CITATION: A.E. v. A.B. , 2021 ONSC 7302
NEWMARKET COURT FILE NO.: FC-19-58096-00
DATE: 20211103

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
A.E.	)	Adam White, Counsel for the Applicant
Applicant	)	
– AND –	)	
A.B.	)	Farrah Hudani/Carolina Paterson, Counsel for the Respondent
Respondent	)	
	)	**HEARD:** May 26, 27, 28, 31; June 1, 2 and 3, 2021.

REASONS FOR DECISION

JARVIS J.

[1] The applicant AE ("the mother") and the respondent AB ("the father") were married on June 27, 2005 and separated on December 23, 2015. There are three children of the marriage, namely JB (a son) born in 2007, EB (a daughter) born in 2009 and SB (another daughter) born in 2015, collectively "the children".

[2] The parties were divorced on August 12, 2018.[1] Each has remarried, the mother on August 22, 2019 (Eliezer Chaim Goldish, hereafter "Mr. Goldish") and the father on February 19, 2019 (Eliana Chaya Sarah Dubrow, hereafter "Ms. Dubrow").[2] Each of the parties' new spouses lives and works in the United States, Mr. Goldish in Cleveland, Ohio and Ms. Dubrow in Los Angeles, California. Mr. Goldish has three daughters from his prior marriage (ages 15, 13 and 9 years old) and a shared parenting arrangement with their mother: Ms. Dubrow has one daughter from her prior marriage (9 years old) and shares equal parenting time with that child's father (on a week-about basis).

[1] A Jewish Bill of Divorce was granted on March 7, 2016. A civil Divorce was granted on August 12, 2018.
[2] The mother and Mr. Goldish married on August 22, 2019: the father and Ms. Dubrow married on February 14, 2019 in Los Angeles but due to a clerical error by the officiating Rabbi the marriage was not registered civilly until June 23, 2020.

[3] The family is Jewish Orthodox as are each of the parties' new partners and their families.

[4] The mother started these proceedings on February 22, 2019. While her Application claims financial and related relief such as equalization of the parties' net family properties and child and spousal support, her most important claim, and the issue that has consumed most of the proceedings and this trial, is her request that she and the children be permitted to relocate to Cleveland where Mr. Goldish and his daughters live. This is opposed by the father. A clinical investigation by the Office of the Children's Lawyer ("OCL" or "OCL report") dated April 29, 2020 did not support the mother's relocation plan but reported that the children wished to move. A Voice of the Child Report ("VOCR" or "VOCR report") dated February 1, 2021 summarized the views and preferences of the two older children who also expressed to the interviewing clinician their wish to relocate.

[5] The following witnesses testified:

(a) The mother;

(b) Sandra Garibotti, a clinician who was engaged by the OCL to provide services pursuant to s. 112 of the *Courts of Justice Act*. The OCL's involvement was requested by McGee J. on June 11, 2019;

(c) Sonia Stefanutti, a clinical investigator also engaged by the OCL. She prepared a VOCR that had been requested by Himel J. on December 3, 2020;

(d) Eliezer Chaim Goldish, the mother's spouse;

(e) The father;

(f) Akiva Medjuck, a friend of the father;

(g) Eliana Chaya Sarah Dubrow, the father's spouse.

[6] The parties agreed to the evidence of Dr. Charles Tator contained in a report dated April 26, 2021 being tendered in lieu of his appearing as a witness at trial. Several parts of his report were redacted by counsel. Dr. Tator is a Professor of Neurosurgery at the University of Toronto and has been treating the mother for spinal complaints since September 2016.

[7] Pursuant to Trial Scheduling and Management endorsements made by Himel J. and MacPherson J., respectively, the OCL witnesses were the Court's witnesses. Other directions were given for witness examinations and trial documents.

[8] A Statement of Agreed Facts was signed by the parties on May 21, 2021 and was marked as Exhibit #1. Each of the parties filed voluminous Document Briefs: only those documents from the Briefs and referenced by the parties in their affidavit evidence and testimony were considered.

[9] The outstanding issues to be determined are these:

(a) Should the mother and children be permitted to relocate to Cleveland, Ohio?;

(b) Depending on the answer to (a) what form of Parenting Order is in the children's best interests and how should decision-making responsibility be allocated?;

(c) What child support Order is appropriate?;

(d) What are the outstanding s. 7 expenses payable by the father, and the parties' respective share of those expenses in future?;

(e) Is the mother entitled to spousal support from the father and, if so, what is the appropriate amount and its duration?

[10] For reasons that follow, the mother will be allowed to relocate to Ohio with the children. A Parenting Order combining elements of both parties' plans filed at start of trial accompanies these Reasons. Both parties will be expected to comply with their representations to the court about promoting the children's healthy relationship with the other parent and members of their extended families. The father will be required to pay a lesser amount of child support than required by the *Child Support Guidelines.*[3] He will be required to pay $65,560 in child support arrears (subject to adjustments, and sanctions for untimely payments). The terms of payment set out in a temporary Order of the Court will be modified. No Order for spousal support will be made *at this time.* The mother's entitlement to spousal support will end on December 31, 2024 if there is no earlier application for spousal support before then.

[11] As described by one of the trial witnesses, this has been a complicated and difficult case. The relocation Order has not been easily made or without some hesitation.

Preliminary objection

[12] On April 26, 2021 Himel J. held a Trial Scheduling Conference and made an endorsement that, among other things, noted that it was anticipated that the parties' evidence in chief would be provided by affidavit. Both parties exchanged affidavits and, in due course, those affidavits were marked as exhibits. When the trial started, the father objected to various statements contained in the mother's affidavit.[4] These objections related to out-of-court statements and recommendations by persons (mostly professionals) to the mother, and the mother's description of these persons' subjective concerns, none of whom was being called as a witness. In addition to hearsay, the mother wished to file as evidence a medical report from the father's psychiatrist (Dr. Bloom) for which no Notice pursuant to the *Evidence*

[3] SOR/97-175, as am.

