

CANADA / JUDGMENT

S.K. v. R.T.N.

2023 BCSC 2057

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 2057 S.K. v. R.T.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.K. v. R.T.N.,

2023 BCSC 2057

Date: 20231123

Docket: E221270

Registry: Vancouver

Between:

S.K.

Petitioner

And

R.T.N.

Respondent

Before: The Honourable Justice Kent

Reasons for Judgment

The Petitioner, appearing in person:

S.K.

Counsel for the Respondent:

C. Alvarez-Gomez

Place and Date of Hearing:

Vancouver, B.C.

October 16, 2023

Place and Date of Judgment:

Vancouver, B.C.

November 23, 2023

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Introduction and Overview

- [1] In these Reasons for Judgment, I have anonymized the names of the parties and the child involved in this family law case to preserve the privacy interests of the child.
- [2] The applicant/petitioner is the child's mother (the "Mother"). She and the child currently live in Vancouver, having moved here from Montréal, Québec in October 2020.
- [3] The respondent is the child's father (the "Father") who is a professor at McGill University in Montréal where he has resided for a long time.
- [4] The parties commenced a common-law relationship in March 2007 and separated some 11 years later in October 2018. They resided together in the Montréal area where they had a son, born in January 2009, who is now 14 years of age (the "Child").
- [5] Following the parties' separation, the Mother initiated a family law proceeding in the Superior Court of Québec (Family Practice Division) in the District of Montréal. The Court made three different orders in that proceeding, namely:

- an Interim Consent to Judgment dated December 5, 2019 (the "QC Interim Order");
- a Final Consent to Judgment on Custody of the Minor Child on September 22, 2020 (the "QC Final Order #1"); and
- a Final Consent to Judgment on July 19, 2021 (the "QC Final Order #2").

[6] Among other things, the QC Final Order #1 granted both parties shared parental and decision-making authority related to the Child, authorized the relocation of the Mother and the Child to Vancouver, granted the Mother sole legal and physical custody of the Child with specified access rights for the Father, and required the Father to pay interim child support in the amount of \$2,000 per month (on a "without prejudice" basis and subject to later recalculation). In addition, the order imposed an "undertaking" upon the Father to directly pay or, alternatively, to reimburse the Mother for certain specified special expenses including:

- "the educational costs of the minor child including, but not limited to, tuition and books, supplies, special outings and tutors, if necessary"; and,
- "the cost of all medical, paramedical, dental, psychological, and therapeutic expenses related to the minor child."

[7] The QC Final Order #2 addressed the division of property and debt but also included the following provisions regarding child support:

- "the [Father] shall pay to the [Mother] an amount of \$2,112.64 per month in child support, the whole on the basis of the Federal Child Support Guidelines"; and
- "the parties declare that there are no arrears accumulated in child support nor special expenses up to the present day."

[8] Both parties were represented by counsel throughout the Québec family law proceedings. The Child also had a lawyer assigned to him to report to the Québec court his wishes respecting custody and relocation to Vancouver. That lawyer was also a signatory to the QC Final Order #1, which addressed those subjects.

[9] The Mother issued these proceedings in the Supreme Court of British Columbia (the "BCSC") on May 19, 2022 in order to recover from the Father the sum of \$15,461.99 that she claims as unpaid special expenses as follows:

- May 31, 2021 - online course on Python - \$19.99;
- September 23, 2021 - school fees at Norma Rose Point Elementary School in Vancouver - \$67;
- June 11, 2021 - NRP hoodie - \$45;
- December 13, 2021 - orthodontist fees - \$2,480;
- May 6, 2022 - May Madrona School fee and partial deposit for 2023 school year - \$5,815;

- March 7, 2022 - autism evaluation fee - \$2,500; and
- June 1, 2022 - June Madrona School fee and partial (and final) deposit for 2023 school year - \$4,535.

[10] The Father disputes liability for these expenses, but also challenges the jurisdiction of the BCSC to even entertain this dispute. While the amounts in dispute are relatively small, the bigger picture is that the Father's child support obligations will continue for at least another four or five years and the Father wants this Court to determine whether subsequent disputes regarding child support can or should be determined in BC.

[11] For the reasons that follow, I find that the BCSC has jurisdiction to determine such disputes and order the Father to pay the principal amount claimed.

Procedural Background in British Columbia

[12] The jurisdiction issues in this case are steeped in a legislative and procedural quagmire. Before addressing them in detail, I first set out the procedural chronology in British Columbia.

[13] On May 19, 2022, the Mother attended at the registry of the BCSC and filed a Requisition to which the QC Final Order #1 was attached. Both documents were thereupon date-stamped by the registry and the case was assigned action number E221270, which was also stamped on both documents.

[14] On June 10, 2022 the Mother filed a Notice of Application to be heard on August 10, 2022. The relief sought included a variation of QC Final Order #1 regarding parental decision-making authority and summer parenting time with the Father, payment by the Father of certain schooling expenses, including the \$15,496.99 special expenses referred to earlier, an annual exchange of income information between the parties, and the commissioning of a "Hear the Child Report". The Legal Basis in the Notice of Application addressed jurisdiction (ss. 71 and 74 of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA")), recognition of extra-provincial orders (ss. 74-75 of the FLA and Supreme Court Family Rules ("SCFR") 3-1 and 15-3(4)), parenting (ss. 37, 41, 45 and 47 of the FLA), child support (s. 7 of the Federal Child Support Guidelines), and ss. 202 and 201 of the FLA respecting commissioning of reports.

