

CANADA / JUDGMENT

PKS v. ANR

2024 BCSC 2449

COURT

Supreme Court of British Columbia

DECIDED

10 December 2024

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2024 BCSC 2449 PKS v. ANR

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

PKS v. ANR,

2024 BCSC 2449

Date: 20241210

Docket: E242032

Registry: Vancouver

Between:

PKS

Claimant

And:

ANR

Respondent

Before: The Honourable Mr Justice Crerar

(Appearance via videoconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

N.N.K. Dhillon

Counsel for the Respondent:

J.M. Werb

Place and Date of Hearing:

Vancouver

December 10, 2024

Place and Date of Judgment:

Vancouver

December 10, 2024

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I. Introduction

- [1] THE COURT: These are my brief oral reasons for judgment in this matter. I make my usual reservation to edit or expand them if a transcript is ordered or for any other reason. The final result and the substance will remain the same, however.
- [2] In this post-judgment application, the mother (the respondent in these proceedings) applies for double costs flowing from my November 19, 2024 reasons in *PKS v. ANR*, 2024 BCSC 2110. In those reasons, I concluded that the father (the claimant in these proceedings)[1] had established that this Court had jurisdiction simpliciter, as the notice of family claim was filed when the mother was physically present in British Columbia, but ultimately found that the Court should exercise its discretion under *forum conveniens* to find that the matter should more appropriately be adjudicated in Florida.
- [3] At the conclusion of those reasons, I made a presumptive costs order:
- [91] The mother has been successful. She is presumptively entitled to her costs of this application and the British Columbia proceedings at scale B. If either party wishes to displace this presumption, that party will advise the other within 15 days of these reasons, and schedule with the Registry a date as soon as reasonably practicable to argue the matter. Each party will provide a written argument to the other party and to the Court at least seven days before the hearing date.
- [4] I also addressed the plea for special costs that each side requested against the other. I encouraged the parties to de-escalate their allegations against each other, which allegations and tensions would be exacerbated through a consideration of special costs, with evidence advanced to support the high level of scandalous, outrageous, and reprehensible behaviour necessary for such an order:
- [92] Each party seeks special costs against the other, pointing to the increasingly acrimonious communications and behaviour leading up to and following the outset of the litigation. While this Court cannot forestall such an application and will consider such an application, if brought, with an open mind, it strongly encourages neither party to pursue such relief. As recognised by counsel, for the most part, the parents have acted responsibly, constructively, and cooperatively, all in the best interests of their two children. The re-tilling of this poisonous soil, in litigation or in reasons for judgment, is not in the best interests of either parent or their children. Special costs awards are exceptional, and generally, only "scandalous", "outrageous", or "reprehensible" misconduct will justify an award of special costs: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 DLR (4th) 740 (BCCA), 1994 CanLII 2570 at p. 745. The parties are urged to de-escalate tensions, and to avoid the costs in stress, time, and money, in seeking special costs against the other.

- [5] Although each side has retreated from a demand for special costs based on reprehensible behaviour, each side continues to level allegations against the other parent, escalating rather than de-escalating tensions. I will not contribute to that bonfire in these reasons. I will generally focus on other determinative matters. That said, I have considered those factors, as set out in the present written arguments, as well as the affidavits in support of them.
- [6] The father agrees that although he had some success (jurisdiction simpliciter), ultimately the mother was successful. The father agrees that the presumptive order should be granted to the mother: that is, costs of scale B, or ordinary complexity, as it is now called.
- [7] The mother seeks double costs from the date of the September 20th offer to settle, pursuant to Rule 11-1 of the Supreme Court Family Rules.
- [8] She starts with the Court's presumptive order of costs to the mother, on an ordinary complexity scale.
- [9] I will typically, in the interests of efficiency and avoiding additional costs to the parties as well as further strain on judicial resources, make a presumptive costs order. A presumptive order silently anticipates that there may exist other circumstances, such as a formal offer to settle, that may displace the presumption.
- [10] Indeed, in the background, there was a formal offer to settle. On September 20, 2024, the mother issued her offer to settle, on the following terms:
- a) The Notice of Family Claim filed by the [father] on August 6, 2024, shall be struck in its entirety,
 - b) The [father] shall file a notice of discontinuance at 4:00 p.m. on September 24, 2024,
 - c) The parties shall attorn jurisdiction of their family law proceedings to the Courts of the State of Florida, USA,
 - d) The parties' existing applications filed in the British Columbia Supreme Court Action E201247 shall be adjourned generally, and
 - e) By 4:00 p.m. on September 24, 2024, the [father] shall pay the [mother] the sum of \$2,500 in full and final settlement of her costs in this matter.
- [11] The offer went on to say:

