol M. in school.

[172] The parties agree that both these relocation requests should be determined at this time, rather than requiring the Ms. Kaur to return to court to seek relocation to Bellingham when M. is of school age.

[173] Ms. Kaur's proposal for relocation is summarized as follows:

- a) Until the end of August 2025, M. would alternate between her mother's home in Spokane, and her father's home in Surrey, on a two-week-on/two-week-off basis. The parenting time exchanges would occur at the Seattle airport such that Mr. Gill would be responsible for taking M. across the border on a regular basis. During this period, M. would attend pre-school in both locations.

(the "Spokane Proposal")

- b) Starting in September 2025, M. would relocate to Bellingham with her mother. She would enrol in kindergarten in Bellingham, but continue to alternate between both her parents' homes on the two-week on/two-week off basis. During her two weeks with her father, M. would continue to go to school in Bellingham, such that Mr. Gill would be responsible for bringing her back and forth over the border on a daily basis.

(the "Bellingham Proposal")

- c) Alternatively, if relocation to Bellingham is not permitted, then the child would primarily reside in Spokane where she would attend school.

(the "Alternative Spokane Proposal")

[174] There are two issues that I must address before determining the Relocation Application: (a) which test should be applied to determine relocation; and (b) who bears the burden of proof.

A. The Test for Relocation

[175] Counsel for Ms. Kaur argues that the test that should be applied to determine the mother's application for relocation, should be the "best interest of the child" test laid out in s. 16 of the Divorce Act.

[176] I agree with the father that the appropriate test to be applied in this case, is that set out in s. 16.92 of the Divorce Act. which requires the court to consider additional factors than those articulated in s. 16 of the Divorce Act, to determine what is in the best interests of the child. In *Barendregt v. Grebliunas*, 2022 SCC 22, at para. 108, the court noted that the test for relocation has been "largely codified" in the 2019 amendments to the Divorce Act. Those amendments now expressly require the court to consider the reasons for relocation as a

part of the best interests analysis: s. 16.92(1)(a).

- [177] In support of her position regarding the application of the narrower best interests test set out in s. 16 of the Divorce Act, Ms. Kaur submits that this is not a "typical" case for relocation, because Ms. Kaur is not asking the court to depart from the "status quo". However, the mother's reliance on status quo seeks to minimize on the one hand, the negative implications of her unilateral actions in moving the child to Spokane, and on the other hand, capitalize on the connections that M. has built to Spokane following her unlawful relocation.
- [178] Further, while status quo is a significant factor it is the best interests of the child that is most important, which involves the long-term. Status quo can thus be changed "even if that change results in a negative short-term impact on the child": *C.L.H. v. R.J.J.S.*, 2012 BCSC 579, at para. 121.
- [179] On the first point, the very purpose of the test under s. 16.92 is to ensure that matters connected to the relocation are taken into account by the Court when conducting the best interests analysis. To ignore those events would go against the specific intention of Parliament. On the second point, the jurisprudence is clear that an abducting parent cannot "benefit" from the wrongful removal of a child, by seeking to create a new status quo. This is further emphasized in s. 72(3) of the FLA, which stipulates that a child's habitual residence cannot be changed by the wrongful removal of a child, unless the other parent acquiesces or delays in applying for an order: *Mei v Li*, 2019 BCSC 2121 at paras. 22-23. In this case, no delay or acquiescence has been proven.
- [180] There is some dispute about the application of s. 16.92(2) of the Divorce Act, which is commonly referred to as the "double bind" clause. Counsel for the claimant concedes that this provision prevents the court from considering whether the relocating parent would still relocate if the Child is not permitted to do so. It is submitted that in this case, Ms. Kaur has waived her right to not have this considered, as she has given specific evidence that she will not come back to Canada even if the relocation is not granted.
- [181] First, I do not agree that Ms. Kaur has waived her right not to have ss. 16.92(2) considered. Such a waiver, if it was to be found, would have to be clear, intentional, and done with the benefit of legal advice. There is no indication that this is the case here. Second (and most importantly) the Claimant did not provide any authority that supports his position that the Court has the power to consider the factor under s. 16.92(2), in the face of a clear statutory prohibition. Consequently, I have not placed any weight on the evidence about what Ms. Kaur will do if the relocation order is not granted.

B. Burden of Proof

- [182] I am also satisfied that the burden of proof for relocation in this case, is on the respondent. This is supported by s. 16.93(1) the Divorce Act and the jurisprudence.

- [183] Section 16.93(1) contemplates situations where the parties have substantially complied with an order, arbitral award or agreement that provides that the child spend substantially equal time in the care of each party. In such a situation, the burden of proving that relocation is in the best interests of the child, falls on the parent intending to relocate: Barendregt at para. 149.
- [184] In the case at bar, while there were no orders or arbitral awards, the parties had an agreement that M. would spend substantially equal time in each parent's care. This agreement was substantially complied with, as evidenced by the parenting history following the child's birth and to the date of separation.
- [185] The parties separated on June 16, 2022, when M. was approximately 2.5 years old. It was then that the shared parenting arrangements were unilaterally changed by Ms. Kaur.
- [186] In *S.T. v. A.T.*, 2023 BCSC 875 the Court was faced with a similar situation to the one at bar. Namely the parent made the relocation application after the relocation had actually "functionally" occurred. The court discussed the application of the Divorce Act in such a scenario:
- [55] In my view, in the circumstances of the sort that are before me, Parliament intended that the relocating parent who has disturbed a settled, multi-year shared parenting status quo, should bear the burden of demonstrating that the relocation being sought retroactively is in the best interest of the children.
- [187] For similar reasons, I find that the burden of proof lies on Ms. Kaur in this case.
- [188] I now turn to considering the relocation factors. As there is an inherent connection between the Spokane and Bellingham relocation plans, I will address the factors in relation to each plan before I provide my conclusions on whether relocation to either city should be permitted.

C. Is Temporary Relocation to Spokane in M.'s Best Interests?

- [189] Both parties agree that M. stands to benefit from having the other parent play an active role in her life. They differ, however on how that should be accomplished. Mr. Gill wants all parenting time visits exercised in Surrey - regardless of where Ms. Kaur is living. Ms. Kaur would like to exercise her parenting time in Spokane.
- [190] According to Ms. Kaur, relocation in the manner proposed by her is in M.'s best interests as it promotes stability (by maintaining the status quo that was arrived at before the parties' separation), enhances her ability to build strong relationships with both sides of her family, and enables Ms. Kaur to work and be a strong female role model for her daughter.
- [191] Mr. Gill disagrees. He argues that Ms. Kaur's proposal prioritizes Ms. Kaur's quality of life over that of the child, places M.'s safety and well being at-risk, fails to meet M.'s need for stability, and interferes in her ability to develop or maintain important social relationships. According to Mr. Gill, it is too onerous on M. to move back and forth across the border on

such a frequent basis. While Mr. Gill does not have any issue with M. staying with Ms. Kaur during her mother's parenting time, Mr. Gill submits that: (a) all of the mother's parenting time should be exercised in Surrey; and (b) the schedule should be rotated every 3-4 days, rather than every two weeks. In the event that Ms. Kaur is not prepared to reside in Surrey, Mr. Gill submits that M. should only be required to travel to Spokane one weekend per month, and on holidays and special occasions.

[192] In *Barendregt*, the SCC summarized 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. [my emphasis]

[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.

[193] The central question then, is whether relocation is in M.'s best interests. In answering this question, I will first consider the relocation factors.

1. Relocation Factors

a) Reasons for the relocation

[194] Ms. Kaur submits that the relocation to Spokane is intended to maintain the status quo as it existed through most of M.'s life and is consistent with what the parties agreed to at the time of separation. I have already considered the latter point and found that the evidence fails to establish that Mr. Gill agreed that Ms. Kaur could relocate to Spokane with M.

[195] As to maintaining the status quo, Ms. Kaur submits that M. divided her time between two homes prior to the parties' separation - one with her mother in Spokane and the other with her father in Surrey. She further submits that this status quo "was established in the parties' relationship long before the parties' separation and throughout most of [M.'s] life".[7] The evidence does not support this assertion.

[196] The status quo is more than just a geographic location. It also entails the relationships and way of life that has been established for a child: *Johal v. Johal*, 2009 BCCA 368, at para.21.

[197] While M. spent about 40% of her time in Spokane from the period June 2020 to June 2021, most of that time was with caregivers, as Ms. Kaur worked 12-hour shifts. When Ms. Kaur returned to Surrey during her weeks off, M. was in the care of both her parents.[8] However, this situation changed dramatically in the final year prior to the parties' separation. During that period, M. was primarily in her father's care either in Surrey or in Seattle, while Ms. Kaur was working at her fellowship.

[198] Ms. Kaur also relies on her employment situation to support her request for relocation. Specifically, she submits that having M. reside with her in Spokane during Ms. Kaur's parenting time, will facilitate Ms. Kaur's ability to work. However, the Respondent is only required to work for one week (7 days) per month. This is the same work schedule and same job that Ms. Kaur had prior to her fellowship starting. During that year, Ms. Kaur regularly travelled to Surrey from Spokane during her weeks off work. The only valid reason advanced for why Ms. Kaur is no longer able to do so, relates to the fact she no longer has a place to stay in Surrey. Consequently, if she were required to exercise her parenting time in Surrey, Ms. Kaur would need to get a residence in Surrey and to furnish the space.

[199] Ms. Kaur's other reasons to relocate the child, including that she could be close to her maternal family, are discussed in the best interests analysis.

b) Impact on the Child

[200] Ms. Kaur submits that the impact of relocation to Spokane is minimal as the relocation will represent a continuation of the post separation status quo. Specifically, since at least February 2023, the parties have been following the Interim Parenting Schedule, which is the same as the two-week off/on schedule proposed by Ms. Kaur. Pursuant to that, M. has been living in Spokane with her mother for two weeks each month, and in Surrey with her father for the other two weeks. According to Ms. Kaur, not only is there no evidence that M. has suffered as a result, but there is reliable evidence that she has been thriving under this parenting regime.