[15] On August 10, 2022, the parties appeared in chambers before Justice Armstrong at which time he made the following orders:

- the Mother's application was adjourned to September 9, 2022, a hearing date that was "peremptory" on the Father;
- the Father was required to file his Application Response and any affidavits by August 26, 2022; and

· the Father was required to consent to the registration of the Child at Madrona School and pay for three months' tuition at that school.

[16] I should note that a formal version of Justice Armstrong's order has yet to be filed with this Court. There appears to be disagreement between the parties as to whether the order was made on an "interim without prejudice basis" (whatever that may mean) and whether the tuition payment was allocated to specific months. The clerk's notes of that order do not include specific reference to these items and the disagreement has yet to be settled by a registrar.

[17] On August 26, 2022, the Father filed his Application Response. The document, which is signed by a lawyer, is some 26 pages, the first 52 paragraphs of which read like an affidavit sworn by the Father. The balance of the document then recites verbatim various provisions of the FLA, the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29 (the "ISO Act"), the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 (the "CJPTA"), and the SCFR.

[18] On September 8, 2022 the Father filed a Jurisdictional Response pursuant to SCFR 18-2. By that response, the Father disputed that the BCSC had jurisdiction over him personally, and alternatively submitted that the BCSC should decline to exercise any jurisdiction over him in any event.

[19] The parties appeared before Justice Shergill in chambers on September 9, 2022 for the hearing of the Mother's application. By that date, both parties had sworn two affidavits. In one of his affidavits, the Father outlined the proceedings that had taken place in Québec and asserted that "the province of Québec is the most appropriate jurisdiction to hear this matter".

[20] Ultimately, the half-day hearing before Justice Shergill was adjourned, as additional time was required for the matter to be properly heard.

[21] On November 24, 2022, the hearing of the Mother's application resumed before Justice Shergill in chambers. By that date,

· each of the parties had sworn their respective F8 Financial Statements; and

· the Mother had sworn her third affidavit and the Father had sworn his affidavits #3 and #4.

[22] The Mother's third affidavit, sworn November 21, 2022, stated that "given the position the [Father] has taken in his Applicant Response materials, I have sent orders to be also registered with the Interjurisdictional Support Services and understand that the [two Québec final orders] have been filed with the BC Supreme Court Registry". She had not received a copy of the filed orders by that date, but she attached to her affidavit email correspondence from the Attorney General's department dated November 17, 2022 confirming that registration with the BCSC was imminent.

[23] On November 23, 2022,

- the Vancouver Registry of the BCSC issued to the Mother two "Notices of Registration of an Extraprovincial Order", to which were attached QC Final Order #1 and to QC Final Order #2 respectively, each bearing the registry's November 23, 2022 registration stamp; and
- copies of this correspondence were emailed to counsel for the Father.

[24] On November 24, 2022, Justice Shergill issued what is essentially a procedural order in the case which, among other things,

- converted by consent the Mother's Notice of Application into a Petition and the Father's Application Response into a Petition Response, both effective on the date they were originally filed;
- allowed the parties to file amended Petition pleadings by December 9, 2022 (the Mother) and December 20, 2022 (the Father), should they wish to do so;
- adjourned the hearing of the Mother's application generally but directed the rescheduling of a new hearing with parenting issues to be given priority; and
- provided directions for the exchange of legal briefs "in the event [the Father] raises procedural irregularities or jurisdictional issues related to the relief being sought by [the Mother]".

[25] On December 16, 2022 the Father filed his Response to Petition. In that pleading, the Father effectively yielded to BCSC jurisdiction in respect of all aspects of the Mother's application except for the child support matters. With respect to the latter, the Response to Petition stated:

- the child support jurisdiction is subject to the CJPTA and the ISO Act;
- the [BCSC] lacks territorial competence pursuant to s. 3 of the CJPTA and there is no real and substantial connection to British Columbia as contemplated in s. 10 of the CJPTA, [or] alternatively, the [BCSC] can and should decline jurisdiction under s. 11 of the CJPTA These factors weigh in favour of leaving child support, including special expenses, with the Québec courts;
- the ISO Act must also be considered, s. 5 of which states that the British Columbia court may only vary a support order made or registered in BC under the ISO Act if "(a) both the [Mother] and the [Father] accept the BC court's jurisdiction or (b) the [Father] habitually resides in BC", neither of which condition is met;
- accordingly [the Father] submits that the appropriate jurisdiction in which a variation application is to be brought is Québec; and,
- in the alternative, if the court assumes jurisdiction, the [Mother] should be imputed income of at least \$100,000 (presumably for the purposes of a pro rata sharing of special expenses).

- [26] On February 6, 2023, the Mother filed a notice with the BCSC indicating that she would be a self-represented litigant in this family law case.
- [27] On May 16, 2023, Justice Ball of this court issued a consent order that "cancelled" the Requisition filed by the Mother on May 19, 2022 and, pursuant to s. 75 of the FLA, "recognized as an Order of this Court" the provisions of the QC Final Order #1 regarding guardianship, parenting arrangements or contact with the Child.
- [28] The hearing of the Petition (i.e. the Mother's Notice of Application originally filed June 10, 2022, as later converted into a Petition contested by the Father's Response to Petition filed December 16, 2022) was heard before Justice Crossin of this court on May 17, 18 and 31, 2023.
- [29] Before Justice Crossin were additional affidavits sworn by both the Mother and the Father, as well as updated F8 Financial Statements from each party.
- [30] Justice Crossin reserved judgment at the conclusion of the hearing and delivered oral reasons for judgment on June 19, 2023. Insofar as jurisdiction was concerned, Justice Crossin noted the following:
- the Mother had abandoned certain features of her original application leaving for decision only the issues respecting parenting and child support;
 - given the time constraints, the child support issues were not being pursued at the hearing before him so that submissions might conclude regarding the parenting issues; and
 - his judgment therefore related only to the parenting issues and "all other matters [i.e. child support] are adjourned generally".
- [31] In the result, the Mother was essentially successful in her application regarding parenting issues. One of the orders made by Justice Crossin granted her final decision-making authority on matters related to the Child's health and education in the event that the parties were unable to agree.
- [32] And so it is that the parties appeared before me on October 16, 2023 to deal with the balance of the Mother's application respecting child support, including the Father's challenge to the court's jurisdiction in that regard. At that time, the court was presented with the Mother's sixth affidavit sworn September 22, 2023 but filed on the morning of the hearing. That affidavit simply reiterates that the Father has not paid the \$15,461.99 that was the subject matter of the original application and outlines the interest charges she has paid on her line of credit regarding those items from 2022 until September 13 (\$1,225.10), an amount she seeks to recover from the Father in addition to the principal sum claimed.