This is an opportunity for your client to accept that this jurisdictional claim lacks merit, and to limit the parties' unnecessarily expending funds towards legal fees that could otherwise be used for the benefit of the family.

- [12] On November 28, 2024, following my reasons in favour of the mother, the mother delivered a draft bill of costs to counsel for the father. That draft bill of costs totalled some \$19,215. She argues that had the father accepted the September 20th offer to settle, the result would be the same, and the father would only pay costs of \$2,500 instead of \$19,215.

II. Law

[13] The mother's written submissions set out the governing legal principles:

12. Rule 16-1(7) of the Supreme Court Family Rules (the "SCFR") specifies that costs of a family law case must be awarded to the successful party unless the court otherwise orders.
13. Rule 16-1(14) of the SCFR provides that the Court may award costs:
 - (a) of a family law case;
 - (b) that relate to some particular application, step or matter in or related to the family law case; or
 - (c) except so far as they relate to some particular application, step or matter in or related to the family law case,

and in awarding those costs the court may fix the amount of costs, including the amount of disbursements.

14. Rule 11-1(4) of the SCFR provides that the court may consider an offer to settle when exercising its discretion in relation to costs.
15. Rule 11-1(5) of the SCFR provides that where an offer to settle has been made, the court may:
 - (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
 - (b) award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
 - (c) award to a party, in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;
 - (d) if the party who made the offer obtained a judgment as favourable as, or more favourable than, the terms of the offer, award to the party the party's costs in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle.
16. Rule 11-1 (6) of the SCFR sets out the factors the court may consider in determining costs where an offer to settle has been made, including:
 - (a) Whether the offer to settle was one that ought reasonably to have been accepted either on the date the offer to settle was delivered, or on any later date;
 - (i) The Court of Appeal in *Hartshorne v. Hartshorne*, 2011 BCCA 29 (at para. 27):

- [27] The first factor - whether the offer to settle was one that ought reasonably to have been accepted - is not determined by reference to the award that was ultimately made. Rather, in considering that factor, the court must determine whether, at the time that the offer was open for acceptance, it would have been reasonable for it to have been accepted: *Bailey v. Jang*, 2008 BCSC 1372, 90 B.C.L.R. (4th) 125 at para. 24; *A.E. v. D.W.J.* at para. 55. As was said in *A.E. v. D.W.J.*, "The reasonableness of the plaintiff's decision not to accept the offer to settle must be assessed without reference to the court's decision" (para. 55). Instead, the reasonableness is to be assessed by considering such factors as the timing of the offer, whether it had some relationship to the claim (as opposed to simply being a "nuisance offer"), whether it could be easily evaluated, and whether some rationale for the offer was provided. We do not intend this to be a comprehensive list, nor do we suggest that each of these factors will necessarily be relevant in a given case.
- (b) The relationship between the terms of settlement offered and the final judgment of the court;
 - (c) The relative financial circumstances of the parties;
 - (d) Any other factor the court considers appropriate:
 - (i) In *Cameron v. Cameron*, 2014 BCSC 142 (at para. 17):
- [17] The fourth factor reconfirms the "unfettered" (*Bailey v Jang*, 2008 BCSC 1372) discretion of the court. It can be invoked to sanction blameworthy conduct such as bringing frivolous motions or otherwise prolonging a trial, or account for complexities in the nature of a proceeding or the content of an offer.
- [14] The law is largely uncontroversial except for the mother's citation of *Crick v. Crick*, 43 BCLR (3d) 251, 1997 CanLII 4395 (SC):
- 17. Where an accurate and timely offer to settle would avoid potentially destructive litigation, double costs ought to be the "rule" rather than the exception: *Crick v. Crick*, 1997 43 BCLR 251 (at para. 8)
 - 18. In the five most recent citations of *Crick* at the British Columbia Supreme Court, *Crick* has not been distinguished or weakened.