[201] In support, Ms. Kaur relies on the s. 211 Report, in which he supports the continuation of the Interim Parenting Schedule until M. is ready to commence kindergarten. Dr. Elterman explains his opinion as follows at p. 77 of his report:

Having spent considerable blocks of time with each parent [M.] has developed a familiarity, comfort and security with both parents as well as her extended family on both sides. She is at a point now where, if she starts spending the majority of her time at one location, the relationship with the other parent is likely to diminish. [my emphasis]

- [202] Mr. Gill argues that Dr. Elterman's opinion on this point should be given little weight, as he based his opinion on the existing Interim Parenting Schedule, rather than considering other more preferable arrangements. In support, Claimant's counsel points to Dr. Elterman's evidence during his cross-examination by her. When Dr. Elterman was asked about whether it was preferable for the parent to cross the border, he responded "It's always the recommendation that you inconvenience the parents more than the child."
- [203] Mr. Gill submits that the relocation will have a devastating and "lifechanging" effect on M., as she will "lose" her consistent and positive relationships with her father, cousins, and other family members; be at-risk due to Ms. Kaur's "negative gatekeeping conduct"; and continue with the "instability that has plagued her young life so far". In terms of the instability that the Spokane Proposal represents, counsel points to M.'s "mother who when not even working prefers to have M. in full time daycare"; her "grandmother who works full time running her gas station"; her uncle who is out of the country regularly for extended periods with a partner who lives out of state; and her aunt and two cousins who live four hours away and she sees infrequently.
- [204] I disagree with counsel for Mr. Gill that Ms. Kaur's situation in Spokane represents instability. Instability and infrequency are not the same thing. Simply because M. does not see her maternal cousins, aunt and uncle that frequently, does not mean that her situation is unstable. Further, I reject any suggestion that M. is in an unstable living situation in Spokane because her grandmother works, or her mother has her in daycare. Countless working parents and grandparents are able provide children with stable living environments.
- [205] Mr. Gill's concern that M.'s relationships with her paternal family will be impacted by the Spokane Proposal, is also unfounded. First, as Dr. Elterman noted, the relationship between M. and her parents should have priority over any other extended family relationships. Second, there is no evidence of any long-term negative impact on M. in terms of her relationships with her cousins or other family members since the Interim Parenting Schedule was put into place.
- [206] I also reject Mr. Gill's concern that M. will be subject to Ms. Kaur's "negative gatekeeping conduct" if she continues to reside in Spokane for two weeks per month until kindergarten. Insofar as this concern arises out of fear that Ms. Kaur will try to influence M. against her father during her parenting time, that concern is not alleviated simply because Ms. Kaur spends her parenting time in Surrey. If the concern is due to a fear that Ms. Kaur will not return M. to Surrey for Mr. Gill's parenting time, Ms. Kaur has shown a willingness to accede to this court's jurisdiction by abiding by Justice Forth's parenting orders.
- [207] I have also considered Mr. Gill's concern about safety risks associated with the drive to Spokane. Road travel is always potentially dangerous, even if one is driving only locally. Ms. Kaur is alert to Mr. Gill's concern and testified that she avoids travelling by road during the winter season. I am satisfied that on the occasions that Ms. Kaur travels by car with M. to

and from Spokane, she has factored the risks to ensure that M.'s safety is paramount. While Mr. Gill may not feel comfortable with Ms. Kaur's decision, the evidence does not rise to a level to cause me to believe that Ms. Kaur is taking unnecessary risks or putting M. in harm's way by choosing her mode of travel.

[208] Finally, Mr. Gill's argument about the physical strain on M. caused by such frequent travel to Spokane in such frequent intervals, is off set to some degree by Dr. Elterman's opinion that these trips (particularly by car) can be beneficial as they provide important bonding time between a parent and child.

c) Time spent with each parent

[209] There is no dispute that both parents have been very actively involved in M.'s life. However, the evidence reveals that with the exception of the four-month period after Mr. Gill's arrest when he did not see the child, M. has spent more time in her father's care than her mother's. This is because Mr. Gill has largely not worked when M. is with him, whereas Ms. Kaur's job has not permitted her to take time off. In making this finding, I reject Ms. Kaur's assertion that when M. was in her father's care in Surrey, it was Mr. Gill's mother or other family members that took care of M. There is no credible evidence to support this.

[210] Further, M. is enrolled in full-time care in Spokane, such that regardless of whether Ms. Kaur is working or not, M. is looked after by third party caregivers. Ms. Kaur's mother, who does look after when she can, runs a gas station and works full-time, seven days per week.

[211] As to the four-month period when Mr. Gill did not see M., I reject any suggestion that Mr. Gill was not taking any steps to see his daughter. During this time, Mr. Gill was actively trying to change or cancel the civil and criminal restraining orders, had filed a Notice of Family Claim in B.C., had asked Ms. Kaur for parenting time, and made it clear that if no agreement was reached he was moving ahead with an interim application for parenting time in B.C. even before jurisdiction was determined.

[212] Since early 2023, when the Interim Parenting Schedule was implemented, M. has had equal parenting time with each parent. However, quantitatively, M. spends more time with her father when she is in Surrey, than with her mother when she is in Spokane. This is because during the two weeks that M. is with her mother in Spokane, M. attends an early childhood program ("ECP") Monday to Friday, from 9am to 3pm or later. Mr. Gill has M. in an early childhood program from around 9am to 12pm on a drop-in basis ranging from around two to three times per week, and does not work when M. is in his care.

[213] At trial, Ms. Kaur denied that she had M. in an ECP for more than a few hours a day, if that. I reject her attempts to distance herself from her sworn statement to the Washington Court and her statements to Dr. Elterman about how long M. was spending at Journey Discovery. Ms. Sohn from Journey Discovery was unable to provide any evidence about M.'s actual attendance or any personal observations of M.

[214] Because of the distance between Spokane and Surrey, M. spends about two days per month travelling by air or by road. That travel time is split roughly evenly between both parents, as the parenting time exchanges occur in Seattle.

d) Compliance with notice requirements

[215] It is undisputed that Ms. Kaur did not comply with the 60-day notice requirement under s. 16.9 of the Divorce Act and s. 46 of the FLA. This obliged her to give Mr. Gill notice of the relocation to Spokane at least 60 days before the expected date of the proposed relocation.

[216] Ms. Kaur provided the s. 16.9 Relocation Notice on March 14, 2023, approximately nine months after she unilaterally relocated M. to Spokane. The Relocation Notice was pro forma and failed to provide the necessary details of the relocation plan. In the Relocation Notice, Ms. Kaur told Mr. Gill that she was "reserv[ing] the right" to argue at trial that her decision to return to Spokane with the child was not a relocation. The Relocation Notice was characterized by her counsel as a "formality" because "it is obvious based on our client's position in these proceedings that she is seeking to have [M.] to continue to reside with her in Spokane".[9]

[217] Ms. Kaur submits that her failure to give notice was not out of bad faith. Rather it was due to the "tumultuous separation and having suffered family violence".[10] While there is no doubt that the separation was tumultuous, the evidence does not support Ms. Kaur's assertion that Mr. Gill committed family violence against her in the period leading up to their separation. I have explained my reasons for this finding under the best interests analysis.

[218] Even if Ms. Kaur was a victim of family violence, Mr. Gill had very limited ability to pose a threat as he had been arrested and deported weeks before Ms. Kaur moved to Spokane. Further, s. 16.9(4) specifically provides a party an opportunity to seek an exemption from, or modification of, the requirements of ss. (1) and (2), where there is a risk of family violence. No such application was ever brought.

[219] Ms. Kaur's argument that Spokane was the only alternative available to her given her circumstances is not supported by the evidence. Bellingham provided Ms. Kaur with a viable option in terms of employment and would not have "necessitated" any breach of the notice requirement. Ms. Kaur's Bellingham Proposal makes it clear that it would have been possible for M. to have been returned to her habitual residence, and for Ms. Kaur to live in Bellingham and exercise her parenting time with M. on a regular basis, while awaiting the court's ruling on a relocation application.

[220] While Ms. Kaur was not keen on the job with Sound Physicians, she also had the option of securing work with the Family Care Network, which she felt was a better fit for her. To that end, I do not find as credible, Ms. Kaur's explanation that the non-compete clause in the contract with Sound Physicians prevented her from pursuing a job with the Family Care Network. While I accept that Ms. Kaur did not want to live in Bellingham, and preferred to

be in Spokane where she was surrounded by her family and friends, this does not justify non-compliance with the notice requirement.

[221] I also reject Ms. Kaur's alternative explanation that she did not provide notice of relocation as "she had not resided in British Columbia for approximately a year" prior to moving to Spokane with M.[11] First, I note that this explanation directly contradicts the Respondent's assertion that the failure to give notice was innocent. Rather, it suggests that the decision not to provide notice was deliberate and considered. Second, Ms. Kaur was represented by legal counsel prior to her unilateral relocation of the child. According to the Washington Proceeding, Ms. Kaur was residing in the Seattle area at the time she commenced the Washington action. This indicates that she moved to Spokane after the lawsuit had been commenced. I find it against the preponderance of probability that neither of the two law firms that acted for her (one in B.C. and the other in Washington State) would have apprised Ms. Kaur of her legal duty to give proper notice of relocation to Mr. Gill.

[222] The comments of the Court in *Burton v. Carter*, 2022 BCSC 2004, are apt:

[73] The claimant admits that she should have not have done what she did [sic], but claims a certain degree of innocence, in that she says she did not fully appreciate the effect of the NFC or the statutory notice regime. However, she was represented by counsel at the relevant time, and she was aware of the respondent's objection to relocation. I conclude, and claimant's counsel agreed, that her move to Salmon Arm was reckless, even if the claimant was not intentionally trying to violate the applicable regime. The claimant's failure to respect the notice requirement weighs against relocation, in that it creates a concern about the claimant's willingness to respect any governing legal regime.

[223] In my view, Ms. Kaur's failure to give timely Notice of Relocation was at best, reckless, and at worse, a calculated decision designed to gain an advantage in this litigation.