The Applicable Regulatory Regime

- [33] In British Columbia, SCFR 3-1 generally requires a "family law case" to be started by filing a Notice of Family Claim under SCFR 4-1. There are, however, exceptions; the family law case can also be started under SCFR 2-1 by a Requisition in the required form to which is attached a written agreement addressing one or more of parenting arrangements, child support, or spousal support, among other things.
- [34] SCFR 3-1 also contemplates the initiation of a family law case by way of a Petition. Indeed, Rule 3-1 specifies certain circumstances where a petition proceeding is mandatory. This includes, among other things, situations where a party seeks an order under ss. 35, 36 or 75 of the FLA to recognize certain types of extraprovincial orders.
- [35] Section 35 of the FLA addresses "extraprovincial declaratory orders" respecting parentage of a child. Section 75 of the FLA addresses extraprovincial orders respecting guardianship, parenting arrangements or contact with the child.
- [36] The FLA contains no provision that expressly addresses recognition of support orders made in Québec or elsewhere.
- [37] In this case, the parties were never formally married and hence the Divorce Act, R.S.C. 1985, c. 3 has no application.
- [38] In British Columbia, the ISO Act can facilitate the obtaining, variation and enforcement of both child and spousal support orders when the parties do not live in the same province. Before the ISO Act came into force in 2003, Part 8 of the Family Relations Act, R.S.B.C. 1996, c. 128 provided a method for these types of applications.
- [39] Every province and territory in Canada has legislation similar to the ISO Act. The legislation applies with respect to "reciprocating jurisdictions". In British Columbia, the Interjurisdictional Support Orders Regulation, B.C. Reg. 15/2003 ("ISO Regulation") includes a schedule listing all such reciprocating jurisdictions. Québec is included in that schedule.
- [40] With respect to Québec, the British Columbia Family Practice Manual (British Columbia: CLE BC, loose-leaf updated 2023), ch 7 at VI-J-2 points out:

Although Quebec is listed as a reciprocating jurisdiction with British Columbia and the Quebec Legislative Assembly has passed their ISOA legislation, that statute has not yet been proclaimed. Accordingly, Quebec applies the law under its Civil Code. Under the Civil Code, and when one party lives outside the Province of Quebec, only the child support recipient may apply to change the child support order. If a recipient lives outside Quebec and wishes to apply to obtain or change the order, Quebec follows the old reciprocal enforcement of maintenance orders ("REMO") process and a provisional order must be made in the recipient's province or territory and sent to Quebec through the designated authority for each jurisdiction.

- [41] Québec's REMO process is set out in the Act Respecting Reciprocal Enforcement of Maintenance Orders: L.R.Q. c. E-19 at ss. 1-4, applied to BC judgments by regulation: L.R.Q. c. E-19 r. 1 s. 3.
- [42] First, the applicant must obtain a provisional order from the BCSC and register it with the Attorney General in Québec (ss. 1-2). The order is then automatically sent to a clerk at the Superior Court of Québec, who dates it and gives it the same effect as though it had been made by a Québec court (s. 3). Under this Act, to execute the order as a judgment creditor, the British Columbia recipient must then apply to the Superior Court of Québec for a confirmation of the judgment (s. 6).
- [43] However, in 2020, a provision was added to a different act in Québec (C.Q.L.R. c. P-2.2 s. 70.1) to allow the Minister to require the Québec payor to pay the obligation once the Minister receives a copy of the order, the application for its execution (in French), and the details of the amount to be paid. This appears to eliminate the previously required court hearing for confirmation and effectively provides a more efficient enforcement (collection) procedure for extraprovincial support recipients.
- [44] Part 3 of the ISO Act addresses registration of support orders made outside of British Columbia. Sections 17-20 of that Act essentially provide for the following process:
- an "eligible copy" of the extraprovincial order must be sent to British Columbia's "designated authority" (the Interjurisdictional Support Services Office of the Ministry of the Attorney General);
 - upon receipt, the designated authority must send the order to the British Columbia court which, in turn, must register it as an order of that court;
 - from the date of its registration, the extraprovincial order has the same effect as a support order made by the British Columbia court and may be enforced in the same manner as any other support order made by that court (both with respect to arrears accruing before registration and obligations accruing after registration);
 - upon registration, the British Columbia court is required to send notice of the registration to the child support payor;
 - the payor then has 30 days following receipt of the notice of registration to apply to the British Columbia court to set the registration aside; and
 - upon that application being made, the British Columbia court may either confirm the registration or set it aside if certain criteria are met (inadequate notice, no opportunity to be heard, public policy considerations, etc.).
- [45] SCFR 18-2 addresses "jurisdictional disputes" in family law cases. It provides a mechanism for a party to defend the family law case on its merits without "submitting" to the jurisdiction of the BCSC. The mechanism is as follows:

- the party disputing the court's jurisdiction may file a "jurisdictional response" in the form specified in the Rules (Form F78);
- the party then has 30 days within which to
 - o (1) serve an application to strike out the other party's pleading (here, a petition) or to have the case dismissed or stayed on the basis that the court has no jurisdiction over that party; or
 - o (2) to file a pleading (response to petition) alleging that the court lacks such jurisdiction;
- in either of which event, all steps taken in the proceeding both before and after such filings will not amount to a "submission to the jurisdiction of the court in relation to the family law case".