III. Discussion and decision

A. Whether the offer to settle was one that ought reasonably to have been accepted either on the date the offer to settle was delivered, or on any later date

- [15] Under the first consideration, the mother argues:
- 20. On July 15, 2024, the [father] wrote in his email to Ms. Kim Ashley at Zacharias Vickers McCann, "I understand that legally, looking at BC and Canada for a resolution is a hail mary."

21. Despite the [father] understanding that his claim in BC was unlikely to be successful, he refused to accept the [mother]'s Offer and continued to pursue litigation in this Court.
 22. The [mother]'s Offer was reasonable and presented when the issue to be determined was well known to the [father]. The Offer was comprehensive and provided the necessary information for the [father] to consider the Offer.
 23. The [mother] made a reasonable, well-thought-out offer in an attempt to avoid litigation on a meritless claim.
 24. The [father] inflamed tensions between the parties and increased costs by pursuing his family claim in BC, despite acknowledging that legally it is unlikely to succeed.
 25. If the [father] had accepted the [mother]'s Offer, then both parties would have been spared the expense of a multi-day hearing and significant legal expenses, and would be overall in a better position than they are now.
- [16] The offer-to-settle rule and jurisprudence in both the Supreme Court Civil Rules and Supreme Court Family Rules largely anticipates an offer that is a monetary offer. That is not to say that a non-monetary offer cannot trigger those rules. But it is much simpler to evaluate whether or not a given offer would have been more advantageous to the recipient, in light of the final outcome of the application or the trial, where the offer to settle is a monetary offer.
- [17] In the present application, of course, the substantive part of the claim concerned the issue of which jurisdiction was the appropriate jurisdiction for the adjudication of parenting issues. This brings the present circumstances in contrast to a claim for monetary support.
- [18] The application was largely binary in nature, making the evaluation of whether it was reasonable to accept the offer, both by the recipient and by the Court, even more difficult to assess.
- [19] The only monetary aspect, apart from the initial costs of litigation, was the costs of the hearing. The mother's offer required a costs payment by a certain date of \$2,500, in contrast to the \$19,215 draft bill of costs in future.
- [20] A key aspect of the evaluation of whether a recipient should have accepted an offer is whether the offer proposed a meaningful compromise that ought to have prompted the recipient to themselves compromise and accept the offer to settle.
- [21] The mother's offer proffered little compromise to the father. It essentially demanded that the father wholly accept the mother's position that Florida is the appropriate jurisdiction, attorn to that jurisdiction, and give up any hope of ever having this matter litigated in British Columbia.
- [22] To be fair, on September 23, 2024, the father himself issued a mirror offer to settle, on similar terms. That said, he offered a little more compromise than the mother's offer:

1. The [father] will take no further steps with respect to his Notice of Family Claim filed on August 6, 2024 until the [father], the [mother], and the Children relocate to British Columbia, whereupon the [father] may renew his Notice of Family Claim, if necessary.
2. The children of the marriage, namely [children's names and birthdates redacted] (the "Children") may continue to reside in Florida, USA up until the conclusion of their 2024/2025 school and daycare year, on the following conditions:
 - a. The [mother] will ensure that the [father] has full access to the Children in the event she continues to reside with her parents at their residence located at [Florida address redacted], meaning that the [father] will be permitted to attend at [Florida address redacted] if the Children are ill and require care, and the [mother] is unable to attend to them for reasons, including due to work obligations, and for exchanging the Children for the parties' respective parenting time.
 - b. The parties will continue their current week-on/week-off parenting schedule, with any changes to be mutually agreed upon in writing.
 - c. The parties will agree on special and holiday parenting time, including vacations, by using the assistance of a parenting or divorce coach.
 - d. The parties will jointly exercise decision-making over the Children, with any disagreements to be mediated with the assistance of their parenting or divorce coach.
 - e. Prior to bringing any court applications, the parties must attempt to resolve matters outside of court by attending a mediation.
 - f. At the conclusion of the Children's school/daycare year in June 2025, the parties will relocate to the Lower Mainland area of British Columbia with the Children. By no later than July 1, 2025, each of the [father] and the [mother] must provide each other with all relevant information regarding the relocation to BC, including:
 - i. Address of residence in which they intend to live with the Children;
 - ii. Employment; and
 - iii. Proposed school for the Children, and
 - g. The parties will mutually agree on a school for the Children to attend in BC starting in the 2025/2026 school year.
 - h. The parties must relocate to BC with the Children by no later than August 15, 2025 to allow the Children sufficient time to adjust prior to the commencement of the new school year.
- [23] In short, the father made some compromises with respect to the children's ongoing education and residence in Florida, but, at the end of the day, similarly demanded that the mother accede to his position in this binary jurisdictional dispute.

- [24] Further, the present fact pattern was unusual in the jurisdiction jurisprudence. Indeed, neither party had a precedent exactly on all fours with the fact pattern before the Court. As I noted in my reasons for judgment, typically in such a jurisdiction application, there is one spouse with an ongoing anchor to the domestic jurisdiction. As is not unusual in multicultural Canada, the other spouse has relocated or taken the child to another jurisdiction to which the parent or couple or family also had ongoing familial ties.
- [25] In the unusual circumstances of the present case, the family had not lived in Vancouver for several years. Vancouver, however, had by far been the locale where the family and indeed the children had spent most of their time together, in contrast to less than a year in Florida. Vancouver and British Columbia had indeed served as the predominant residence for the couple and for the children during the marriage.
- [26] Had the family spent a little less time in India, through the happenstance of the father's job situation and the good-faith decision by both parents to expose the children to their Indian heritage, British Columbia may well have prevailed as the appropriate jurisdiction. Had this matter been heard in August rather than November, occasioned largely due to judicial vacancies, the family would have spent closer to one-half of the year in Florida rather than, as it turned out by November, closer to a full year in Florida. Again, these important, rather happenstance, facts were not fully known when the offer to settle was received. The procedural delays were not known when the offer to settle was received. The result may well have been different.
- [27] I would also note that the marital status of the couple was a dynamic and developing situation. The father at least--and one must assume that the mother was proceeding in a good-faith manner as well--was exploring counselling and seeking reconciliation. It is not disputed that there was no formal announcement of separation until late July 2024. Soon thereafter, the parties went into litigation mode. Just a few weeks after that, the offer to settle was issued.
- [28] Depending on the weight that the Court ultimately put on that reconciliation period, the Court may well have placed little weight on the passage of time in Florida.
- [29] Further, the father, to some extent, was acting in the best interests of the children with respect to that Florida time. He did return to Florida with the younger child in the interests of keeping the family together and not keeping the two children apart. He acted in the best interests of the children and the family in agreeing that they could start school together and that they could continue attending school in Florida. Ultimately, he agreed to these matters, to the prejudice of his own jurisdictional position.
- [30] In short, the father's position was far from meritless.
- [31] The mother places great weight upon a July 2024 communication from the father to his counsel, in which he recognized that the jurisdictional application was in effect a "Hail Mary": that is, one with a faint hope for success. The mother points to this in support of an

argument that, first, the father's position was cynical and irresponsible; second, that it was a hopeless application that should have been avoided such that double costs should follow; and third, that the offer to settle should have been evaluated based upon the acknowledged weakness in his own case.