[224] This situation is similar to the circumstances in *A.J.M. v. C.J.M.*, 2023 BCSC 1000, where the Court was also faced with a claim that a withholding parent was unaware of the relocation notice requirements:

[63] The fact that A.J.M. had to learn of the relocation from C.'s former school principal underscores the secrecy with which C.J.M. effected it. Thus, even if C.J.M. was truly unaware of the notice requirements of the FLA and Divorce Act as he claims, he still concealed the move to Duncan from A.J.M. and the evidence on this application leads me to conclude that was deliberate.

[225] Given the course of events after the separation, and my finding about the June incident that resulted in the parties' separation, I am left with the inevitable conclusion that Ms. Kaur had no intention of notifying Mr. Gill or consulting with him about her decision to unilaterally move M. to Spokane.

e) Existence of Orders Regarding Residence

[226] When M. was unilaterally moved to Spokane by her mother in July 2022, there was no order or agreement in place that specified the geographic area in which the child was to reside. As noted elsewhere, on December 1, 2022, Justice Forth made a finding that B.C. (and specifically Surrey) was the child's place of habitual residence.

f) Reasonableness of the relocation proposal

[227] Two concerns arise with respect to the reasonableness of the Spokane Proposal. The first relates to the length of time between parenting exchanges, and the second relates to the location of the exchanges. I have addressed Mr. Gill's concern about the length of time under the analysis dealing with the child's needs.

[228] Ms. Kaur's relocation proposal mandates that the parenting time exchanges occur at or near the Seattle airport, or another location as agreed to by the parties. This means that Mr. Gill will be required to drive to Seattle to either pick up M. or to drop her off. I consider this aspect of the proposal entirely unreasonable. I find the proposal by Ms. Kaur to be unfairly balanced in her favour, with no regard for the hardship that she has occasioned on Mr. Gill as a result of her actions.

[229] It was Ms. Kaur's decision to take the job offer in Spokane and relocate there. That decision was against Mr. Gill's wishes and without consultation. I see no reason why Mr. Gill should have to share in the cost and travel time associated with going to Spokane every two weeks - or more frequently depending on holidays and other special days requiring additional parenting exchanges. The burden on Mr. Gill is further exacerbated by the fact that he does not have a Nexus pass. The criminal charges laid against Mr. Gill were on the strength of unfounded allegations made by Ms. Kaur. He was forcibly returned to Canada, and his application for a Nexus pass was subsequently denied. It is Mr. Gill's uncontroverted evidence that despite the charges being dismissed, he no longer qualifies for a Nexus pass, and thus has no expedient way of travelling across the border.

[230] I also have concern about Ms. Kaur's proposal that M. stay in Spokane for two weeks every month until September 2025. This arrangement does not take into consideration the onerous burden that is being placed on the child for the sake of Ms. Kaur's own convenience. This concern is buttressed by Dr. Elterman's testimony that it is preferable to inconvenience the parent over the child. While travel time may provide for a bonding opportunity with each parent, there are other less inconvenient ways that such bonding opportunities can be achieved.

g) Compliance with legal obligations

[231] I have already addressed at length Ms. Kaur's failure to comply with her legal obligations regarding providing notice of relocation until well after the fact.

[232] In addition, Ms. Kaur's recalcitrant attitude and refusal to admit to any wrongdoing, raise real concerns about her ability and willingness to comply with any court order regarding parenting time. This is of particular concern given that she resides in another jurisdiction, thus making it potentially more difficult to enforce non-compliance. This concern is tempered by her subsequent compliance with Justice Forth's orders.

[233] No such concerns arise in relation to Mr. Gill.

2. Best interests of the child analysis

[234] I turn now to considering the factors under s. 16 regarding the best interests of the child.

a) Child's needs

[235] M. turned 4 years old in January 2024. She is a healthy, pleasant, and bright child who gets along well with others. M. currently attends pre-school and will be eligible to attend kindergarten in September 2025, when she is just over 5.5 years old.

[236] While the parties agree that the child requires stability at this stage of development, they fundamentally disagree on what will provide her with stability. The father submits that geographic stability is important for the child's development, as this will enable her to develop friendships and social connections in school. However, this concept is challenged by Dr. Elterman, who opined at pp. 32 and 33 of the s. 211 Report, that it was more important for the child to have stability in her relationship with her mother and father, rather than developing relationships with peers, or being fixed at one geographic location.

[237] In *L. v. L.* 2002 BCSC 871 at para. 33, the court noted that the "stability of a relationship with both parents and a routine that works effectively will likely provide the kind of stability that this child needs".

[238] I agree with the mother that stability in M.'s relationship with her parents is more important than geographic location or developing relationships with other people. Up until the point that the parties separated, both parents were active participants in the child's life. Despite shifting geographical location depending on external circumstances such as Ms. Kaur's employment or the pandemic, M.'s ties with both her parents has remained strong. Despite concerns raised by each parent that the child is suffering from the post separation parenting arrangements, M. seems to be thriving by all accounts. Dr. Elterman noted that M. is "clearly a well-adjusted child".

[239] The parties also disagree on the importance of a routine for M. Mr. Gill takes issue with Ms. Kaur's decision to keep M. in daycare even when she is in Ms. Kaur's care. Ms. Kaur defends this decision, arguing that she wants M. to have a routine. Dr. Elterman testified that "the child's attachment and time with the parents was more important than the routine".

- [240] I turn to the concerns raised about the child needing a shorter exchange time between parenting visits. Mr. Gill does not want to continue on a 2 week off/on schedule. He submits that the ideal situation for M. is to have both of her parents in Surrey with a frequent shared parenting regime (3-4-4-3) where they can both be actively engaged in M.'s day-to-day life regardless even of whose parenting time it is. This "ideal" is based on both parents living in the same jurisdiction.
- [241] Ms. Kaur submits that the 3-4-4-3 schedule reflects the Claimant's unwillingness or inability to understand the parties' and M.'s actual circumstances and is unrealistic given that Ms. Kaur works and lives in Spokane.
- [242] In his s. 211 report, Dr. Elterman opined that a two week off/on schedule would be best for M., as it would be "a balanced time to the extent that 4 weeks is too long and one week is too short for a turnaround [M. can] continue to enjoy the best of both homes and continue to develop a close attachment to both her parents": pp. 33, 34. However, under cross-examination by Ms. Specht, Dr. Elterman agreed that for children in the 3 or 4 year-old range, a shorter exchange would be preferable because of their perception of time. This was followed by the below exchange:

Q And for [M.], in terms of that situation, a week on/week off situation would probably be one of the better arrangements for her?

A That even that might be -- yeah, that that -- but you always have to factor in the distance. But if -- look, if they were living in the same community, I would say 3-4-4-3 would probably be the way to go.

Q Okay.

A I don't know that I would do week on/week off at her age until she's about 6 or 7. Because then I think you can tolerate the absence of a parent better than at 3 or 4.

- [243] Despite Dr. Elterman's trial testimony, it is important for the court to consider all of M.'s needs, and not just one in isolation. In this case, the child's need for a shorter exchange must be considered in conjunction with her other needs identified earlier.

b) Relationships with parents and others

- [244] M. has a strong bond with both her parents, who Dr. Elterman, described as "excellent parents". M. is closely attached to both and finds stimulation from each relationship. None of the witnesses expressed any negative views about either party's skills as a parent, and Mr. Gill's parents conceded that Ms. Kaur was a good mother to M.

- [245] Each of the family witnesses that testified for the parties described the parent they were related to, as providing a loving and supportive home environment in which M. was well cared for. They each also attested to their own strong emotional bond with M., and some evidence about the logistical challenges in maintaining strong ties with M. if she were to live primarily in either country. It was evident that they cared for M. deeply and were invested in her well being.
- [246] M. is an only child but has cousins in Surrey that she is very close to and with whom she was raised. H. is the same age as M., and K. is two years older. Dr. Elterman described their relationship and interactions to be like siblings. M. attends pre-school with H. and it is anticipated that M. and H. will attend the same school and same grade, if she is enrolled in school in Surrey.
- [247] Deborah Nicol is an early childhood educator who works as a facilitator at the Strong Start Centre that M. attends in Surrey. She provided evidence about her observations of M. during her attendance at the pre-school program. She described a positive relationship between M. and her father. She observed that Mr. Gill was attentive and patient, and engaged well with M. Ms. Nicol noted that M. often attended the program with her cousins (H. and K.). They appeared to get along very well and all three interacted with each other like siblings.
- [248] M. lives in an extended family environment in Surrey, such that Mr. Gill's parents and two of his sisters also live in the same residence. M. has thus developed a strong bond with her paternal grandparents (who are retired) and aunts. She also has a very strong bond with Mr. Gill's other sister Sendip, his aunts, and other extended family members. They regularly get together for family events, religious, and social occasions, and holidays.
- [249] M. also has extended family members with whom she resides in Spokane. Ms. Kaur shares a residence with her mother and brother. Although M.'s maternal grandmother works full-time, she spends a considerable amount of time with M. when she is not working. Ms. Kaur's brother is a professional basketball player and plays in the European league. He spends as much time as he can with M. Though he lives Spokane, he travels for significant periods of time, and is also involved in a committed relationship with a woman who lives out of State. Ms. Kaur has a sister that lives in Auburn, which is about a 3.5 hour drive from Spokane. Her sister has two children who are not much older than M. and who M. is close to. They see each other regularly on holidays and other social events. M. also has strong bonds with other extended family members and family friends on her mother's side. M. is also close to her childhood babysitter, Sharon Hamlin, who continues to have a strong relationship with M.
- c) Willingness of parent to support relationship
- [250] Despite the significant challenges in their relationship and some slips along the way, when the parties were together, they generally showed a willingness to support M.'s relationship with the other parent. For example, when she was working in Spokane, Ms. Kaur willingly

drove with M. to Surrey on a regular basis so that they could be together as a family in the Surrey home. In turn, Mr. Gill moved to Seattle with Ms. Kaur so that M. could be close to her mother while she was doing her fellowship. While these concessions were also designed to help stabilize their own relationship, I am satisfied that the parties were committed to sacrificing their personal comfort to ensure that M.'s relationship with the other parent was maintained. Sadly, this situation did not continue following separation.