[4] These involved paragraphs 15, 29, 43, 45, 82, 110, 114, 115, 120, 123 and 263. The report was referenced in paragraphs 119 and 120 of the mother's affidavit. The Bloom report was contained in Volume IV, Tab 184 of the Document Books filed by the mother.

Act[5] had been given nor reference made to this expert's evidence in the Trial Scheduling Conference Form. The Court ruled that certain statements and paragraphs of the mother's affidavit were inadmissible hearsay, the psychiatrist's report was struck but certain statements from it to which both parties agreed were allowed.

Part 1: Background of court proceedings

[13] The following procedural events and court Orders are relevant:

(a) The mother started her Application on February 22, 2019;

(b) On June 11, 2019 McGee J. made an Order for, among other things, the appointment of the OCL, psychotherapy for the parties' middle child, parenting time for the father (and issues related to parenting), disclosure and child support. This Order was made after a Case Conference. The parties consented to the Order. Part of the conference endorsement read,

> "I have been direct with [the mother] regarding a child centred view of parenting and [the children's] needs for both parents…Neither parent can replace the other parent and both should work hard to create the best childhood possible for the children, irrespective of their reasons, or the cause of their separation";

(c) On December 19, 2019 MacPherson J. made an Order permitting the mother and children to travel to Ohio and for the father's holiday parenting time. Paragraph 3 of that Order directed that,

> "The Applicant, during her trip, shall not introduce the children to any schools proposed or homes she may want to reside in should the request to relocate be granted."

The father was ordered to pay $3,000 costs;

(d) The OCL report prepared by Ms. Garibotti was completed on April 29, 2020 and, after a mid-May disclosure meeting involving only counsel was held, forwarded to the parties on May 28, 2020;

(e) Following a Settlement Conference on September 14, 2020, Himel J. granted leave to either party to bring a motion to reinvolve the OCL, for disclosure from the father and directing him to respond to the mother's s.7 expense claim by September 30, 2020. He was also ordered to pay $1,250 costs inclusive of HST within 30 days;

(f) On November 12, 2020, this Court dealt with a motion by the mother for s. 7 expenses. The motion was dismissed on a without prejudice basis;

[5] R.S.O. 1990, c. E.23.

(g) On December 3, 2020 Himel J. conducted a further Settlement Conference. Among other things, the father was directed to advise the mother by December 10, 2020 whether he would consent to the children's relocation to Ohio and his position on the mother's $104,000 s. 7 expense claim. He was directed to provide a payment plan. The OCL was requested to undertake a VOCR, preferably by Ms. Garibotti. The case was targeted for trial during the May 2021 trial sittings of the court;

(h) On January 26, 2021 Bennett J. ordered the father to pay his share of the children's s. 7 expenses in the amount of $79,993.29 at the rate of $1,500 a month plus an additional $10,000 each December 15th when his bonus from employment would be paid[6];

(i) The VOCR was completed on February 1, 2021 and sent to the parties on February 11, 2021;

(j) On March 26, 2021 Kaufman J. made an Order conditionally discharging the father's solicitor of record;

(k) A Trial Scheduling Conference was held by Himel J. on April 8, 2021. Directions were given about next steps as were directions about the length and structure of the trial. The father was found in breach of the Order of Bennett J. respecting s. 7 expenses;

(l) On April 21, 2021 Bennett J. clarified certain terms of his earlier Order;

(m) On April 26, 2021 another Trial Scheduling Conference was held by Himel J. Further directions were given with respect to the trial. These included estimated length (five days), duration limits on examinations and witness order. A Trial Management Conference was scheduled for May 20, 2021 before another judge;

(n) On May 7, 2021 Himel J. dismissed a motion by the mother to have her Dispute to the OCL report filed as part of the Trial Record;

(o) On May 17, 2021 Himel J. dismissed a motion by the father for leave to call an immigration expert at trial. The father was ordered to pay $1,000 costs plus HST within seven days;

(p) On May 20, 2021 MacPherson J. held a Trial Management Conference. Directions were given with respect to the parties' evidence in chief being provided by affidavit and for the exchange of their document briefs;

(q) The trial started on May 26, 2021;

[6] 2021 ONSC 607.

(r) On May 27, 2021, Bennett J. release his Ruling on costs relating to the motion heard on January 26, 2021. The father was ordered to pay $9,000 costs plus HST forthwith. The following observations were made,

> 16. As was said by this Court in its ruling on the motion, the respondent through his counsel, acknowledged that he had not complied with previous court orders and that he had no excuse for not having done so…
>
> 25. There is a pattern of behaviour by the respondent in not responding to matters and taking no initiative to try to resolve matters outside of court…
>
> 30. This Court finds that by deliberately disobeying court orders, the respondent did act in bad faith...
>
> 31. Even if this Court is incorrect in its determination that the respondent acted in bad faith, for reasons set out herein and based on the respondent's blatant inaction in dealing with this matter for months prior to the motion itself and for his blatant disregard to even respond to correspondence from the applicant when she was attempting to be reasonable and resolve matters, the applicant should be entitled to her costs…
>
> 32. Rule 24 in its entirety and case law required costs to be awarded where a party acts unreasonably. This court finds for the reasons set out herein and in the ruling on the motion that the respondent acted unreasonably by his actions in breaching court orders and in failing to respond to attempts to resolve matters and instructing counsel to respond to correspondence from other counsel.

(s) Trial evidence was concluded on June 3, 2021. The parties opted to deliver written closing submissions. That was done by July 9, 2021.

[14] It is common ground that by the time that the trial evidence concluded on June 3rd the father had not complied with the costs Orders made by Himel J. and by Bennett J.

Part 2: Evidence of the mother and father (Parenting)

[15] The parties were twenty-one years old when they married in 2005 in Montreal, Quebec where the mother's family live. Theirs had been a long-distance relationship since meeting at a summer camp four years earlier. After their marriage, they resided in the Greater Toronto Area until their separation.