[32] I disagree with the interpretation of the "Hail Mary" comment. That was simply a realistic expectation on the part of the father in light of all of the factors and risks that have just been recited, specifically the ongoing residence and schooling of the children in Florida. Again, these flowed at least to some degree from the good-faith decisions of the father: he acted in the best interests of the children, to the prejudice of his legal position. I do not recognize this phrase as the revelation of a cynical position on the part of the father, such that it should be condemned, or such that it should play a significant role in the consideration of the offer to settle. It was simply a realistic acknowledgment that the facts made his legal position more challenging.

B. The relationship between the terms of settlement offered and the final judgment of the court

[33] Under the second consideration, the mother argues:

26. The [mother] achieved a result more favourable than the terms of her Offer. The [father] fared worse due to the Reasons for Judgment than he would have had he accepted the [mother]'s Offer.
27. The [mother]'s Offer was more favourable to the [father] than the Reasons for Judgment, particularly with respect to costs:

Offer

Reasons for Judgment

The Notice of Family Claim filed by the [father] on August 6, 2024, shall be struck in its entirety

Notice of Family Claim stayed and struck in its entirety

The [father] shall file a notice of discontinuance by 4:00 p.m. on September 24, 2024

See above

The parties shall attorn jurisdiction of their family law proceedings to the Courts of the State of Florida, USA

Honourable Court declines to exercise jurisdiction or territorial competence on the grounds of forum non conveniens

The parties' existing applications filed in the BC Supreme Court Action E201247 shall be adjourned generally

[father]'s application dismissed

[mother]'s application granted

By 4:00 p.m. on September 24, 2024, the [father] shall pay the [mother] the sum of \$2,500 in full and final settlement of her costs in this matter

Costs at Scale B awarded to the [mother], pending application by either party to displace this presumption

Draft Bill of Costs at \$19k+

28. Had the [father] accepted the [mother]'s Offer, his costs would have been limited to \$2,500.

[italicised emphasis in original]

[34] The ultimate court order did not entirely match what the mother was offering in her formal offer to settle. While the costs consequences would have been better for the father, the mother's offer, and the mother's jurisdictional demands, were not fully confirmed by this Court.

[35] Again, the mother's offer required the father to formally attorn to the jurisdiction of the Florida court: that is, fully and completely agree that the Florida court had jurisdiction and that he attorned to that jurisdiction.

[36] The British Columbia Court did not order that the parties attorn to the Florida court. That is a matter to be adjudicated in and decided by the Florida court.

[37] While it is highly unlikely, there remains a possibility that the Florida court, for whatever reason, may find that it has no jurisdiction over the parties, or that it should not exercise that jurisdiction over the parties. There may be some statute or jurisdictional principle in Florida that either prompts or mandates that conclusion by the Florida court. The Florida court could make a rare order in the nature of renvoi: that is, notwithstanding the preliminary decision of the British Columbia court to defer jurisdiction to the Florida court, the Florida court, at the end of the day, because of its statutory apparatus or its jurisprudence, may conclude that ultimately the British Columbia court is the more appropriate jurisdiction, and send the matter back to British Columbia. By noting this, I am certainly not encouraging the Florida court or the parties to spend their valuable time exploring or litigating that matter. Suffice to say, the order of this Court fell far short of a formal attornment to the Florida court by the father, as demanded in the mother's formal offer to settle.

C. The relative financial circumstances of the parties

[38] Under the third consideration, the mother argues:

29. The [father] has access to various assets and accounts in California and India. His net worth is significantly higher than the [mother]'s and there is a premarital agreement to protect his assets.