[251] Ms. Kaur justifies her actions in taking M. to Spokane, as follows:[12]

- a) She returned to Spokane following a "tumultuous separation which involved an incidence of domestic violence she suffered at the hands of the claimant." The existence of family violence is an important factor in mobility cases: Barendregt at para. 147. While there is no doubt that the separation was tumultuous, as I have discussed under the best interests analysis, the evidence does not support Ms. Kaur's assertion that Mr. Gill committed family violence against her in the period leading up to their separation.
- b) Her lease for the apartment in Seattle ended at the end of June 2022, and she had nowhere else to live. The expiry of the lease is uncontroverted and there is no evidence that Seattle was anything more than a temporary place for the parties to reside while Ms. Kaur completed her fellowship.
- c) The parties had agreed that Ms. Kaur would return to Spokane with M. "for some time after the fellowship in Seattle ended". The evidence does not establish that such an agreement was made. Rather, the plan was for Ms. Kaur to temporarily relocate to Bellingham and exercise her parenting time in accordance with the Bellingham Plan.
- d) She had secured a job in Spokane before the fellowship had ended. Ms. Kaur secured this job without telling Mr. Gill and after she had already signed a contract to work in Bellingham.
- e) She was acting in what she believed to be the child's best interests by remaining in Spokane and being surrounded by family support in the period following the separation. The child's best interests were served by Ms. Kaur adhering to the Bellingham Plan and returning M. to her place of habitual residence, rather than withholding her from her father.
- f) She had no connection to B.C. beyond her relationship with the claimant, and had no residence to return to outside of Mr. Gill's home. I accept that her main connection to B.C. was through Mr. Gill.

[252] It is important here to distinguish between Ms. Kaur's own reasons to move to Spokane, and her reasons to relocate the child unilaterally and without Mr. Gill's consent. I do not disagree that given Ms. Kaur's lack of connection to Surrey, she may not have wanted to stay in Surrey after the parties had separated. She had no place to live, no close family or friends (outside of the connections she had made through Mr. Gill), and no job to go to in Surrey. Seattle was not an option for Ms. Kaur, as she did not have a job offer or place to live in Seattle. While Bellingham afforded Ms. Kaur with a job, she needed to find a place to live. Spokane afforded Ms. Kaur with free accommodation at her mother's home, and a

family support system. To that extent, I accept that it may have been more preferable for her personally, to live in Spokane.

- [253] However, Ms. Kaur's reasons for relocating M. to Spokane are not compelling. This is not a situation where Mr. Gill posed a danger to M. Even if Ms. Kaur was in fear of her own safety, there is no credible evidence that M. was at risk of physical or psychological harm if she were returned to Surrey to live with Mr. Gill while Ms. Kaur and he sorted out issues of parenting. The criminal no contact order which was in place until September 9, 2022, and upon which Ms. Kaur relies, was obtained under dubious circumstances. Knowing that there was no evidence that Mr. Gill posed a risk to M.'s safety and security, Ms. Kaur could have moved to have the no contact order varied, so that M. could continue to see her father. Instead, Ms. Kaur ignored efforts by Mr. Gill to put into place a reasonable interim parenting schedule.
- [254] It is important to note here that until the events of June 16, 2022, M. had been with her father virtually every weekday over the past year, and for at least part of most weekends. Even if Ms. Kaur did not view Mr. Gill as being a very good father, it is indisputable that he was an integral part of M.'s daily life. Ms. Kaur's actions caused M. to be ripped away from her father and kept from him for months. I am mindful that the emotional throes of a marital break-up can cause spouses to act in ways that they later regret. In this case, Ms. Kaur has displayed very little remorse for her actions, choosing instead to blame her conduct on others, whether it is Mr. Gill or her legal counsel.
- [255] This brings me to Ms. Kaur's actions in the litigation. While I accept that Ms. Kaur was acting on legal advice insofar as the default proceeding is concerned, she is not absolved from responsibility for the conduct displayed throughout the Washington Proceeding. In *McDermott v. McDermott*, 2013 BCSC 534, one party similarly attempted to manipulate the Court process with the help of her counsel in an effort to delay trial and gain an advantage in the custodial matters. This was denounced by the court: *McDermott* at para. 245.
- [256] Irrespective of whether Mr. Hemmat and Ms. Riano fell short of their own heightened ethical obligations in ex parte proceedings, in my view, Ms. Kaur was firmly in control of her litigation, and her legal counsel were acting on her instructions. Mr. Hemmat was clear in his evidence, which is also supported by the numerous emails, that Ms. Kaur was aware of the plan of action to try to push the Washington Proceeding forward and delay the Canadian proceedings to gain legal advantage over Mr. Gill.
- [257] Further, I am satisfied that Ms. Kaur understood what was being filed on her behalf and what she was swearing to the Court in the various legal documents filed in both Washington and B.C. Those included false representations to the Washington court about Mr. Gill's relationship with M. and the reason for his three month "absence" from M.'s life, including that Mr. Gill had "intentionally abandoned" M. and that he "substantially refused to perform his parenting duties" in relation to M. Her proposed temporary parenting plan was filed in September 2022 after the criminal charges and civil protection order were dismissed. In it,

Ms. Kaur sought to severely restrict parenting time for Mr. Gill to four hours in person every two weeks under supervision, and two hours per week of telephonic or video call access.

- [258] Mr. Heinrichs' attempt to characterize Ms. Kaur as the unwilling participant in a scheme put together by her Washington counsel, does not withstand scrutiny. As an example, he points to an email sent by Ms. Kaur to her counsel on September 14, 2022, where she asks her lawyer if they should be contacting Mr. Gill's counsel to discuss a parenting plan. Mr. Heinrichs argues that Ms. Kaur's lawyer advised her not to communicate with the opposing side "and she followed that legal advice".[13]
- [259] It was open for Ms. Kaur - who has shown herself throughout this trial to be a highly intelligent, well educated, and assertive person - to reject her lawyer's advice and insist that her child's needs be put first. Ms. Kaur knew that Mr. Gill was desperate to see their daughter, and that M. had not had any contact with her father for several months, despite him being a part of M.'s daily life for the better part of her entire existence. That Ms. Kaur continues to hide behind her counsel, rather than acknowledging her own mistakes is more than troubling. It shows a blatant disregard for what is in the child's best interests.
- [260] It was not until the parties were in Court in October 2022 that Ms. Kaur consented to any in-person parenting time at all.
- [261] Having found that Mr. Gill was a "loving and caring father, actively involved in all aspects of [M.'s] care"[14], Justice Forth ultimately ordered an interim equal shared parenting regime. Despite this, Ms. Kaur continued to advocate for a more restricted parenting regime. In her Amended Counterclaim filed in March 2023, Ms. Kaur sought to overturn the decision of Justice Forth on habitual residence entirely, and in the alternative, to relocate M. to Spokane.
- [262] Ms. Kaur's insistence that Mr. Gill not have any possible advantage over her with respect to parenting time with M., was exhibited most clearly in an ill-conceived application brought in June 2023. The application was over one extra day with M. Ms. Kaur testified that this application was brought "as a matter of principle" because "we should just follow the rules" and "it was my day and .I don't think my flexibility should be taken advantage of".
- [263] Even Ms. Kaur's position in terms of the Bellingham Proposal, indicates a focus on ensuring that Mr. Gill does not have the upper hand, rather than on what is in M.'s best interests. For reasons unrelated to M.'s best interests, Ms. Kaur would rather have M. attend school in Bellingham, where neither she nor the child have any ties at all, and force Mr. Gill to drive across the border to see his daughter, than to agree to M. attending school in Surrey where M. has clear ties.
- [264] Despite the obvious animosity engendered by Ms. Kaur's abduction of M., Mr. Gill's testimony indicates a strong willingness to support M.'s relationship with her mother. However, the legal position taken by him in this litigation, as well as the arguments

advanced by his counsel, may be indicative of a more hard-line approach. For example, he is seeking sole parental decision making power, rather than the model advanced by Ms. Kaur. Further, at times the criticism of Ms. Kaur by his counsel was unfair and inconsistent with Mr. Gill's more conciliatory approach as articulated in his evidence. Counsel's criticism that Ms. Kaur was putting herself first over M. by being a working mother, or putting M. in daycare even when not working, suggests a view that there is only one correct way to parent a child. Whether this is due to posturing by his counsel, or truly reflective of Mr. Gill's own views about Ms. Kaur, there remains the possibility that Mr. Gill may always be supportive of Ms. Kaur's relationship with M. I have taken this into consideration when determining what is in the best interests of the child.

[265] However, my above comments should not be seen as an endorsement of the Respondent's position that Mr. Gill has exhibited an unwillingness to support her relationship with M. I consider Mr. Gill's position that Ms. Kaur should exercise her parenting time with M. in Surrey, rather than having the child move back and forth across the border, to be motivated out of a desire to have some stability for M. rather than to punish Ms. Kaur. Whether one ultimately disagrees with Mr. Gill's position, I do not find it unreasonable for him to advance it.

[266] My concerns about Ms. Kaur on this issue are more amplified. Ms. Kaur's testimony and legal position throughout most of this litigation leave me with significant worry that she is unwilling to support Mr. Gill's relationship with M. Ms. Kaur displays very little respect for Mr. Gill and his contributions towards M. and their relationship. Though she denied it at trial, it was evident that her evidence at her examination for discovery that she was the "better parent" remains her view. Ms. Kaur referred to Mr. Gill as "babysitting" M. while the parties were living in Seattle, despite the fact that it was Mr. Gill who provided primary care for M. while Ms. Kaur was completing her fellowship. In an attempt to minimize Mr. Gill's efforts, Ms. Kaur stated that he was working remotely while he was supposed to be caring for M. Those allegations were refuted by Mr. Gill and Sendip.

[267] Ms. Kaur has exhibited a willingness to take inappropriate steps to keep M. away from her father, even if this means swearing to falsehoods in court documents, or telling the court what she believes will achieve her goals, rather than speaking the truth. While her legal position at the conclusion of the trial is dramatically different than what it was in the months leading up to the trial, it is not a surprise that Mr. Gill has urged me to view this change with skepticism.

d) History of care

[268] I have already provided details of the history of M.'s care elsewhere in these reasons, and I will not repeat them here.

e) Child's views

[269] M. is 4 years old. There is no dispute that minimal weight should be ascribed to her views given her age and level of maturity.