[46] Lastly, the CJPTA also provides certain rules and procedural mechanics respecting the "territorial competence" and "subject matter competence" of the courts of British Columbia. The relevant provisions for present purposes include:

Proceedings against a person

3 A court has territorial competence in a proceeding that is brought against a person only if

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
- (b) during the course of the proceeding that person submits to the court's jurisdiction,
- (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
- (d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or
- (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

Residual discretion

6 A court that under section 3 lacks territorial competence in a proceeding may hear the proceeding despite that section if it considers that

- (a) there is no court outside British Columbia in which the plaintiff can commence the proceeding, or
- (b) the commencement of the proceeding in a court outside British Columbia cannot reasonably be required.

Real and substantial connection

10 Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding

- (e) concerns contractual obligations, and
- (i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,
- (k) is for enforcement of a judgment of a court made in or outside British Columbia or an arbitral award made in or outside British Columbia,

Discretion as to the exercise of territorial competence

11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

- (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
 - (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
 - (b) the law to be applied to issues in the proceeding,
 - (c) the desirability of avoiding multiplicity of legal proceedings,
 - (d) the desirability of avoiding conflicting decisions in different courts,
 - (e) the enforcement of an eventual judgment, and
 - (f) the fair and efficient working of the Canadian legal system as a whole.

Conflicts or inconsistencies with other Acts

12 If there is a conflict or inconsistency between this Part and another Act of British Columbia or of Canada that expressly

- (a) confers jurisdiction or territorial competence on a court, or
- (b) denies jurisdiction or territorial competence to a court, that other Act prevails.

[47] It should be noted that even if an extraprovincial party submits to or otherwise attorns to the jurisdiction of the British Columbia court, that does not preclude the party from asking the court to decline jurisdiction on forum non conveniens grounds: Price v. Srivastva, 2020 BCSC 1109.

Impact of the ISO Act

[48] In British Columbia, the usual starting point for considering jurisdiction is the CJPTA. As noted above, s. 3 of that Act sets out five criteria which will establish "territorial competence" over a "proceeding". Two of those criteria may have application here, namely,

- If, during the course of this family law case, the Father has "submitted to the court's jurisdiction"; and/or
- if there is a "real and substantial connection between British Columbia and the facts on which this [family law case] against the [F]ather is based"

[49] Even if territorial competence over the Father is established, s. 11 of the CJPTA permits the court to decline jurisdiction if it determines that the Québec court is a more appropriate forum in which to hear the proceeding.

[50] As also noted above, the CJPTA recognizes that the Legislature or Parliament may create different rules and other legislation for both territorial competence and forum non conveniens considerations in any particular case. There are, for example, specific provisions under both the FLA and the DA that do expressly confer jurisdiction including, in the latter case, to vary a child support order made by another court in the province in which the payor spouse resides. However, as I noted, the DA has no application in this case, as the parties were never formally married.

[51] The Father invokes the ISO Act as a basis for resisting jurisdiction in this court. He cites cases such as Cockerham v. Hanc, 2014 BCSC 2432 and Virani v. Virani, 2006 BCCA 63 and 2006 BCCA 341 in support of the proposition that:

- by enacting the ISO Act, the British Columbia Legislature intended to make a code for the enforcement and variation of support orders with other reciprocating provinces that have enacted similar complementary legislation;
- in light of the "precise mechanisms" stipulated by that code, the British Columbia courts "should not entertain any proceedings which might fairly be considered to be wiggling out of the requirements of the scheme" (a reference to obiter dicta in Virani, 2006 BCCA 341 at paras. 8-9); and
- the ISO Act construct applies only to the enforcement or variation of support orders in the province where the support payor resides (here, Québec) and was not properly invoked by the Mother in registering the two Québec support orders in the British Columbia court.

[52] I agree with the Father that I must follow the appellate jurisprudence from this province that has determined the ISO Act is a complete code for enforcing and varying extraprovincial support orders. However, contrary to the Father's submissions, I find that ss. 17-18 and s. 35 of the ISO Act permit me to enforce or vary the support provisions in QC Final Order #1.

Is the ISO Act a "Complete Code"?

[53] The Father submits that the order the Mother requests can only be made pursuant to the ISO Act, rather than by establishing territorial competence under the CJPTA, as the ISO Act is a "complete code".

[54] In the early 2000s, Canadian provinces and territories, with the exception of Québec, brought into force ISO legislation based on a model uniform law. This legislation improved upon the former regime for the reciprocal enforcement of maintenance or support orders (or "REMO"), streamlining the process for enforcing or varying support orders between provinces.

[55] Despite the shared purpose and mirrored provisions of the provincial acts, courts have reached different conclusions about whether support recipients can use processes outside of the ISO regime to recognize, enforce, or vary foreign support orders. In some provinces, recipient parents may look beyond the ISO legislation to enforce or vary support obligations: *Jasen v. Karassik*, 2009 ONCA 245 at paras. 68-69; *Parrish v. Navarro*, 2014 ONCA 856; *Krushelinski v. Wehner*, 2015 SKQB 195 at paras. 46-47; *Simmons v. Ferguson*, 2018 NSSC 262 at paras. 13, 23. In other provinces, such as British Columbia, the ISO Act is treated as a complete code: *Virani*; *Cockerham*; *Besha v. Lisanework*, 2010 BCCA 580; *Kapolak v. Udlaoyak*, 2006 NWTSC 52; *Graune v. Graune*, 2010 NBQB 68; *Harman v. Harman*, 2009 ABCA 410; *Trylinski-Branson v. Branson*, 2010 ABCA 322.