[16] The mother described the marriage as miserable, characterized by her emotional, psychological and sexual abuse by the father. She was unsparing in personal details, enduring the abuse "largely as a result of misconception borne of my Jewish Orthodox

background".[7] Because she wanted to maintain the marriage and the family unit, none of the abuse was reported to the police or other third parties. The father denied the mother's allegations.

[17] Description of the parties' relationships with their children were dramatically different. The mother described the father's relationship with JB as "very difficult" since infancy, sometimes screaming and shaming the child, "highly unattuned to the child's emotional needs".[8] EB, the second child, "was always Daddy's little girl" but suffers "a constant state of tension relating to her father insofar [as] she does not wish to disappoint him…[The mother] believes EB loves her father and seeks his love and approval".[9] SB, who was almost six months old when her parents separated, was, according to her mother, an unwanted pregnancy by the father: his caregiving role when the child was an infant was "minimal and perfunctory".[10]

[18] The father described the family as actively involved in the Orthodox Jewish community in Toronto. He was a very involved parent, describing in detail the parties' parenting responsibilities before and after each child's birth and the parties' respective child-rearing and childcare involvement. Both parties worked. A nanny was hired after a joint interview when JB began nursery school at three years old. SB was born after two miscarriages following EB's birth (the parties' descriptions of the father's care and concern for the mother and his time spent by her bedside at the hospital on each occasion are irreconcilable). In January 2012 and 2013 the mother vacationed in Florida without JB and EB, leaving them in the care of the father and nanny.[11]

[19] As described by the mother, the event that led to the separation occurred on December 20, 2015, after the father was out of the home with the children. She was house cleaning and found a small bag that contained non-kosher candies, packaged in some off-colour jokes, one involving marriage. This led to a broader search of the house during which the mother discovered in the father's briefcase, among other things, unsent "Thank You" cards, condoms, collection notices and Craigslist and Kijiji invitations to other women to join him at sporting events and to engage in sexually-related activities. Accessing the father's Ipad (the mother had the father's password) she also found a series of names which she assumed (correctly) were internet aliases used by the father. Her "world was spinning".

[20] On December 23, 2015 the mother and children left to visit her family in Montreal on a pre-planned visit: the father did not accompany them. The mother had just retained counsel who emailed the father on the same day that the mother and children left, confirmed that she would be returning from Montreal on January 3, 2016 and that she preferred that the father live elsewhere. The mother also emailed the husband later that day telling him that their marriage was finished, she was heartbroken.

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[7] Exhibit #2, being the affidavit evidence-in-chief of the mother affirmed May 25, 2021, paragraph 8 (xii).
[8] *Ibid*, paras. 13-15.
[9] *Ibid*, para. 23.
[10] *Ibid*, para. 33.
[11] Exhibit #1, being the Statement of Agreed Fact (paras. 54 and 55) and Exhibit #53, being the affidavit evidence-in-chief of the father affirmed May 25, 2021.

> …My dreams of raising a happy loving family with you have been shattered. You have destroyed our marriage, our family, and most heartbreakingly of all – you have irreparably changed your children's lives and have crushed a part of their innocence and spirt forever. My heart breaks mostly for them. But I will continue to love them and support them. I will not let your selfishness and sociopathic deceit tarnish them…
>
> My heartbreak is also for you. You have on all levels destroyed your own life… I have given you all of myself and my whole heart for fourteen and a half years of my life. I never stopped loving you and supporting you. I imagined us raising a beautiful family together and glowing with pride together at each of their accomplishments. I imagined us growing old together. I longed each day to grow beside you as a life partner and friend. You have robbed yourself of any chance at this, and for this my heart breaks…
>
> …I have not explained to the children what I know or the destruction you have caused – nor will I. Although not all of your interactions with them are qualitative or yield a positive influence on their growth and self esteem, I believe they need you in their lives. They need to continue to believe that you are inherently good. To spare them additional shame and pain, and out of pity and mercy for you, I will shield them from your crimes….

[21] The parties later spoke by telephone and the father emailed the mother on December 24th that he would do anything to rectify the situation. During the children's time in Montreal they spoke with their father. He consulted with, and began treatment by, a psychotherapist (Dr. Betzalel Wolff) for sex addiction on December 30, 2015. He also retained counsel. When the mother and children returned from Montreal, the parties explained to the children that they had decided to separate and tried to reassure them. The father moved to his parent's residence to live.

[22] On January 4, 2016 the mother proposed arrangements for therapy for the older two children. Both parties reached out to a non-profit organization providing health referrals, education and support for the Jewish community. Dr. Ray Morris was recommended for mediation and Carah Mitchell was recommended as a support person for the children. The parties met with Dr. Morris the next day to discuss parenting strategies but as the mother felt "quite uncomfortable" when the meeting ended after about forty-five minutes, she decided to not participate further. That led to a proposal from the mother on January 6th for a "joint custody" arrangement in which the children would primarily reside with her, alternating weekend and weekly overnight parenting time with the father and joint decision-making. She expected a timely response from the father.[12]

[12] The mother advised on January 7th that she needed more time to consider the parenting time schedule for the parties' six-month old child (Exhibit #55). On January 13th she amended her January 6th proposal provide for a six-month review and to, mostly, fine-tune child exchanges. Her proposal for joint custody and shared decision-making was unchanged (Exhibit #56).

[23] On January 18, 2016 the mother informed the father that there would be no further contact with the children until he responded to her parenting proposal. Around this time, too, the mother accessed the father's iCloud account and found evidence of the father's extramarital relationship with a woman whom the mother suspected (but was not) underage. The father offered to provide evidence of the woman's age. Together with other information from the iCloud account which the mother shared with Ms. Mitchell, the father was led to understand that Ms. Mitchell had advised the mother against the children spending overnight time with him (see paragraph 27 below).

[24] Between January 3, 2016 and January 19, 2016, the children had overnight parenting time with their father on two occasions.