[270] The parties differ on whether M. has expressed any objection to the long road trips that she has to take to travel to Spokane. Mr. Gill testified that M. has expressed a reticence to driving. Ms. Kaur denies that M. has complained to her and suggests that any complaints are a failing on the part of Mr. Gill. On this issue, I prefer the evidence of Mr. Gill as being more consistent with the preponderance of probability. Given her age and maturity, it is not unexpected that M. would dislike sitting in the car for hours on end.

[271] Regardless of the long car trips, is clear from the evidence of all witnesses that M. loves being with each of her parents. There is some suggestion about M. being coached by her mother to disparage Mr. Gill and his family, but I have not placed any weight on it as there is very little in the way of reliable evidence that was provided to support such an allegation.

f) Cultural and religious heritage

[272] Both of M's parents are of Punjabi-Sikh heritage. They are both committed to maintaining M's connection to the Sikh faith, Punjabi language, and Punjabi cultural traditions.

[273] However, there is a difference in how each expresses their faith. The biggest difference is in relation to celebrating non-Sikh holidays. Ms. Kaur typically celebrates only those holidays which align with her faith. Mr. Gill also participates in western holiday traditions such as Christmas.

[274] While Ms. Kaur originally was opposed to Mr. Gill celebrating Christmas, she has taken a more conciliatory approach on this issue. The parties' differences in terms of Christmas actually work to the advantage of M. Ms. Kaur's ambivalence towards Christmas means that she is not opposed to Mr. Gill having M. during that period of time. In turn, Mr. Gill has no issue with Ms. Kaur having M. during the New Year period, when her family typically gets together.

g) Plans for care

[275] Both parents have sound plans for M.'s care when she is in their custody. These include having her enrolled in daycare and/or preschool, involving her in extracurricular activities, and having her set up with healthcare practitioners to meet her health needs.

h) Meeting the child's needs

[276] M. has two intelligent and capable parents who are able to make medical and educational decisions to meet M.'s needs. Dr. Elterman reported that each has the ability to provide for M.'s physical and emotional needs. He confirmed that both value education and both want her to be a social child with the ability to interact with other children.

- [277] Both parties are gainfully employed and financially secure. Ms. Kaur's employer witnesses testified that she was a valued employee, worked hard, and had the respect of her colleagues.
- [278] While Mr. Gill's family home is significantly more opulent, larger, and newer than Ms. Kaur's family home, both are able to provide M. with a safe and secure home that meets her needs.
- [279] Counsel for the Claimant expressed some concern around the Respondent's willingness to effectively communicate the care she was providing to M., particularly around medical treatment or M's illnesses and vaccines. However, I consider this to be a lapse of judgment on the part of Ms. Kaur, which was related to her animosity towards Mr. Gill in the throes of their separation, rather, than any indication of a deficiency in her ability to provide adequate care to meet M.'s needs.
- i) Communication and Cooperation
- [280] The parties have had significant challenges in communicating and cooperating with each other. Each must bear some responsibility for that situation.
- [281] Both parties appear to be aware of these transgressions and willing to change their communication style in the future. This is important, as the parties' communication styles impacts their ability to cooperate. Despite his testimony which exhibits a reasonable and conciliatory attitude, Mr. Gill has a deep mistrust of Ms. Kaur. This mistrust can become an impediment to effective communication and may prolong hostilities. In my view, it has resulted in Mr. Gill taking at times an unreasonable stance, such as rejecting the idea of a parenting coordinator when it is clear that the parties could benefit from one.
- [282] Ms. Kaur's post separation conduct was unacceptable and pushed matters to an extreme. This, coupled with her antagonizing communication style and reluctance to acknowledge wrongdoing, has created more hostility than necessary. Fortunately, Ms. Kaur has made some effort to improve her communication style with Mr. Gill. Whether this is "posturing" as alleged by the Claimant, or a genuine effort on her part to improve matters, the reality is that things have improved since January 2023, such that there has been little disagreement between the parties since.
- [283] To address any future issues that might arise between the parties, Ms. Kaur has suggested the use of a parenting coordinator. Mr. Gill opposes the appointment of a parenting coordinator in the grounds that they are unnecessary, they would have limited jurisdiction on cross border matters, and they would cost too much. I disagree. Given the significant communication differences that arise in this case, it would be appropriate and useful to have a parenting coordinator appointed. They can be of immense benefit to helping the parties resolve matters without resorting to litigation. Further, any costs issues can easily be addressed with the parenting coordinator having the power to reapportion the costs as between the parties depending on the reasonableness of a party's position. Finally, in

terms of jurisdiction, this objection pre-supposes that there will be problems. Ms. Kaur has already acceded to the jurisdiction of this court and is proposing a parenting coordinator that is registered with the BC Roster. Jurisdictional issues can be addressed if and when they arise.

[284] Mr. Gill is prepared to consult with the Respondent on all parenting matters, but is seeking a Joyce Model order, which will grant him decision making authority if the parties are not able to come to a consensus after meaningful discussion has taken place. This position is advanced in light of the difficulties that the parties have had in the past, the high conflict nature of their relationship, and his mistrust of Ms. Kaur.

[285] Ms. Kaur seeks an order that the parties equally share parental responsibilities and jointly discuss and decide on significant decisions for M. The Respondent characterizes the Claimant's position regarding decision making as consistent with his controlling behaviour through the relationship, and indicative of his disrespect for the Respondent's capacity to make decisions for M. I do not see it in that light. In my view, Mr. Gill's position is a by-product of Ms. Kaur's past conduct. However, I find that a Joyce Model type of parenting order may unnecessarily shift the balance of power in favour of one party, and is not necessary in light of the fact that a parenting coordinator is being put into place to address any disputes that might arise.

j) Family violence

[286] Section 16(3)(j) of the Divorce Act requires the Court to consider 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;

[287] Ms. Kaur has alleged that Mr. Gill has: exhibited family violence against her; has subjected M. to witnessing the family violence; and has subjected Ms. Kaur to coercive and controlling behaviour. Mr. Gill denies all allegations of family violence and says that these have been made so that Ms. Kaur can "eject" him from M.'s life.

[288] Dr. Elterman did not consider family violence to be a concern. He stated with respect to Mr. Gill, "there is no evidence of inappropriate attitudes and expectations found in parents who are more likely to be physically abusive." He further found they had difference narratives respecting the family violence allegations, but what was "most important" was there was a "low risk" of violence to M. by either parent. He found that Ms. Kaur tested in the range for "elevated indirect aggression" that likely leads to a "degree of chronic frustration". Mr. Gill's test results were normal.

i. Birth Certificate Incident

- [289] The first incident of concern is the "birth certificate incident" which is alleged to have occurred around March 29, 2021, at the Surrey home. Ms. Kaur alleges that she and Mr. Gill were arguing and Mr. Gill hit her leg while she attempted to pick M. up. He then blocked the exit door against the Respondent, preventing her from leaving the bedroom. Some time after that, Ms. Kaur realized that the Claimant took M.'s birth certificate without advising the Respondent. Ms. Kaur called Mr. Gill's father (Parmjit) and complained about the missing birth certificate. Ms Kaur testified that she was physically and emotionally shaken by this incident.
- [290] Mr. Gill admits that he had an argument with Ms. Kaur around March 29, and that he took M.'s birth certificate. He testified that Ms. Kaur threatened to take M. to the U.S. and not bring her back. He stated that he panicked and took the birth certificate out of the diaper bag and put it in the closet in the bedroom. However, he denied that he hit Ms. Kaur or in any way prevented her from leaving. Mr. Gill later returned the birth certificate into the diaper bag.
- [291] I find Ms. Kaur's version of events regarding the birth certificate as lacking in credibility, and prefer Mr. Gill's account. Ms. Kaur's evidence around whether a door was locked or the manner in which she says she was prevented from leaving the bedroom, was inconsistent with the photographs depicting the door and surrounding area. Further, Parmjit (who I found to be a credible and reliable witness) denied any phone call from Ms. Kaur about the birth certificate.
- [292] The facts do not support Mr. Gill being violent on that occasion; nor do they support the allegation that he was exhibiting coercive and controlling behaviour. Rather, I find that his decision to take the birth certificate, while regrettable, was done in the heat of an argument and out of fear that Ms. Kaur would take the child against his wishes. The birth certificate was returned by the next day, and there was no long-lasting negative repercussion. At trial Mr. Gill expressed remorse about his actions.

ii. Border Incident

- [293] The next incident of concern is the border incident referenced earlier. The parties agree that Mr. Gill refused to hand over M. to Ms. Kaur - Mr. Gill says he did this because Ms. Kaur said she was going to take the child for the entire week rather than returning her the next day as planned. Ms. Kaur says that she had pre-arranged to have M. in daycare for the week, but that Mr. Gill did not agree with her decision. She alleges that he was abusing her psychologically by withholding M. from her.
- [294] I note that at the time, M. was less than one year old and the borders were just starting to open up again after the pandemic. Mr. Gill was understandably upset that Ms. Kaur put an infant in daycare for an entire week during a highly uncertain time of the pandemic, when the father was willing and able to keep the child at home under his care. While it is unfortunate that the matter became heated causing the child to be upset, I do not see Mr. Gill's behaviour as being reflective of any form of psychological abuse or coercive control.

Rather, I find his response a natural reaction to Ms. Kaur's approach to M.'s care. In my view the border incident was an example of Ms. Kaur's desire to have control over M. even if that meant putting an infant in daycare rather than having her father look after her.

iii. Hawaii Incident

[295] The third incident of concern occurred in Hawaii, sometime between May 28 and June 6, 2022. On this occasion, Mr. Gill says that Ms. Kaur slapped M. on the legs when M. accidentally hit Ms. Kaur in the face with her feet while getting her diaper changed. He said that M. was crying and Ms. Kaur defended her actions by saying that M. had kicked her.

[296] Ms. Kaur testified that her actions have been misperceived as violent, when all she did was reflexively "move" M.'s legs away after M. "planted her heels in both my eyes". While Ms. Kaur's action of hitting M. was inappropriate, I am satisfied that Ms. Kaur was acting reflexively rather than with an intention to commit violence against M.

iv. Water and Keys Incidents

[297] This now brings me to the "water incident" which occurred on June 15, 2022, and the "keys incident" which occurred the day after. Mr. Gill alleges that these incidents were orchestrated to provoke Mr. Gill so that Ms. Kaur could have him criminally charged and removed from the country. Ms. Kaur says that these incidents are an example of escalating violence perpetrated by Mr. Gill against her.