30. The [mother] has incurred significant legal fees relating to the within proceeding.
31. The [father] has not paid spousal or child support to the [mother].
- [39] The mother argues that the disparity of resources should prompt double costs. She specifically points to the fact that their California premarital agreement protected the father's premarital assets, exceeding \$2 million, at least at the time of their wedding. The mother also argues that the father has not paid spousal or child support, to her financial prejudice.
- [40] I would note that that portion of the test does not seek to equalize the assets of the parties. Rather, it looks at the economic pressure brought to bear through the offer or through the ongoing litigation, as well as the economic consequences of accepting or rejecting the offer, in light of the cost of proceeding forward. It is very much anticipating a David-versus-Goliath situation where the offeror cynically knows that the offeree is not in any position to continue paying legal costs, such that a nuisance offer can be extended.
- [41] I do not put substantial weight on this consideration. I do not have details of the competing matrimonial assets of either party. I do not have details of the present state of the father's assets. For all I know, considerable amounts of those premarital assets may have been spent during the history of the family's time together. As both parties acknowledged, they enjoyed a comfortable international lifestyle with many holidays, and multiple extended stays in multiple countries. Many such trips occurred while the father was unemployed. Further, I do not know whether the California premarital agreement may be vulnerable to a legal challenge, whether brought here, in Florida, or in California.
- [42] Turning to the mother's side of the ledger, it is clear from her vigorous legal proceedings, both in British Columbia and Florida, that she has some funds--her own funds or from her family or friends or otherwise--and, in any case, is not in the vulnerable position contemplated under the Supreme Court Family Rules and jurisprudence.

D. Any other factor the court considers appropriate

- [43] Under the fourth consideration, the mother advances various complaints about the father's time estimates, materials, and evidence.
- [44] She also cites Crick for the proposition that where an accurate and timely offer to settle would avoid potentially destructive litigation, double costs ought to be the rule rather than the exception. The mother notes that in one of the more recent applications of Crick, in *Cameron v. Cameron*, 2014 BCSC 142, the Court stated:
- [12] The discretion of the court can be exercised to ensure, for example, that litigants are not "penalized for declining an offer that did not provide a genuine incentive to settle" (*Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282). This observation is an important counterpoint to the position in Crick.

- [45] For the reasons that I have just cited, there were many legitimate reasons for the father to decline the offer to settle, and to take his chances in advancing his own jurisdictional application and in responding to the mother's jurisdictional application.
- [46] Accordingly, the Court, in exercising its discretion--which is paramount under the jurisprudence, including *Crick* and *Cameron*--declines to place significant weight on the *Crick* destructive litigation principle in these circumstances.
- [47] I would also note that both sides levelled unhappy allegations against the other side, and indeed, continue to level destructive and negative allegations against the other side, despite the Court's express exhortation in para 92 to de-escalate tensions. This is a further factor diminishing the applicability of *Crick* in this application.
- [48] The mother also seeks to reverse the trial ruling that she bear the costs of the third day of this hearing. On the second day of the hearing, the mother came forward with an ingenious but last-minute argument: that it was not entirely clear on the record the precise moment that the father filed his claim in the Supreme Court Registry, such that the mother may not have been physically in the jurisdiction at that time. Indeed, their airplane may have taken off before the employee of the father's counsel's firm walked over to the Registry and filed his claim.
- [49] Ordinarily, such a last-minute application would be dismissed out of hand, as being raised far too late in the proceedings. The Court only gave leave to the mother to raise this last-minute argument because the issue of jurisdiction transcends the dispute between the parties. It engages the issue of comity, and the relationship of the British Columbia court to the Florida court. It would exhibit a lack of comity if the British Columbia court asserted jurisdiction over the parties when it would be more appropriate for another court to do so. In turn, the issue of jurisdiction is informed by the orderly adjudication of multi-jurisdictional disputes: another factor that transcends the private dispute between the parties.
- [50] The Court granted leave to the mother to bring her last-minute application. The Court also ordered that she pay the costs occasioned by her last-minute application in any event of the cause.
- [51] Allowing the mother to proceed with the application necessitated considerable scrambling by both parties, and particularly the father's counsel's law firm, to determine in a tight time frame the precise moments when materials were filed. Unfortunately, through the happenstance of payment in cash rather than with a credit card, the Registry did not provide a time stamp on the receipt, which required further scrambling for alternative information about when the filing may have occurred vis-a-vis the airplane taking off. Further, there was scrambling to establish the time the airplane departed.