[25] On January 23, 2016 the mother proposed "ground rules" for the children's time with their father. These included not sharing food or drinks with the children and following sound hygiene practices because the mother was concerned about the risk of infection or disease as a result of the father's extra-marital behaviour (she tested negative for any sexually-communicable diseases). On January 25, 2016 the mother's lawyer wrote again to the father's lawyer that his client awaited the father's parenting time counterproposal. He advised that the mother was hesitant to proceed with permitting any further parenting time because the children's therapist had "indicated a number of concerns" about the father's addictions negatively impacting the children.[13] Those concerns were not described. The father's parenting counterproposal was made on January 26th and it proposed an alternating 2-2-3 parenting schedule. Concern was also expressed about the escalating "temperature" in the case.

[26] During this January period the parties' separation had become publicly known in their community. The mother was concerned about what was being said about her, that there were people who were calling her and her family in Montreal about her being "crazy": she demanded (this from the father's brother) a public retraction of what she understood was being said about her by the father's family. According to the father, the mother threatened to disclose why the parties had separated if a meeting wasn't held immediately. The mother agreed that she would not speak. On the evening of January 26, 2016 (the same day that the father's counterproposal was made) an extended family meeting was held at the matrimonial home after the children had gone to bed at which the father's parents and several of his relations attended. Having gone to what she described were "great lengths" to keep the reasons for the parties' separation private and to spare him (and his family) embarrassment, the mother expected the father to "come clean". He said he would explain. But, according to the mother, he didn't. The meeting was very short. According to the mother, the father did not reveal the reason why the parties separated. He took no responsibility for his behaviour. Instead he told everyone that the rumours circulating about the mother must stop. There was no accountability according to the mother.

[27] On January 28, 2016 the mother's lawyer advised the father's lawyer that the mother had been approached about the lawyers for the parties meeting with the mother's Rabbi

[13] Exhibit #11.

(Korobkin) for a mediation session. The parties would participate by cellphone. Pending that meeting, mother's counsel also advised that, based on therapist Mitchell's advice, there would be no further overnight parenting time "for the time being" given the father's therapeutic issues. The father's parenting time was restricted to Tuesdays and Thursdays after school and on Sundays, no overnights.

[28] A mediation session with the Rabbi was held on March 3, 2016 but nothing was resolved.

[29] In mid-April 2016 the mother remained concerned about the father's parenting abilities. She proposed (and the father agreed) that the parties participate in an assessment. After much back and forth between counsel, Dr. Hy Bloom, a forensic psychiatrist, was retained in July 2016 and the assessment process started ("the Bloom assessment").

[30] In late May 2016 JB complained about bleeding from his penis. The mother contacted Ms. Mitchell for advice. Jewish Child and Family Services ("JCFS") became involved as did the police. An investigation was undertaken. JB (who was then nine years old) said that he and his father had "a secret". The Police Records were entered as Business Records (Exhibit #40). JB was interviewed. During the interview,

> "…he advised he and his dad did have a secret, but he didn't want to tell his mother, because it might hurt her feelings. He said the secret between he and his father was, "Boys rule!". [JB] advised he was having a hard time with his parents *(sic)* divorce, but speaking to someone about it. When asked if anyone had hurt him, [JB] advised his father hurt him sometimes with what he would say to him, but would not elaborate. **[**JB] advised neither his mother or father had ever disciplined him or his siblings physically. He advised he missed his father and liked spending time with him. When asked if anyone had ever talked to him about his "private parts" he advised he had the conversation and no one had ever made him feel uncomfortable, or touched him. If anyone did, he would tell his mother or someone he trusted.

[31] The investigating officer also noted,

> [The mother] also asked police to view a still photo of the video she had of her ex-husband and who she believed to be an underage girl. D/C KNILL viewed the image; a picture of a dark-haired woman, wearing dark rimed *(sic)* glasses and a light grey-blue coloured tank top with spaghetti straps. The woman appeared to be in her 20s at the very least, and was probably closer to her 30's. [The mother] was advised that the legal age of consent in Canada was 16 years, and the woman in the photo appeared to be well over the age of consent. Although [the mother] was reluctant to agree, she advised police she would leave the matter with them. D/C KNILL advised there was no apparent criminal offence based on the picture.

[32] EB was also interviewed.

> On Thursday July 14, 2016, D/C KNILL and JFCS Richardo THEODULOZ interviewed [EB] at the CYAC on camera (TPSF366761). **[**EB] did not disclose anything to police and advised she liked visiting with her father. When asked if anything made her uncomfortable at home or at her father's house, she advised there was not. [EB] was shy at first, but appeared well adjusted and comfortable talking to police and CAS. (bolding added)

[33] As there were no criminal or protection concerns after interviewing JB and EB, the criminal investigation was discontinued but the JFCS continued to be involved with the family until its' file was later closed too. The father's evidence is that he only found out about the involvement of the JCFS and the police after the OCL report was released and the investigator's notes disclosed.

[34] In March 2017 the parties met at a coffee shop. The mother told the father about her relationship with Mr. Goldish, whom she had been dating for about three months, and her intention to move to Cleveland with the children to live with him and his family. At this point in time, Mr. Goldish and the parties' children had never met. The mother testified that she did not want to "blindside" the father with this information and wanted to reassure him of his role in their children's lives. She said that he would consider the matter.

[35] While awaiting completion of the Bloom assessment the mother proposed a meeting of the parties with a community leader, Michael Kuhl (who was also the father's employer) to help mediate an increased parenting time schedule. That mediation was held on June 21, 2017: it was unsuccessful. The mother's plan to relocate was more formally confirmed in a letter from her lawyer to the father's lawyer on July 25, 2017. The father testified that he had considered the mother's plan, but he never agreed to the move because her continuing failure to facilitate the children's relationship with him (as evidenced by her objection to the children spending overnights and increased time with him) gave him no confidence that the situation would change. Her proposals for increased parenting time were linked to his agreement to her move. Near the end of October 2017, the father confirmed to the mother that he opposed the move.