[298] The water incident occurred while the parties were at the Seattle residence. There is no dispute that the parties were having an argument, when Ms. Kaur splashed the water she was drinking onto Mr. Gill, while M. was in her arms. Ms. Kaur says that it was cold water that she splashed to "calm" Mr. Gill down as she had seen this done to good effect on the situational comedies "Seinfeld" and "Friends". Mr. Gill says that the water was hot and was done as an act of aggression. Immediately after the incident, Mr. Gill threw the cup out of Ms. Kaur's hand, and took M. from Ms. Kaur's arms. Ms. Kaur asserts that in the process, her finger got cut.

[299] A photograph entered into evidence shows a very tiny cut on what appears to be the index finger of someone's hand. Mr. Gill denies Ms. Kaur cut her finger at the time, questions the reliability of the photograph, and notes there is no reference to it in the police report that Ms. Kaur made the next day. While it is possible that she may have cut her hand when Mr. Gill tried to take the metal cup away from her, I find that any such injury was accidental and not an act of family violence by Mr. Gill.

[300] It is telling that while Mr. Gill was remorseful in his role in the event, Ms. Kaur continued at trial to avoid taking any responsibility for her actions.

[301] I reject Ms. Kaur's evidence and conclude that there was no act of family violence on the part of Mr. Gill during the water incident. However, when Ms. Kaur threw water on Mr. Gill, I find she committed an unprovoked act of family violence.

v. Keys Incident

- [302] Following the water incident, the parties went to sleep in separate areas of the apartment, with Mr. Gill taking M. into the loft to sleep with him.
- [303] On June 16, 2022, Ms. Kaur woke up early and got ready for work. The parties accounts diverge at this point. According to Ms. Kaur, she went up to the loft to kiss M. good bye. Ms. Kaur said that she was very scared that Mr. Gill would take M. back to Surrey while she was gone to work. So, as she was leaving, she took his car keys and put them in her backpack. Mr. Gill was sleeping at the time, but woke up by the time Ms. Kaur was downstairs.
- [304] Ms. Kaur heard Mr. Gill yelling at her. When he caught up to her, Mr. Gill was barefoot and they were both outside near her car. Mr. Gill demanded his keys, and started pushing and shoving her. Ms. Kaur's own car keys were hanging off her backpack. Mr. Gill got a hold of them and started pulling on the keychain, which in turn pulled on her backpack. In this way, he dragged Ms. Kaur after him as he went up the stairs. Ms. Kaur did not resist Mr. Gill when he was pulling the backpack with the key chain, as it was common knowledge to her not to resist when someone is trying to harm you. When they were at the top of the stairs, the key chain broke. Mr. Gill then got into the apartment and would not give her keys back to her. Ms. Kaur put her foot in the door but pulled it out as she did not want it to get injured when he closed the door. She then called the police and then went downstairs to wait for them. The police eventually arrived and arrested Mr. Gill. Ms. Kaur called her family and also Mr. Gill's father, to tell him what had happened. Ms. Kaur says that Parmjit threatened her and told her you sent my son to jail you might as well have strangled your daughter. Parmjit denies it and says that he has never made any threats.
- [305] Under cross-examination Ms. Kaur denied that her motivation that morning was to get Mr. Gill arrested. However, she admitted that she waited for two hours for the police to arrive.
- [306] Mr. Gill denied any act of violence on his part. He testified that he awoke to the sound of keys jingling at the bottom of the ladder to the loft. When he checked he noticed that his keys were gone. He ran downstairs to get them back from Ms. Kaur. He saw keys dangling from her backpack and thought they were his. He started to take them before realizing that they were Ms. Kaur's keys. She told him to give her keys back, and he said that he would do so only if she gave his keys back to him. She threatened to call the police and he told her to go ahead. Mr. Gill denies shoving or pushing Ms. Kaur. When she called the police the operator told them to move apart from each other. They both waited for the police to arrive.

- [307] Both parties agree that while they were waiting for the police to arrive, Ms. Kaur asked Mr. Gill to bring M. to her, which he did. She also asked him to move her car as the parking lot was being painted, which he did. The police arrested Mr. Gill without incident, and took him to the police station where he was strip searched. Mr. Gill was held for 48 hours then sent back to Canada, facing criminal charges and a criminal no contact order. Mr. Gill testified as to being traumatized by the entire incident.
- [308] After having regard to all of the evidence, I find that Mr. Gill did not commit family violence on June 16, 2022. In coming to this conclusion, I reject Ms. Kaur's version of events as lacking in credibility. I find that her description of the manner in which Mr. Gill "dragged" her up the stairs to be incoherent and illogical. Ms. Kaur's evidence that Mr. Gill pulled her up the stairs holding only onto a keychain which was in turn attached to a backpack, which was in turn attached to her body, defies logic. If that were indeed the case, given Ms. Kaur's medium stature, the key chain would most certainly have broken long before Ms. Kaur made it to the stairs.
- [309] Ms. Kaur's other explanation, that she was dragged up the stairs somewhat willingly because she knew that one should not resist when they are being attacked, also does not make sense. The easiest way not to resist would have been to simply take the backpack off and let Mr. Gill have the keys. By her own evidence, Mr. Gill's sole motivation was to get his car keys back from her - keys which she had stolen from him and hidden inside her backpack. While it is possible that during the struggle over the keys there may have been some application of force by Mr. Gill, the evidence falls far short of establishing that Mr. Gill pushed, shoved, or in any other way assaulted Ms. Kaur.
- [310] I am also concerned that on both June 15 and 16 Ms. Kaur was the instigator of the violent altercation between the parties, which she has unfairly blamed Mr. Gill for. It would have been evident to Ms. Kaur that spilling water on Mr. Gill, and later stealing Mr. Gill's keys, were provocative acts that would cause him to be upset. While I will not go so far as to find that Ms. Kaur deliberately did these things in an effort to get Mr. Gill arrested and deported, I am also not ruling it out. There remains a reasonable possibility on the evidence, that the events of June 15 and 16 were part of a calculated strategy to have Mr. Gill arrested and deported to Canada so that Ms. Kaur could have sole custody of M. To that end, I note that it would have been evident to Ms. Kaur, based on her past interactions with the police in relation to various family members, that there was a good chance the police would come and arrest Mr. Gill if she reported an altercation between them. Further, I find it unlikely that Ms. Kaur could have mobilized her legal resources so quickly as to file her petition in the Washington courts seeking a protection order on the same day that Mr. Gill was arrested, without some pre-planning.

vi. Coercive Control

- [311] Ms. Kaur has also alleged various acts on the part of Mr. Gill which she says are indicative of his controlling behaviour and coercion of her. These include "forcing" her to: apply for PR Status in Canada; look for work in B.C. and Bellingham and attend job interviews in Bellingham; contact the B.C. College of Physicians and Surgeons; travel to B.C. for the parties relationship and in particular during her pregnancy; undergo unwanted and potentially dangerous medical procedures during her pregnancy; come to Canada in March 2020 after M. was born; and celebrate Christian holidays with the Claimant and his family.
- [312] I find all of these allegations specious and lacking in credibility. While there is no dispute that Ms. Kaur did all of the things set out above, there is no credible evidence that she did them under duress or pressure from Mr. Gill. Rather, I find that Ms. Kaur took these steps during a time when she was trying to make her relationship work. It is only after the fact, during the throes of this litigation, that she has recast these events to try to portray Mr. Gill as a controlling husband.
- [313] To that end, I find it particularly concerning that Ms. Kaur has attempted to play into racial stereotypes as a way to turn the court against Mr. Gill and his family. For example, in her Affidavit made on October 3, 2022, at para. 33, Ms. Kaur criticized the manner in which Mr. Gill's parents raised the family which was "conservative" and "unfortunately the common case in many traditional Indian families, especially with lower levels of education "[15]. That Ms. Kaur would think it appropriate to rely on these racial stereotypes to sway the court against Mr. Gill is very disturbing.

vii. Conclusion

- [314] After considering all of the evidence, I conclude that none of the allegations of family violence on the part of Mr. Gill are substantiated. This includes any suggestion of coercive control in relation to Ms. Kaur, or any violence directed toward or around M. As such, I have no s. 16(3)(j) concerns about Mr. Gill. Nor indeed has Ms. Kaur suggested that Mr. Gill is compromised in this respect.
- [315] While Mr. Gill has acted in a not very mature way (by for example, hiding the child's birth certificate, or getting into an argument with Ms. Kaur in front of M.), he has shown remorse for his conduct. I am satisfied that he realizes that this type of behaviour is not acceptable, and I am confident that he will try to avoid engaging in it in the future.
- [316] The same cannot be said for Ms. Kaur. I find that Ms. Kaur did perpetrate acts of family violence against Mr. Gill by throwing water at him on June 15 and stealing his keys on June 16 so that he could not leave the house with M. These events are serious and reflect an animosity towards Mr. Gill that needs to be addressed. However, these actions do not affect my view that Ms. Kaur is able and willing to care for and meets M.'s needs. To that end, I am satisfied that Ms. Kaur's acts of family violence have not compromised her ability under s. 16(3)(j).

k) Relevant Court proceedings or orders

[317] Neither party raises this factor as a concern, and I have already set out the history of the litigation between the parties.

D. Is Permanent Relocation to Bellingham in M.'s Best Interests?

[318] I now turn to considering the factors related to whether relocating the child to Bellingham when she reaches the age of kindergarten, is in the child's best interests. As many of the factors I have taken into consideration in this analysis were already set out in the discussion regarding the Spokane Proposal, I will not repeat them here.

[319] However, the Bellingham Proposal also engages some relocation and best interests factors in a different way than the Spokane Proposal. As such, I have addressed them below. These are factors (a), (b), and (f), under s. 16.92(1) of the Divorce Act, and factors (a) and (g) under s. 16(3) of the Divorce Act.