[56] In *Besha v. Lisanework*, 2010 BCCA 580 at para. 25, our Court of Appeal confirmed that the ISO Act "provides the only procedure available in British Columbia to recognize, enforce, or vary a foreign support order." This holding applies both to situations in which the reciprocating jurisdiction has equivalent ISO legislation (e.g., *Cockerham*) and to situations in which the reciprocating jurisdiction, like Québec, requires a provisional order (e.g., *Virani*). The Court in *Cockerham* determined that the introduction of the FLA did not change this rule, given that both the FLA and its predecessor act were silent on the issue of jurisdiction over support: at paras. 80, 87. However, the rule has been held not to apply when the foreign support order comes from a non-reciprocating jurisdiction: *Cao v. Chen*, 2020 BCSC 735 at para. 139.

[57] Making an order outside of the ISO regime is of limited utility for the very reasons the ISO Act sought to address. The Court in *Graune v. Graune*, 2010 NBQB 68 at para. 32 explains why the purpose of REMO/ISO legislation shows that it must be a "complete code", quoting from an annotation of *Bouchard v. Ouellet*, 2005 ONCJ 335 by the late Professor James G. McLeod in 15 R.F.L. (6th) 78:

At common law, courts would not enforce a foreign in personam order unless: (i) it was final and conclusive; (ii) for a sum certain; and (iii) the respondent resided in the province at the time proceedings were commenced or attorned to the jurisdiction of the local court. Although the final requirement may have been relaxed in respect of interprovincial recognition of foreign judgments in *Morguard*, it is unclear whether the real and substantial extension applies where there is specific legislation that addresses the problem, as there is in support cases. Regardless, support orders are not final and conclusive. They are always subject to variation in the event of a material change with the result that they were not enforceable extraterritorially at common law. This was the main reason for the enactment of RESO legislation, as Smith J.A. pointed out in *Mathers v. Bruce* [2005 BCCA 410], and remains as much a problem today on conflict-of-laws principles as it was then. Although a final support order obtained in one reciprocating state can be filed and enforced in another reciprocating state under ISO legislation: cf. *Mathers v. Bruce*, it is unclear whether a court would treat an order against a non-resident respondent obtained by service ex juris as a final order capable of registration and enforcement. Little J. did not even advert to the enforcement problems in her reasons. Kukurin J. at least indirectly acknowledged the enforcement problems the mother could face in *Humphries v. Rokoss* [2004 ONCJ 277] when he stated that what she did with her judgment was up to her.

This raises the further issue of whether courts should make orders that they know are unenforceable. Given the existence of ISO legislation to deal with the enforcement problems and provide what the legislators have decided is a fair way to adjudicate interprovincial support cases, it is submitted that courts should decline to assume jurisdiction to make a final order in a support case if the applicant is unlikely to be able to enforce the order. While the result in the case certainly simplifies matters for an applicant seeking a support order against an out-of-province respondent, it comes at a cost. An applicant must balance the convenience of proceeding with the enforcement problems that are sure to follow."

[Emphasis added.]

[58] One element that distinguishes the present case from cases like *Virani*, *Cockerham*, and *Besha* is that the order the Mother seeks in this case is, in fact, "final and conclusive." Rather than seeking a variation in ongoing support, she seeks an order requiring the Father to pay an ascertained sum of unpaid special expenses accrued to date under QC Final Order #1.

[59] Additionally, some BC courts have suggested that having jurisdiction to deal with parenting issues under the FLA may be sufficient to establish jurisdiction to deal with support issues: *Johansson v. Janssen*, 2020 BCSC 1738 at para. 28; *Schubert v. Johnson*, 2017 BCSC 1664 at para. 54. The Court in *Cockerham* declined to exercise jurisdiction over parenting issues, whereas in the present case, the Father conceded that this Court has jurisdiction over those issues.

[60] Nonetheless, in the face of an outstanding support order from Québec, exercising jurisdiction over child support issues outside of the province's ISO regime would be of questionable utility, given the challenges with enforcing a resulting order in Québec, and would be contrary to the fair and efficient working of the Canadian legal system as a whole.

[61] Thus, I will limit my analysis to whether the Québec order for special expenses (QC Final Order #1) can be enforced or varied under the ISO Act.

Can QC Final Order #1 be enforced or varied pursuant to the ISO Act?

[62] I reject the Father's submission that the ISO Act only allows for variation or enforcement in the province where the support payor resides.

[63] According to a publication on the Government of Canada website written by Tracy Morrow entitled "Some Considerations for Practitioners in Inter-jurisdictional Support Cases" (updated December 2022) (the "Morrow Publication"), ISO legislation has two main purposes:

- i. to enable family support orders and agreements made outside of a jurisdiction to be enforced in the jurisdiction with the greatest ability to do so (usually where the support payor resides); and
- ii. to enable a party in one jurisdiction to apply to establish or vary a family support order without having to go to or retain counsel in the jurisdiction where the other party resides.

[64] This case falls into the latter category. In this case, the Mother followed the process provided under ss. 17-18 of the ISO Act to have the Québec orders registered as orders of this court and which therefore

- "have the same effect as a support order made by a court in British Columbia" (s. 18(2)); and
- "may be enforced, with respect to arrears accrued before registration and obligations accruing after registration, in the same manner as a support order made by a court in British Columbia or may be varied" under the ISO Act (s. 18(3)).