[36] The parties were notified that the assessment was completed on or about September 26, 2017 but Dr. Bloom's report ("the Bloom report") was not delivered until February 26, 2018. The mother attributed the delay to the father's failure to pay the balance of his share of Dr. Bloom's account. While the report was not admitted into evidence, it is common ground that there was no recommendation that the children should not have overnight parenting time with their father. The father's risk of harm to the children from his addiction was low.

[37] The mother testified that the father reaffirmed his opposition to relocation in late March 2018. This was about a month after the release of the Bloom report (February 26, 2018). The mother reached out to another Rabbi (Nelken) to negotiate a resolution of their parenting issues, specifically her relocation to Ohio and the children's time with their father before and after relocation. The mother insisted that the issues were interconnected and not to be considered separate and apart. The father agreed to the Rabbi's involvement,

complaining that he had been waiting for over two years to have the children spend overnights with him: while he was prepared to discuss mobility he maintained that the issues were "not all interconnected". Despite this exchange, mediation was attempted between March 1, 2018 and August 31, 2018 but without success.

[38] There was no change to the children's time with their father.

[39] In August 2018 the mother learned that the father had become engaged.

[40] On December 6, 2018 the mother agreed to the father's request for overnight access on the condition that this arrangement be reviewed after February 3, 2019. The mother wanted a review of the schedule: the father understood that the review was to be done by the parties and therapist Mitchell to assess EB's mental health. A total of six overnights took place between January 12 and February 23, 2019, the last shortly after the father's wedding on February 14, 2019 and the family's (separate) return from Los Angeles. The father said that the overnights were a great success. On February 23, 2019, the day after she started her Application, the mother terminated overnight parenting time for all the children. The mother said that she had asked Ms. Mitchell to re-evaluate EB to determine whether her overnights with her father should continue. The father pointed out that the review was not to discontinue EB's overnight time but "to see if additional nights could be added".[14]

[41] On June 11, 2019 McGee J. ordered, among other things, overnight and weekday parenting time for the children and their father. Initially this time was alternating weekends but, effective with the July 13-15, 2019 weekend, the parenting time started on the Saturday at 6 pm until the children's return to school/daycare/summer camp on the Monday, and weeknight parenting time each Tuesday and Thursday from after school/daycare/camp until 7 pm.

[42] After the release of the OCL report, the parenting time arrangements were modified by the parties to extend the children's return time to 7:30 pm on the Tuesdays, every other weekend from Thursday after school to Sunday at 7:30 pm, and on Thursdays preceding the children's weekend with their mother from after school to 7:30 pm. The parties also agreed to an equal sharing of parenting time for the summer and other holiday breaks.

[43] The father's evidence is that he remained on the road to recovery from his addiction and that while there had been some relapses in the previous five and a half years, he was maintaining his sobriety, attending group therapy sessions and had seen Dr. Wolff about two to three weeks before this trial started.

[14] Exhibit #44.

Part 3: Parenting Plans

[44] Pursuant to the Order made by Himel J. on April 26, 2021 at the parties' second Trial Scheduling Conference, both parties filed their proposed parenting plans depending on whether relocation was permitted.

The mother's parenting plans[15]

[45] If relocation was permitted the mother proposed that the children primarily reside with her and that the parties share decision-making, with her "openly and actively" engaging the father with regard to any major decision related to health, education, religion and extra-curricular activities. A parenting coordinator would be engaged as appropriate if the parties were unable to agree about "any single parenting decision" (that implying a disagreement about a major decision). The children would spend time with the father for five non-consecutive weekends during the school year from Thursday after school until their return to school on Monday. The children would be with their mother for Mother's Day and with the father for Father's Day. They would spend all winter breaks with their father. If the children were not attending "sleep-away" camps, they would be in their father's care for two non-consecutive three week periods: if the children were away at camp, then they would be in his care for three-quarters of the remaining full weeks. Jewish Holiday time would be equally shared as recommended in the OCL report. Exchanges would take place in Angola, New York, roughly equidistant between the parties' residences. Travelling even this distance would be challenging to the mother because she had significant multilevel degenerative disc disease in the thoracic and lumbrosacral spine, diagnosed after the parties separated, that worsened after a 2018 accident in which she was struck by a truck. Her neurosurgeon (Dr. Tator) opined that she would likely require a major operative procedure to treat her spinal cord compression. It was recommended that the mother not lift objects heavier than 5-10kg and that she needed help for everyday activities. There was a favourable surgical prognosis.[16]

[46] If relocation was not permitted, the mother proposed that the children reside primarily with her and that she have sole decision-making responsibility. The children would reside with their father every Tuesday and Thursday night after school until 7:30 pm and alternating weekends from Thursday after school until return to school on Monday. Winter break and summer school break times were modified from the mother's relocation plan to permit equal time. Mother's Day and Father's Day times were unchanged as was sharing of Jewish Holiday time.

[47] The plans also contained general parenting principles. Paragraphs 15 and 16 of the mother's relocation plan were mirrored in paragraphs 49 and 50 of her plan if relocation was not allowed.

[15] Exhibit #33.
[16] Exhibit #53.

> 15. Notwithstanding the above subparagraphs, the parties shall at all times maintain a reasonable and flexible position respecting the residency arrangements for the children and at all times the best interests of the children shall prevail. Accordingly, if special occasions, extracurricular activities, friend's birthday parties, excursions or other opportunities become available to the children, or to either party, neither party will insist that the residency arrangements set out herein be adhered to without exception, when these opportunities can be reasonably accommodated.
>
> 16. The parties shall encourage the children to respect and honor the other parent and the other parent's family and neither party shall alienate or attempt to alienate or diminish the affections of the children from the other parent, or disparage or allow others to disparage the other parent in the presence of the children. The parties shall promote a healthy and ongoing relationship between the children and both of their extended families/friends and spouses. The children shall not be involved in or exposed to any animosities that may exist between the parents, or involving their respective families, friends or other relatives.