- [52] As indicated by the mother's citation of specific times that various emails with respect to those materials and with respect to requests for those materials occurred, the thrust of the mother's submissions is that the Court should depart from its mid-hearing ruling that the mother bear the costs of her last-minute application, based upon perceived non-responsiveness and delay on the part of the father and his counsel.
- [53] I am satisfied that any delayed or less than orderly responses from the father's counsel were largely occasioned by the fact that the application arose at the very last minute. Again, this aspect of the application could and should have been raised in August. It would have been clear at that point that there could exist an issue about the timing of the flight, as well as the timing of the filing. Accordingly, I confirm my mid-hearing ruling that the mother bear the cost of the third day of the hearing, along with any disbursements related to the Vancouver airport timing issue.

IV. Conclusion and costs of present application

- [54] In conclusion, I would once again endorse and encourage the parties to de-escalate this matter. Think of your children's college fund. Think of their psychological well being. The sooner you can de-escalate litigation tensions, in so far as that can be achieved, the better chance your children will not pick up on psychological cues of the stress occasioned by the parental conflict and the litigation.
- [55] Accordingly, to bring the discussion down to the mundane mechanics, I would encourage the parties to observe that there is no sensible reason to proceed to a Registrar's hearing to determine the costs of the hearing, or the portion dedicated to the Vancouver airport timing issue. Your competent counsel can arrive at an appropriate bill of costs, based upon a review of the tariff under the Supreme Court Family Rules, perhaps after a little negotiation. It is not a matter that is worth further litigating. I would endorse Mr. Werb's observation in that regard.
- [56] In my reasons for judgment, I praised counsel not once but twice for their excellent counsel work and submissions. Counsel's written submissions today are of much higher caliber than the Court typically receives for a costs hearing. If counsel can direct that professionalism and professional excellence towards negotiating a fit bill of costs, then the parents can put that issue to rest sooner rather than later, perhaps right after this video hearing.
- [57] Finally, I am not going to make a lump sum order. There are too many moving parts for me to assess a proper lump sum.
- [58] Both aspects of the mother's costs application are dismissed by the Court.

[59] The presumptive costs order is confirmed: the mother is entitled to her costs of the jurisdictional application, and the British Columbia proceedings, at the scale based on ordinary complexity, except the costs and disbursements for day 3 of the hearing (those related to the Vancouver airport argument), for which she bears responsibility. and which will be set off against the costs the father owes the mother.

[SUBMISSIONS ON COSTS OF COSTS APPLICATION]

[60] THE COURT: Yes: I agree with Mr. Werb's submission in this regard. In the spirit of these reasons and the partial intent of these reasons of de-escalation, I agree that both parties should bear their own costs for today's hearing, even though the father was successful.

[61] The high-level presumptive approach of an offer to settle issued by the successful party will be always subject to the court's discretion. The mother's application for double costs was not unreasonable, and was very competently argued in her written submissions. Accordingly, I will make an order that each party bear its own costs, notwithstanding the father's success.

"Crerar J"

[1] For consistency and clarity, I have substituted 'father' for 'claimant' and 'mother' for 'respondent' throughout, including in the quoted excerpts from counsel's arguments.

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