[65] Once the Mother registered QC Final Order #1 under the ISO Act, it became enforceable as an order of this Court. Indeed, the Mother does not seek to vary the terms of the order, but to require the Father to pay specific s. 7 special expenses as dictated by the order.

[66] I find that this Court has jurisdiction to make such an order for enforcement.

- [67] I agree with the Father that the utility of such registration might be limited, given that the court in Québec must first confirm the provisional order before the Mother can enforce (i.e. collect) the support obligations in that province. Nevertheless, it was open for the Father to make an application to this Court to set aside the registration of the Québec orders pursuant to s. 19 of the ISO Act; no such application was made, and the 30-day period for bringing such an application has expired.
- [68] However, I acknowledge that the order requested by the Mother could instead be considered a "variation" of QC Final Order #1, given that it will result in a provisional order that can be used to enforce an obligation to pay specific special expenses in Québec. I do not need to decide the question of whether the order sought is to vary or enforce QC Final Order #1, as I find that the requirements for making a provisional variation order under the ISO Act are nonetheless satisfied, for the reasons set out below.

Jurisdiction to vary under s. 27 of the ISO Act

- [69] Part 4, Division 1 of the ISO Act addresses situations in which an applicant seeking to vary an extraprovincial order resides in BC and the payor resides elsewhere. The process set out in s. 27 applies when the payor resides in a reciprocating jurisdiction that requires a provisional variation order--such as Québec, which still follows a "REMO" regime. Section 27 of the ISO Act permits this Court to make a provisional variation order, following which British Columbia's designated authority will send copies of the order to the reciprocating jurisdiction for confirmation.
- [70] In order to rely on s. 27, the Mother would have needed to complete a support variation application that complies with the requirements set out in ss. 25(2) and 25(3) of the ISO Act. As this process was not followed, I cannot rely on this provision to vary QB Final Order #1.

Jurisdiction to vary under s. 35 of the ISO Act

- [71] This Court is also permitted to vary a support order if "both the applicant and the respondent accept the British Columbia court's jurisdiction": ISO Act s. 35.
- [72] The word "accept" must be read in its entire context and its grammatical and ordinary sense "harmoniously with the scheme of the Act, the object of the Act, and the intention of [the Legislature]": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC) at para. 21.
- [73] Courts have commonly used the word "accept" interchangeably with "attorn" or "submit" when evaluating whether a court has territorial competence: see *Sleep Number Corporation v. Maher Sign*, 2020 ONCA 95 at para. 7; *Imagis Technologies Inc. v. Red Herring Communications, Inc.*, 2003 BCSC 366 at paras. 8-9; *Nordmark v. Frykman*, 2018 BCSC 2219 at paras. 25-29.

[74] According to the Morrow Publication, provincial ISO legislation permits courts to vary a support order where

"both parties agree to the variation application proceeding in the province or territory in which the support order was registered (i.e., the applicant serves the out of province party with notice of the application and the out of province party "attorns" or submits to the jurisdiction of the Court by either retaining a lawyer in that province or territory or filing a document responding to the merits of the application)".

[Emphasis added.]

[75] In my view, "accept" was intended to be a more readily understandable synonym for "submit" or "attorn", rather than to import a more stringent requirement. This interpretation is consistent with the scheme and object of the ISO Act, which aims to facilitate the enforcement of support obligations between parties residing in different jurisdictions, rather than putting up barriers to enforcement. Applying different standards for acceptance (i.e. attornment) on different family law issues within the same proceeding could yield confusing and arbitrary results.

[76] I thereby find that the test for submission or attornment under s. 3(b) of CJPTA and at common law can be used to determine whether jurisdiction has been accepted under s. 35 of the ISO Act.

[77] I must therefore consider whether the Father has attorned to the jurisdiction of this Court.

[78] The Father submits that he has at no time agreed to or submitted to this Court's jurisdiction in respect of the child support issue.

[79] Counsel for the Father acknowledges that his client has submitted to the jurisdiction of this Court in respect of parenting matters, but not in respect of child support matters. Presumably, this distinction was the basis for the "limited" recognition found in the consent order granted by Justice Ball on May 16, 2023. The legal question is whether submitting to the jurisdiction for one purpose (parenting time and parenting responsibilities) amounts to an attornment for child support purposes as well.

[80] I conclude that the Father did in fact submit to the jurisdiction of this Court in this proceeding with respect to issues of child support and that, as a consequence, this court has jurisdiction pursuant to s. 35 of the ISO Act in respect of the enforcement or variation proceedings brought against him by the Mother.

[81] I referred earlier to SCFR 18-2, which provides a mechanism for a party to defend a family law case on the merits without "submitting" to the jurisdiction of the BCSC. That mechanism requires a "jurisdictional response" to be filed before filing any substantive response or otherwise taking any further steps in the BCSC proceeding. Filing a jurisdictional response grants the objecting party 30 days within which to take various steps to perfect their challenge to jurisdiction, whether it be an application to have the proceeding stayed or

struck out, or to simply allege a lack of jurisdiction in a filed pleading.