[48] Both plans proposed the children be permitted to contact the other parent by telephone from working landlines. Paragraphs 19 and 53, although differently worded (the latter a more abbreviated version) provided as follows:

> 19. The children shall be permitted to freely send telephone calls from working landlines with any family member while in the care of either parent, without the supervision of the residential parent. Each parent should encourage the children to call the non-residential parent regularly during their parenting time. If the non-residential parent needs to speak with the children regarding a pressing matter during the other party's parenting time, the non-residential parent shall contact the residential parent requesting that the child call. If the children wish to video call with the other parent, a private and quiet location will be provided and the children will be permitted to do so.

[49] The mother's representations to the court as contained in her plans are relevant to the court's disposition.

[50] The mother's plans also included a term that the parties continue to use Our Family Wizard to exchange all child-related information.

The father's parenting plans[17]

[51] If relocation was permitted, the father proposed that the parties equally share joint decision-making responsibilities for the same areas as proposed by the mother and, excepting transfer times and some greater precision than her plan around the proposed mid-point

[17] Exhibit #71.

exchange location, the parties agreed about sharing the Jewish Holy Days. The father proposed more generous and flexible parenting time. He proposed that in each month, at his election, except for the winter break and the summer school break, the children be in his care in Cleveland from the Thursday after school until either the Sunday or Monday (return to school). For the months of October, November and May (the third weekend) the children would spend Thursday after school until Sunday with him; the mother would be responsible to facilitate the children's travel to Ontario either by car or air, subject to Covid-19 restrictions. He also proposed that the children reside with him for seven full weeks of their ten weeks summer school break.

[52] If relocation was not permitted, the father proposed a week about parenting schedule and shared decision-making responsibility. The children's current healthcare professionals, schools and residency in Ontario would not be changed without the parents' written consent. Jewish holiday time would be shared. The father proposed identical paragraphs (28 and 59) to the mother's paragraph 15 (above) dealing with maintaining "reasonable and flexible" positions involving the children's residencies and special occasions but his proposal about each parent encouraging respect and honour of the other parent and their extended families included stepparent families and spouses (paragraphs 29 and 60).

[53] Paragraphs 30 and 61 dealt with the children being able to contact the other parent. These paragraphs are roughly comparable to the mother's proposal. Paragraph 30 proposed,

> 30. The children shall be permitted to call the non-residential parent from the residential-parent's home as they wish. The Father and the Mother are to ensure they each have a working landline or cell phone, so that the children can freely contact the other parent while at home. A phone number where the children can be reached shall be made available to each parent. The non-residential parent shall be able to call to speak with the children at the residential parent's home once daily at 6:00 p.m. via facetime or video call. The residential parent shall ensure that the children are available for the call and that a method to be able to video call with the children is available.

[54] The father also proposed that the mother should be required to obtain an Order in Ohio, at her cost, mirroring the parenting terms of any relocation Order.

[55] Like the mother, both the father's plans proposed continued use of Our Family Wizard for all child-related information exchanges.

Part 4: Evidence of the Children's Lawyer

Sandra Garibotti

[56] Ms. Garibotti is a clinician who was employed by the Office of the Children's Lawyer ("OCL"). She became involved in these proceedings after a previous clinician was unable

to complete an investigation pursuant to s. 112 of the *Courts of Justice Act*[18]. Ms. Garibotti has a long background in child protection and for most of the past decade has worked as a clinician for the OCL and, privately, as a family therapist. This work has included extensive interviewing of parents and children, formatting clinical recommendations solely and in a group context, testifying in court and dealing with a variety of relationship-based issues such as communication, parenting, conflict resolution and post-separation conflict.

[57] Ms. Garibotti's report is dated April 29, 2020. It detailed the number of interviews of the parents (two each), observation visits to the parents' homes in the presence of the children, their new stepparents (one each), two interviews of the children (each separately, not together) and collateral contacts such as the children's pediatrician, three psychotherapists, a social worker and a school principal. Counsel for both parties sent copies of the pleadings to Ms. Garibotti and, with authorization from the parents, she obtained records relevant to these proceedings from Toronto Police Services, York Regional Police, Jewish Child and Family Services, a psychiatrist (Bloom) who treated the father, a medical note relating to the father and information about a psychological and later psychoeducational assessment of EB. She was diagnosed with a learning disability and ADHD of an inattentive and mild nature.

[58] After referring to the factors under the then proposed amendments to the *Divorce Act*[19] dealing with parenting, the report made a number of recommendations. Bottom line, it did not support the mother's plan to relocate to Cleveland. The report was filed as Ms. Garibotti's evidence-in-chief[20]: the mother disputed its principal recommendation that the children not be permitted to relocate with her. Ms. Garibotti was cross-examined by both parties. She noted in her report that the children spoke positively of both parents and their new partners. She also considered the children's views and preferences.

> The children were consistent in their interviews, and each child had their own thoughts of the current schedule. [SB] stated she enjoyed going to her father's home, sometimes, but was clear she preferred spending more time with her mother. She spoke positively about both of her parents, and was animated and affectionate in both homes. [EB] spoke highly of her parents, and was clear that she would like to spend Shabbat with her father sometimes. She also clearly indicated she wanted to move to Cleveland with her mother. She stated she wanted to be with her family, specifically her stepsisters and her stepfather. She acknowledged some concern in not seeing her father as often, but felt that she would visit him frequently throughout the year.
>
> [JB] was more reticent in seeing his father, and did not feel that the weeknight visits were needed. He felt these visits were rushed and they were not really able to do anything. He felt the current schedule was "good", and he was clear that not celebrating Shabbat with his father was fine. When discussing the move, he was clear that he wanted to move to Cleveland, and was frustrated

[18] R.S.O. 1990, c. C.43 as am.
[19] R.S.C., 1985, c. 3 (2nd Supp.).
[20] Exhibit #49, Report of the Children's Lawyer.

> that he could not go. He was not concerned in missing his friends or father. He said he would come back for visits with his father, and could see his friends then. [JB] felt returning once or twice a year would be fine.

[59] Much of Ms. Garibotti's testimony centred on the report's conclusions.