[320] Ms. Kaur acknowledges that once the child reaches school age, it will no longer be feasible to shuttle her back and forth from Bellingham. The Bellingham Proposal is intended by Ms. Kaur to be a permanent solution, designed to facilitate the child attending school in one jurisdiction, while still maintaining an equal shared parenting regime with both her parents. This proposal entails: Ms. Kaur moving to Bellingham; Ms. Kaur continuing to work part-time (7 days per month); Ms. Kaur enrolling the child in school in Bellingham; the parties maintaining the same two week on/off parenting schedule; and permitting Mr. Gill to exercise his parenting time in Surrey.

[321] As the plan entails Ms. Kaur finding a residence in Bellingham, she has asked that it not be put into place until just before M. starts kindergarten. Under this plan, Ms. Kaur's brother and mother would also move to Bellingham, in order to provide M. with the support network that she needs. Inderbir and Sital both testified that they were willing to make this move but would need to dispose of the gas station business and the residence. It is important to note that Ms. Kaur has not committed to finding employment in Bellingham under this plan. Rather, she has committed only to "explore" her employment options.

[322] Ms. Kaur submits that the Bellingham Proposal is reasonable and in M.'s best interests as it meets M.'s needs for stability, enables her mother to work, and supports M.'s ongoing relationship with her family. Though she concedes that the trip to Bellingham will take at least 40 minutes, plus time at the border, she submits that inconvenience to M. must be balanced against the child's needs to maintain her maternal relationships. Ms. Kaur submits that her proposed parenting regime protects M.'s relationships on both sides of the border - with her family in Washington and her family in British Columbia.

[323] Counsel for the father submits that there are numerous flaws with the Bellingham Proposal. [16] It is argued that the Bellingham Proposal has no roots in reality or stability for M, because it will:

- a) Take M. to a place where neither parent has ever lived and where neither parent has any social support or connections;
- b) Take M. to a place where she has no pre-existing social or peer relationships herself as she transitions into Kindergarten;
- c) Require M. to travel at least half of the month across the border, twice daily just to get to and from school;
- d) Leave M. at risk of not even getting to school in the event that her father is turned away at the border, for example as a result of having to explain the previous criminal charges in the USA which resulted in the Claimant being denied a NEXUS pass;
- e) Not allow M. to participate in regular activities due to the cross border travel and the continued residence in two jurisdictions because there simply would not be time for her to do so;
- f) Interrupt M.'s family relationships on both sides of the border and in particular her relationship with Khushi and Himmat.

[324] I agree with some, but not all, of the concerns raised by Mr. Gill in relation to the Bellingham Proposal. For example, there is no rationale to support why the child should go to an unknown school in Bellingham when there are good schools in Surrey which are located in a community that the child is already familiar with and has roots in. I also find that Ms. Kaur's proposal that Mr. Gill bear the brunt of driving across the border to Bellingham is unreasonable, for the same reasons set out in the discussion regarding the Spokane Proposal. Given Ms. Kaur's employment is only 7 days per week, and her stated intention to continue to work part-time, there is no reason why Ms. Kaur cannot cross the border to pick up M. or take her to school.

[325] However, I disagree with Mr. Gill about his objection to the child having to cross the border on a sometimes daily basis to exercise parenting time or to go to school. I accept that this will likely take about one including average border waiting times. While this is inconvenient, commuting one hour in each direction on a daily basis is not so onerous that it should be rejected out of hand. It is not unusual for a child living in the Metro Vancouver area to commute one hour in each direction to go to school.

[326] With respect to the other concerns raised, I find that they can be adequately addressed by modifying the Bellingham Proposal to better meet M.'s needs. Those modifications relate to M. attending school in Surrey, and the parenting time to be exchanged every week rather than every two weeks. The two week on-off schedule is not in M.'s best interests on a long term basis. In my view, a more appropriate schedule is for M. to shift to being in each parent's care for 7 day stretches, with additional time each week for the non-custodial parent to have contact with M. This would allow Ms. Kaur to maintain a 7-day work schedule while still meeting the child's needs for stability and contact with both parents.

E. Conclusion

- [327] I arrive finally at whether temporary relocation to Spokane or permanent relocation to Bellingham, is in M.'s best interests.
- [328] Having regard to the child's physical, emotional and psychological safety, security and well-being, I find that it serves M.'s best interests to have her temporarily relocated to Spokane until December 31, 2024. This will provide sufficient time for M. to strengthen her connections with both her parents and extended family members, while providing enough lead time for the transition to occur for kindergarten. It will also minimize the number of months that M. has to endure frequent and lengthy trips to Spokane. During this time, M. will continue her two-week off/on parenting schedule, which I accept is in her best interests as it will minimize the amount of travel to and from Spokane.
- [329] Further, while I agree that transporting M. back and forth from Spokane is not ideal, this would be for a limited time during which Ms. Kaur would be able to have time to carefully plan her move and save some money towards finding a suitable residence in Bellingham.
- [330] However, this parenting schedule will change to a week on-week off basis after December 31, 2024. It is important for M. to enroll in pre-school by January 2025 in Surrey, which is where she will ultimately attend kindergarten and gain her primary and secondary education.
- [331] On a long term basis, I agree that a partial relocation to Bellingham is warranted such that Ms. Kaur should be permitted to exercise her parenting time with M. in Bellingham. However, I find that M.'s interests are best served if she is enrolled in school in Surrey. Of all the places she has lived (Surrey, Seattle, and Spokane) Surrey is the constant that has remained unchanged. In my view, Surrey provides the most stable environment for M.
- [332] I do not doubt that Ms. Kaur has made the decision to move to Bellingham. However, there is no guarantee that Ms. Kaur will actually find work or agree to work in Bellingham. This leaves the very real possibility that under Ms. Kaur's Bellingham Proposal, there may be times when M. is in school in Bellingham, her father has returned to Surrey for the day, and her mother is working in Spokane, such that M. has no family around in the event of an emergency.
- [333] Despite his stated intentions to move to Bellingham once Ms. Kaur relocates there, it is not a given that Ms. Kaur's brother will actually make the move or be around long enough to provide M. with the stability she needs. Inderbir travels for a significant portion of the year due to his career. He is also in a committed relationship with someone living in another state. Similarly, while Ms. Kaur's mother has expressed a willingness to move to Bellingham, this will depend in large part on her ability to sell her business and her home. Further, if Ms. Kaur's family is truly committed to helping her out with M.'s care, there is no rational reason why they cannot travel to Surrey to pick up M. when Ms. Kaur is unable.

[334] Ms. Kaur's concern that she does not have the flexibility to pick up M. and bring her across the border, is of little relevance since Ms. Kaur only works 7 days per week and her parenting time could easily be set for the weeks that she is not working.

[335] Given my findings that partial relocation to Bellingham is warranted, I do not need to address Ms. Kaur's Alternative Spokane Proposal, which I find on the evidence is not in M.'s best interests in any event.

VII. What parenting schedule will operate in M.'s best interests, both now and when she commences kindergarten in 2025?

[336] I turn now to the parenting schedule that best meets M.'s needs. In my view, the most appropriate schedule is for the parties to operate under an equal shared parenting regime. This would be put into effect as follows.

[337] At the time her parents separated, M. was just 1.5 years old; this high conflict litigation has been ongoing over half her life. It is intended that the Reasons will provide the parties with finality and certainty, and reduce the time that M. has to travel back and forth between two residences.

[338] Both parties provided detailed draft orders for consideration (hereinafter the "Gill Draft Order" and the "Kaur Draft Order"). Although some of the terms are the same, there are material differences. I have addressed those material differences where necessary. For the sake of convenience, I will rely on the Kaur Draft Order as the template for the orders pronounced hereafter, unless noted otherwise.

[339] I therefore order as follows.

[340] Term 1 from the Kaur Draft Order is granted, such that both parents are guardians of the child pursuant to s. 39 of the FLA.

[341] Term 2 from the Kaur Draft Order is granted, such that the parents shall share equally the parental responsibilities over M. under s. 41 of the FLA as follows:

2. Pursuant to Section 16 of the Divorce Act (Canada) and Section 40(2) of the Family Law Act, the Claimant and the Respondent shall equally administer all of the following parenting responsibilities for the Child under Section 41 of the Family Law Act pursuant to the following terms:
 - a. Each guardian will have an obligation to advise the other guardian of any matters of a significant nature affect the Child;
 - b. Each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the Child, including significant decisions about health (except emergency decisions), education, religious instruction and general welfare, and which includes the decision of whether to cut the Child's hair;

- c. The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions; and
- d. Each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.

[342] Regarding term 2(b) above, maintaining unshorn hair is an integral part of the Sikh faith. Ms. Kaur's desire that any decision to cut M.'s hair should be done in consultation with the other parent, is reasonable in ensuring that both parents have a say over M.'s spiritual upbringing.

[343] In further regards to Term 2, I have specifically rejected Mr. Gill's request (contained at Term 2(d) of the Gill Draft Order) that he be given final decision making authority over M. This imbalance in favour of one parent is not in the best interests of the child.

[344] Term 3 is granted from the Kaur Draft Order with respect to documentation for the child.

[345] Term 4 is an amalgamation of Term 4 from the Kaur Draft Order and Term 3 of the Gill Draft Order, and will read as follows:

- 4. The Claimant and the Respondent shall share equally in the cost of obtaining, and cooperate and execute all documents required to facilitate the Child's travel documents and Canadian identification, including but not limited to:
 - a) Child's Canadian passport and any renewals thereto;
 - b) Child's USA passport and any renewals thereto;
 - c) Child's Nexus identification card;
 - d) Any form of Canadian Identification (Federal or Provincial);
 - e) Child's Social Insurance Number; and
 - f) Child's Health Insurance Card.

[346] Terms 5 to 8 from the Kaur Draft Order regarding travel and identity documentation are granted.

[347] I turn now to the child's healthcare and medical needs. I agree with Mr. Gill that the child's primary healthcare practitioners should be in B.C. so as to ensure that she has coordinated healthcare which is located in the province where she will ultimately attend school. This will also minimize conflict between the parties in terms of which jurisdiction the child should be taken to for her medical care. In making this determination I am mindful that until December 2024, the child will be splitting her time equally between Spokane and Surrey. Any emergency needs that arise during those visits or at other times when the child is in the U.S.A., can be addressed through the order.