- [82] In this case, the Father did not file a jurisdictional response in a timely way. His counsel attended in chambers before Mr. Justice Armstrong on August 10, 2022 to resist the Mother's application. Notwithstanding the submissions made by his counsel, the Father was then ordered by the court to pay (and he did in fact pay) three months of tuition fees for the Madrona School.
- [83] The Father then filed his Application Response on August 26, 2022. That document did not expressly articulate a jurisdictional challenge, although it did recite verbatim various provisions of the FLA, the ISO Act, the CJPTA and the SCFR. He filed the Application Response before filing any Jurisdictional Response pursuant to SCFR 18-2.
- [84] At common law, taking these steps before filing any Jurisdictional Response constitutes submission to this Court's jurisdiction: *Momentous Corporation v. Canadian American Association of Professional Baseball Ltd.*, 2010 ONCA 722, aff'd on other grounds in 2012 SCC 9; *Cao v. Chen*, 2020 BCSC 735. A party can submit to the jurisdiction inadvertently, including as a result of mistakes made by their counsel. This may have been the case here, although there is no evidence to that effect before me.
- [85] Nonetheless, even after the Jurisdictional Response was filed on September 8, 2022, the Father filed neither an application to strike or stay the proceeding nor an amended pleading or Response expressly alleging a lack of jurisdiction within the 30-day time period required by the Rule.
- [86] I recognise some courts have exercised discretion to waive strict compliance with the SCFR on jurisdiction, especially where the party was not represented by legal counsel: *Souhaibb v. Javed*, 2023 BCSC 584. However, counsel have represented the Father throughout these proceedings and I am not inclined to exercise such discretion in his favour here.
- [87] Thus, s. 35 of the ISO Act gives this Court jurisdiction to make a provisional order to vary the support provisions of QC Final Order #1, which has now been registered in this proceeding.

Discretion to Decline Jurisdiction

- [88] Whether territorial competence is established at common law or under the ISO Act, this Court should then consider whether to exercise its discretion to decline jurisdiction on the ground that the Québec court is a more appropriate forum in which to hear any applications respecting the enforcement or variation of child support (see the use of the word "may" in ISO Act ss. 27 and 35). In deciding whether to exercise this discretion, s. 11(2) of the CJPTA requires consideration of all the relevant circumstances, including the six factors listed in that section: *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 103; *Price v. Srivastva*, 2020 BCSC 1109 at para. 44.

- [89] It should be noted that it is the Father who bears the burden of establishing that Québec is the clearly more appropriate forum in this case: Van Breda at para. 103; Srivastva at paras. 35-36.
- [90] In many cases, the habitual residence of a child is usually the primary factor in determining jurisdiction, as that forum is usually best suited to determine what may be in the child's best interests at any given time. This is clearly the principle animating jurisdictional issues with respect to guardianship, parenting arrangements or contact with the children as provided in Division 7 of Part 4 of the FLA: Srivastva at paras. 37-42. It is also the jurisdiction in which the expenses related to rearing the child will be incurred and paid. These factors weigh heavily in favour of British Columbia being the most appropriate forum for the child support matters in this case.
- [91] The comparative convenience and expense for the parties and their witnesses in litigating their dispute tends to be relatively balanced in most cases. There is no evidence before me that compares litigation costs in Montréal with those in Vancouver, though they are likely to be similar. In the application before me, the Father had two counsel appear, one by videoconference from Québec, but it was not necessary for him to do so given that he has also retained competent Vancouver counsel to represent his interests. The Mother is self-represented and, given her stated income, may have difficulty retaining counsel in Québec.
- [92] The law respecting child support is essentially the same in both Québec and British Columbia. Final orders have already been made and registered in both provinces, and enforcement/variation applications are routinely conducted based on only affidavit evidence (as was the case here).
- [93] Comparative convenience and expense factors do not favour the Father and are at best neutral.
- [94] I certainly agree it is desirable to avoid a multiplicity of legal proceedings in different courts so as to avoid unnecessary expense and the possibility of conflicting decisions. I would note, however, that generally speaking "it is preferable that all issues directly affecting the [Child] be done in the same forum" and that it should only be in "rare cases where it is appropriate to divide issues between [different] forums": Souhaibb v. Javed, 2023 BCSC 584 at para. 119, adopting the reasoning of S.R.L. v. K.J.T., 2014 BCSC 1562 at para. 35. The Father has now agreed to have parenting issues dealt with by the British Columbia court, and it is only sensible for child support matters to be determined in that same forum. These factors weigh heavily in favour of British Columbia exercising its jurisdiction over child support in this case.
- [95] It is likely that the enforcement of any eventual child support judgment issued by this Court will have to occur in Québec. Both provinces have a similar regime of government-assisted collection of unpaid child support. Both provinces require, more as a practical matter rather than anything else, that the amount of special expenses be capable of quantification before enforcement (collection) occurs. While Québec still employs a "REMO" regime, recent

legislative changes in that province have obviated the previous requirement for the Québec court to confirm any British Columbia judgment before it can be enforced. It is highly unlikely that either the Québec court or the government-appointed support collection agency would refuse to confirm or collect a child support judgment issued by this Court. I have no concerns regarding the fair and efficient working of the Canadian legal system in that regard.

[96] I also note there is no indication that the Father would not comply with any child support order issued in British Columbia in any event. I am advised that he is paying the child support required by QC Final Order #2 and that he promptly paid the Madrona tuition fees as required by the Armstrong order.

[97] In all the circumstances, the Father has not discharged his burden of proving that the Québec court would be the more appropriate forum in which to hear any support disputes affecting the Child. I therefore dismiss the Father's request for a declaration that this Court does not have jurisdiction over the issue of child support or, alternatively, that it will decline jurisdiction in favour of the Québec court.