> This was a complex and difficult matter to address. One can see the benefits of both plans that the parties are presenting. Should [the mother] be able to move, she would be supported by her husband and would be supported in raising the children. However, over the years she has not demonstrated a willingness to fully support and encourage an open and easy relationship between [the father] and the children. Even when she has been provided with information to indicate that [the father] did not pose a risk, and when [EB]'s anxiety was less acute, she did not extend any additional time to [the father]. There was no demonstrated flexibility that would indicate she would continue to encourage a strong and healthy relationship between the children and their father should she be able to move. It is expected she would comply with court orders and access schedules, but nothing more, as this has been her pattern of behaviour. Therefore a move to Cleveland is not supported at this time.
>
> [The father] has also not demonstrated an ability to provide shared parenting. Although one may suggest he has not been provided the opportunity, the children have been primarily cared for by [the mother], and she has met their needs well. Therefore, it is recommended that [the father] have more contact with the children than the current schedule permits, but shared parenting is not recommended, as this would not be in the children's best interest.
>
> Although it is not conductive *(sic)* to have shared decision making when there has been on-going challenges in communication and collaboration, to provide one parent with the sole responsibility of decision-making would significantly disenfranchise the other parent. Specifically, should [the mother] be provided with sole decision making authority, she would be able to relocate and make decisions for the children that may further fracture the children from their father. [The father]'s passive or procrastination in responding to [the mother] has been a concern, and he must be more responsive to address the children's needs; however, to remove his decision making ability all together, would risk his ability to remain an active role in the children's lives.
>
> The parties must be careful in their communication to the children of the recommendations and next steps in their lives. The children have articulated to their respective therapists, and to this clinician, their desire to move and will be disappointed if they cannot go. They expressed concern with their mother's feelings, and would be worried about her happiness. In particular, [JB] has articulated that he has observed his mother sad, and feels it is his father's fault. It would be concerning if they were told that they cannot move because of their father. This would only continue to impede on the children's relationship with

> their father that must be resolved and encouraged. It is recommended that this report is shared with the children's therapists, and the children should be provided the opportunity to process their feelings, in a neutral healthy manner.[21]

[60] Among other things, Ms. Garibotti recommended the children remain in the primary care of their mother with specified weekly parenting time with their father. A detailed holiday and special days schedule was proposed. Decision-making would be shared and, in the event of a disagreement about a major decision (not defined), the parties were to utilize the assistance of a Rabbi or mediator to help them negotiate an agreement.

[61] Not surprisingly, the father maintained that Ms. Garibotti's report and her evidence were comprehensive: the mother had not, and likely would not, support the children's relationship with him if they were permitted to move: the relocation would further fracture that relationship.

[62] Equally as unsurprising, the mother submitted that the clinician's conclusions were seriously flawed in that Ms. Garibotti was allegedly under time constraints to produce an expedited report, that she had never been made aware of a dispute by the mother to certain of the conclusions that the mother had not facilitated the children' relationship with their father and had overlooked allegations of domestic violence. Even so, the mother accepted the clinician's interviews with the children which were consistent in that they wanted to move to Cleveland.

Sonia Stefanutti

[63] On December 3, 2020 Himel J. ordered that a Voice of the Child Report ("VOCR") be requested from the OCL, preferably conducted by Ms. Garibotti. Instead of her, Ms. Sonia Stefanutti, another clinician employed by the OCL, was assigned to interview the oldest two children: there was no evidence why Ms. Garibotti was not involved. Ms. Stefanutti's report is dated February 1, 2021 and was filed, representing her evidence-in-chief.[22]

[64] A VOCR is a report intended to provide information about a child's views and preferences for use in resolving parenting disputes. Generally non-evaluative, a VOCR is not comparable to a clinical investigation such as that conducted by Ms. Garibotti or a more comprehensive assessment pursuant to s. 30 of the *Children's Law Reform Act*.[23] It is typically short and the time from engagement of the interviewer to delivery of a report is very brief. Typically, no contextual information is gathered and no recommendations are made. A VOCR's practical benefit is giving a child a chance to be heard. Not uncommonly, recourse to a VOCR is challenged because one or both parents are concerned that it can be used by a parent to manipulate a child's views, that it has potential to alienate a child and further the goals of the alienator parent.[24] Where there is an imbalance in a child's

[21] *Ibid* at p. 20.
[22] Exhibit #34.
[23] R.S.O. 1990, c. C.12 as am.
[24] *Gajda v Canepa*, 2018 ONSC 5154 at para. 23.

relationship with its parents or where one or both of the parents decline to acknowledge that the other is capable of identifying and responding to children's needs, caution must be exercised in giving undue weight to the report.

[65] In undertaking her engagement, Ms. Stefanutti did not review the pleadings, the OCL report, contact collaterals or review collateral source documents: she relied on the information package provided by the OCL, principally comprising the intake forms submitted by the parties. She satisfied herself that her interviews with the two oldest children were private (SB was too young), there was no one else in the room and that they could not be overheard. The interviews were conducted on January 17 and 26, 2021 and the report concluded five days later.

[66] Ms. Stefanutti testified that both children loved their parents. She described their presentation. [JB] was a "confident, articulate, and charismatic thirteen-year-old youth. He was honest and thoughtful and had little difficulty sharing about his life, views and perspective".[25] [EB] presented "as a sweet, well-mannered and sociable eleven-year-old girl. She was eager to speak with this clinician, as an opportunity to express her thoughts and feelings with regards to the current situation. She was open, honest and had little difficulty clearly expressing herself".[26] After the children briefly described their family life, schooling and activities, Ms. Stefanutti recorded their views about their relationships with their parents and siblings.