[348] Term 9 will therefore read as follows:

9. Unless otherwise agreed to by the parties, and with the exception of emergency treatment that might be required while the Child is in the USA, the Child shall have primary care doctors, ophthalmologists, dental practitioners, or any other required specialists, in Canada.

[349] Term 10 is taken from the Gill Draft Order but is modified to enable both parents the right to schedule the child's medical appointments. Term 10 is to read as follows:

10. Either parent may schedule the Child's regular medical and dental appointments with the following requirements:
 - a. The scheduling parent shall provide the other parent with at least 14 days' notice of any scheduled appointment (except for emergencies or sudden health/dental issues);
 - b. The scheduling parent shall attempt to schedule the Child's appointments for a time when the other parent may be available to attend personally or virtually, however the Child's needs shall be put first over the other parent's availability to attend;
 - c. In the event that the other parent does not attend an appointment for the Child, then the scheduling parent shall inform the other parent in writing as to what occurred at the appointment and any pertinent healthcare information that needs to be shared about the Child;
 - d. Either parent is at liberty to contact the care provider directly to obtain any information or documents relating to the Child's attendance and treatment and both parties shall have contact information for any health or dental care practitioner for the Child.

[350] Term 11 from the Kaur Draft Order is granted regarding the need to notify the other parent of an emergency appointment.

[351] Terms 12 to 14 of the Kaur Draft Order are granted in relation to the powers of the Parenting Coordinator.

[352] Term 15 of the Kaur Draft Order is modified to include reference to s. 19 of the FLA, as follows:

15. Subject to s. 19 of the Family Law Act, and s.6(4)(b) of the Family Law Regulation, B.C. Reg. 347/2102 and any applicable Order of the Court, if the parties are unable to agree on any decision affecting the parenting responsibilities or parenting arrangements of the Child, they will refer the dispute to the Parenting Coordinator for resolution. The parties will not initiate or renew Court proceedings on matters which are within the scope of the Parenting Coordinator's services.

[353] Term 16 of the Kaur Draft Order regarding the costs of the Parenting Coordinator, is granted.

[354] Terms 17 and 18 of the Kaur Draft Order relate to relief that is no longer sought. Given the need for finality and Ms. Kaur's tendency to change her position over the course of time, it is appropriate to dismiss this particular relief sought, as follows:

17. The Respondent's application for a declaration that, pursuant to s. 72 of the Family Law Act that the child, M., born January 31, 2020 is habitually resident in Washington State and an Order that M. may continue to primarily reside in Spokane, Washington, is dismissed.
18. The Respondent's application for a declaration that M. is habitually resident in both B.C. and Washington and an Order that M. may continue to primarily reside in Spokane, Washington, is dismissed.

[355] Terms 19 and 20 of the Kaur Draft Order are amalgamated and modified as follows:

19. Pursuant to s. 16.1 of the Divorce Act the respondent, Jasdeep Kaur, may temporarily relocate the Child to Spokane, Washington, on the following terms:
 - a. The relocation to Spokane is partial in that the Child will continue to maintain her residence in Surrey, British Columbia, with her father.
 - b. The relocation to Spokane is effective only until December 31, 2024.
 - c. Until December 31, 2024, the parties will continue to share parenting time of the Child on an equal two-week on, two-week off parenting schedule, as follows:
 - i. The Claimant is entitled to exercise his parenting time in Surrey, British Columbia and the Respondent is entitled to exercise her parenting time in Spokane, Washington.
 - ii. The parties will exchange the Child on the Canada side of the Canada-U.S.A. border (Peace Arch Crossing), or any other location agreed to by the parties, in writing.
 - iii. By May 1, 2024, the parties will agree on the dates, times, and locations of each exchange for the remaining period until December 31, 2024. A party may make a request to change a date no less than 60 days prior to the scheduled exchange, with consent not to be unreasonably withheld. The parties may vary this term by consent in writing.
 - iv. The parties will bear their own costs of travel to the exchange location.

[356] Term 21 of the Kaur Draft Order regarding s. 41 of the FLA is captured in Term 2, and therefore not required.

[357] Term 22 of the Kaur Draft Order is re-numbered as Term 20, and amended as follows:

20. The parties are permitted to enroll the Child into pre-school in their respective jurisdictions, subject to Term 22. Each parent is entitled to full information and access to the pre-school as it relates to the Child.

[358] Term 23 of the Kaur Draft Order is re-numbered as Term 21, and modified as follows:

21. The parties will attend co-parenting counselling with the cost to be equally shared. In the event the parties are unable to agree on the counsellor, they are to seek the assistance of the Parenting Coordinator.

[359] A new Term 22 is inserted, as follows:

22. Commencing January 1, 2025, the Child is to attend pre-school only in Surrey, British Columbia. The pre-school shall be the same one that the child was attending in December 2024, subject to the parties' agreeing to a different pre-school.

[360] A new Term 23 is inserted, as follows:

23. Pursuant to s. 16.1 of the Divorce Act the respondent, Jasdeep Kaur, may relocate the Child to Bellingham, Washington, on the following terms:
- a. The relocation to Bellingham is partial in that the Child will continue to maintain her residence in Surrey, British Columbia, with her father.
 - b. The relocation to Bellingham is effective starting January 1, 2025, or such other date as agreed to by the parties in writing.
 - c. Ms. Kaur must notify Mr. Gill of her residential address in Bellingham by December 1, 2024.
 - d. From January 1, 2025, onwards, the parties will share parenting time of the Child on an equal one-week on, one-week off parenting schedule as follows:
 - i. The Claimant is entitled to exercise his parenting time in Surrey, British Columbia, and the Respondent is entitled to exercise her parenting time in Bellingham, Washington.
 - ii. The parties will exchange the Child on the Canada side of the Canada-U.S.A. border (Peace Arch Crossing), or any other location agreed to by the parties, in writing.
 - iii. By September 1, 2024, the parties will agree on the dates, times, and locations of each exchange for the period starting January 1, 2025, and continue to do so every four months thereafter. A party may make a request to change a date no less than 60 days prior to the scheduled exchange, with consent not to be unreasonably withheld. The parties may vary this term by consent in writing.
 - iv. The parties will bear their own costs of travel to the exchange location.

[361] Term 24 of the Kaur Draft Order is modified to read as follows:

24. The Child will commence Kindergarten in September 2025 in Surrey, British Columbia, and will continue to attend all of her primary and secondary school education in Surrey, subject to the parties agreeing to her attending school in a different jurisdiction, on the following terms:
- a. Each parent is entitled to full information and access to the school as it relates to the Child.

- b. Either party may schedule the Child in extra-curricular activities in Surrey, subject to the consent of the other party, such consent not to be unreasonably withheld.
- c. Where the child is enrolled in an extra-curricular activity with the consent of the other parent, and the activity falls during the other parent's parenting time, the other parent is to take the child to such activity or arrange to have the child attend the activity.
- d. The reasonable costs of the extra-curricular are to be shared equally by the parties.
- e. The parties are permitted to travel within Canada or the USA during their parenting time with the Child without the need for any prior travel authorization, and the travelling party must provide not less than 14 days' notice to the other party of the dates of travel and the address of their destination; except that, for trips that are 72 hours or less in duration, the travelling party must provide not less than 24 hours' notice.

[362] A new Term 25 is created as follows:

- 25. Commencing September 1, 2025, and for the duration of the time the Child is in school, the parties are to continue to share parenting time of the Child on an equal one-week on, one-week off basis as follows:
 - a. The Claimant is entitled to exercise his parenting time in Surrey, British Columbia, and the Respondent is entitled to exercise her parenting time in Bellingham, Washington.
 - b. The Parenting schedule will run from after school on Mondays (or 3pm if school is not in session), to the start of school the following Monday (or 9am if school is not in session).
 - c. All exchanges of the Child are to be done at the Child's school in Surrey, as follows: the Child will be dropped off at school on Monday morning by the parent who is completing their parenting week, and picked up after school by the parent who is starting their parenting week.
 - d. The parties may choose another location for drop off or pick up of the Child, by agreement in writing.
 - e. In the event a party is not able to pick up the Child for their parenting time, they may designate another person to pick the child up. In such event, they must notify the other parent at least 24 hours in advance.

[363] Term 25 of the Kaur Draft Order which relates to the Holiday Parenting Schedule, is now re-numbered to Term 26. The entirety of the Term sought is granted.

[364] Term 26 of the Kaur Draft Order which relates to alternative relief, is dismissed.

[365] Term 27 of the Kaur Draft Order regarding FaceTime calls is granted.

[366] Terms 28 and 29 of the Kaur Draft Order regarding travel are granted.

[367] Terms 30 and 31 of the Kaur Draft Order regarding conduct are granted.

VIII. Costs

[368] The parties have leave to address the Court on costs in the event they are not able to come to an agreement.

"Shergill J."

[1] Infra, para. 72.

[2] Declaration of Jasdeep Kaur in the Superior Court of Washington Case No. 22-2-09221-1 SEA, made July 18, 2022, at p. 732, line 18.

[3] As many of the participants in this litigation bear the same last names, I will refer to each of the non-party witnesses by their first names. I do not intend any disrespect.

[4] For reasons that are unclear, this Declaration Application was refiled by the claimant on October 3, 2022.

[5] Respondent's Revised Chronology, pg. 11.

[6] Under s. 80 of the FLA the Hague Convention has the force of law in B.C.

[7] Written Submission of the Respondent, at para. 37.

[8] Mr. Gill was off work from about April 2020 to 2023.

[9] Joint Book of Documents, Vol. 3, Tab 45, letter dated March 14, 2023.

[10] Written Submission of the Respondent, at para. 66.

[11] Written Submission of the Respondent, at para. 56.

[12] Written Submissions of Respondent, at paras. 50-55.

[13] Written Submission of the Respondent, at para. 204.

[14] Gill 2022, at para 155.

[15] This Affidavit was drafted and filed by Ms. Kaur's previous counsel. No aspersions are cast on her current counsel who rightly made an effort to distance himself from it.

[16] Written Submission of the Claimant, at para. 111

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