Merits of the Special Expense Claim

[98] The total principal amount for unpaid special expenses that the Mother seeks to recover from the Father is \$15,461.99, which is itemized in para. 9 of these Reasons for Judgment as follows:

- May 31, 2021 - online course on Python - \$19.99;
- September 23, 2021 - school fees at Norma Rose Point Elementary School in Vancouver - \$67;
- June 11, 2021 - NRP hoodie - \$45;
- December 13, 2021 - orthodontist fees - \$2,480;
- May 6, 2022 - May Madrona School fee and partial deposit for 2023 school year - \$5,815;
- March 7, 2022 - autism evaluation fee - \$2,500; and
- June 1, 2022 - June Madrona School fee and partial (and final) deposit for 2023 school year - \$4,535.

[99] Pursuant to QC Final Order #1, now registered as an enforceable order of this Court, the Father was required to directly pay--or, alternatively, to reimburse--the Mother for certain specified expenses, including:

- "the educational costs of the minor child including, but not limited to, tuition and books, supplies, special outings and tutors, if necessary"; and
- "the cost of all medical, paramedical, dental, psychological, and therapeutic expenses related to the minor child."

- [100] The outstanding amounts claimed qualify as either education costs (Python, NRP, Madrona School) or medical expenses (autism evaluation, orthodontist fees).
- [101] However, I note that QC Final Order #2 clarifies that "there are no arrears accumulated in child support nor special expenses" as of the date the order was made on July 19, 2021. Thus, the Python and NRP hoodie expenses cannot be recovered.
- [102] The Father's objection to these expenses was primarily focused on the Madrona School fees. He argues that the Québec orders were issued when the Child was attending public school and when the parties had joint decision-making authority regarding educational and medical matters. He challenges the Mother's allegedly unilateral decision to enroll the Child at Madrona School contrary to both the joint decision-making regime and the explicit provision that the Child would be attending a public school, Norma Rose Elementary.
- [103] In his written submissions, the Father also takes issue with the requirement that he pay 100% of any s. 7 special expenses. He asks that his income for child support purposes be reduced, that income be imputed to the Mother in the amount of "not less than \$100,000", and that the s. 7 expenses should be paid proportionately, 60% by him and 40% by the Mother. He has not, however, filed any application in the Québec court or this Court to vary the child support provisions of the two Québec final orders.
- [104] The parties did not take me through the numerous affidavits filed in support of the Mother's application, mostly because the majority of court time was taken up with the challenge to the court's jurisdiction. I have, however, read all of the affidavit material and I accept the Mother's evidence on the following points:
- While the parents were living together, the Child attended both a private and a public school at different times and was homeschooled by the Mother for grade five.
 - The Child has a history of struggling in school and has on occasion gone on "school strike" (i.e. refusing to attend at all). It appears that many of his difficulties stemmed from social interaction challenges and bullying.
 - In March 2022, the Child was diagnosed with autism (the medical report is an exhibit in the material). The pediatrician told the Mother that this was a "classic case of a bright child with autism" and that this explained his struggles at school throughout his life.
 - The pediatrician recommended that the Child go to Madrona School, which specialized in educating such children.
 - The Mother sent to the Father copies of both the medical report and information regarding Madrona School, as well as possible British Columbia government contribution to defray some tuition costs.

· The Father proposed to sign the consent documents registering the Child at Madrona, provided the Mother agreed to pay 50% of the tuition fees. She treated this as an approval of Madrona, and therefore had the Child begin school there for the balance of that academic year, paid the required tuition, and also paid the deposit necessary to reserve registration for the 2022-23 school year.

· The Mother presented the Father with the receipts/invoices for the school expenses (indeed all of the claimed special expenses), but the latter refused to pay and also refused to sign the consent form for the Child's attendance at Madrona. This led to the Armstrong order of August 10, 2022 requiring the Father to pay the Madrona tuition fees and to execute the consent forms.

[105] The Mother's position is that, given the Child's past schooling challenges and the recent autism diagnosis, enrolment in Madrona School was a reasonable and necessary response to the Child's particular needs and that, as per the agreement made between the parties and embodied in QC Final Order #1, the related fees were, and remain, the 100% responsibility of the Father (along with the other special expenses), "until such time as [the Mother has] sufficient income to also contribute".

[106] The Mother also points out that the child's educational fees were historically paid in full by the Father, including private school fees.

[107] Section 7 of the Guidelines provides for the inclusion in any child support order of amounts necessary to cover all or any portion of certain "special or extraordinary expenses", taking into account the necessity of the expense in relation to the child's best interests and its reasonableness in relation to the parties' means. Health-related expenses (including orthodontic treatment) and special educational programs that meet the child's particular needs are expressly listed in s. 7 of the Guidelines as the sort of special or extraordinary expenses for which provision can be made.

[108] I have no hesitation in concluding that the Mother's decision to enroll the Child at Madrona School was reasonable in light of the Child's history of struggling in school and, in particular, his recent autism diagnosis.

[109] QC Final Order #1 expressly required the Father to pay the Child's "educational costs" and all medical and dental expenses. He should have reimbursed the Mother within 15 days of being provided the receipts or invoices for the expenses the Mother incurred. The failure of the Mother to extract express agreement from the Father to the amounts involved beforehand is not a defence to the claim, particularly where the Mother incurred the expense in response to the special needs of the Child. It is also not a defence for the Father to request variation of the child support orders without a proper application for that relief first being filed and fully argued before the court.

[110] I therefore grant judgment to the Mother for the unpaid special expenses she claims for school fees, orthodontist fees, and autism evaluation costs, for a total principal amount of \$15,397. Interest is payable on each of these amounts from 15 days after the Mother sent the

receipts or invoices to the Father, pursuant to s. 11.1 of the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127, and s. 6.1 of the Family Maintenance Enforcement Act Regulation, B.C. Reg. 346/88. I direct counsel to calculate the appropriate amount and to include it in the formal order entered in relation to this judgment.

"Kent J."

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