[67] Both children were aware of the court proceedings. Ms. Stefanutti reported that,

> [JB] shared that he is aware of the current court situation, and that his mother is trying to move them to Cleveland, Ohio. He understands that there was a previous decision made to move to Cleveland, but now the plan has paused because his father changed his mind about allowing them to go. According to [JB], prior to when they thought they were moving, they began to look at schools and a house to move to in Cleveland. He stated that his mother talks to him about the move and tells him that she wants to relocate to be with her husband. She tells him the reasons it would be beneficial to him. His father avoids the topic, as [EB] believes it hurts him to talk about it.
>
> [JB] expressed to this clinician that he wants to move to Cleveland, Ohio and has wanted to for a very long time. He loves the school and the community in Cleveland and believes that his family would be happier. [JB] does not feel that his desire to move to Cleveland has anything to do with the influence of his mother and stepfather, but rather because it is a new environment and a fresh start with nice people and community. He thinks leaving his father and friends behind will be difficult but will visit often and be able to stay in touch. [JB] stated that his father is aware that he wants to go. He will miss his father, but hopes he understands that it is the best for him and will make him happy

[25] *Supra* #34 at p. 2.
[26] *Ibid* at p. 3.

> to move to Cleveland. He hopes that arrangements can be made to see his father every month, as well as communicating with him regularly through virtual devices.

[68] As for EB, Ms. Stefanutti reported that she was,

> … aware that her mother wants to move to Cleveland, Ohio. With regards to relocating to Cleveland, [EB] expressed that she herself "really, really, really" wants to move there. When asked why, she stated that it is because her "family lives there, everything is close, and because it is a good place with lots of stuff'. She added that she likes the community because the synagogue is close by, and there are always fun activities happening with friends. [EB] stated that she would miss her friends and father, but they can stay in touch through telephone and virtual devices. She knows that her father will be upset, but he should understand this is what she wants. She hopes to visit with her father one time per month and on the holidays. [EB] concluded this interview by saying that she was not influenced and is "100% sure" that she wants to live in Cleveland, Ohio.

[69] In her summary, and unshaken in her testimony, Ms. Stefanutti stated that the children's views "were strong, clear and consistent in expressing their desire to want a fresh start in Cleveland…"[27] She also observed that,

> It appears that the relocation plan has been discussed at length previously, with some confusion and unsurety *(sic)* to the children because of conflict and disagreements between their parents. It seems that the mother, in particular has discussed the court proceedings and conflict with the children, as they seem to know exactly what is occurring, as the father has not had any dialogue with the children about the matter. Whether or not this can be considered as coaxing by the mother is unclear, as it appears that it may have already been a plan that was previously approved which would explain the children's longing to want to relocate. It was clear and consistent in both interviews that the children wished to re-locate to Cleveland, Ohio with their mother.

Part 5: Evidence of the parties' witnesses

Mr. Goldish

[70] Eliezar Goldish is the mother's spouse. He resides in Cleveland, Ohio and shares parenting responsibilities with his former spouse on a week-about basis of their three daughters, ranging in age from 9 to 15 years old. His divorce was difficult, a four-year process involving parenting and financial issues. Employed by a data processing company, he earns slightly in excess of $100,000 USD a year and is entitled to an annual bonus. His employment package includes a broad range of health benefits with a high deductible and

[27] *Ibid* at p. 4.

a matching 401K contribution from his employer (a 401K is roughly equivalent to a Registered Retirement Savings Plan in Canada). The mother and parties' children in this case are already covered under his health plan. He and his children live in a lower cost area of Cleveland and, with the mother, he is looking for a larger home for their combined families.

[71] The mother and Mr. Goldish began dating in 2017. In June 2018 he invited her and the parties' children to a Bat Mitzvah for one of his daughters. He and the mother married on August 22, 2019. During his testimony Mr Goldish ruled out relocating to Ontario. In October 2020 he applied to U.S. Immigration to sponsor the mother and children. Before this trial started, he had sent an update request to the immigration authorities but had not had a response other than that his sponsorship application remained pending. He anticipated a positive response very soon.[28]

[72] Mr. Goldish told the Court that the mother had looked into schooling options in the Cleveland area. He was aware of the costs of that schooling and testified that all Cleveland orthodox schools had large subsidies: he was a former member of a council charged with distributing subsidy allotments. Based on his experience and information about comparative schooling costs between Cleveland and Toronto, and after accounting for the US/CDN exchange rate, he estimated that the schooling costs would be about $15,000 CDN less in Ohio for all three of the parties' children. He prepared a comparative summary for Toronto and Cleveland.

[73] Acknowledging that the children seemed to love their father and enjoyed their time spent with him, Mr. Goldish said he was prepared to support that relationship and was willing to participate in driving them to a mid-point exchange location in Angola, New York, about twenty-two miles southwest of Buffalo, New York.

Mr. Medjuck

[74] Mr. Medjuck and the father are best friends who've known each other for a long time but closer in the last five years. He and his former spouse have four children between 19 and 10 years old, the older two of whom (both boys) live with him: the younger two reside with him and their mother on a 50/50 basis. He has final decision-making authority.

[75] His children are friends with the parties' children. Before Covid-19, he, the father and one or more of their children would bike evenings. Other activities would include boating and regular backyard BBQs. Mr. Medjuck and the two boys living with him attended the father's wedding in February 2019 in Los Angeles. He observed the parties' children enjoying the celebration, but it had to end abruptly because the children had to leave for the airport: they appeared unhappy ("miserable") to leave.

[28] When the evidence was concluded, the court requested that it be informed when a response from US immigration was received. The mother advised on September 10, 2021 that mandatory information interviews about which she and Mr. Goldish had testified appeared to be on track to proceed after November 10, 2021.

[76] The father was described as very patient, his relationship with the children emotionally strong. The children were comfortable around him, there was no distancing or apparent tension or discord. It was clear to him that the children enjoyed being with their father. To JB and his father following sports was almost a religion; there was a real bond between them. He had no reservations about leaving his children in the father's care.

[77] Mr. Medjuck had participated with the father in the same group therapy sessions with Dr. Wolff but stopped after his sessions ended. He and the father supported each other. He knew about the father's current therapy but not its specifics. Describing the 12-step process for addictive behaviour, Mr. Medjuck noted that forgiveness was an important step in the recovery process as was the concept of atonement. While he was not familiar with the father's current degree of sobriety, he trusted that the father was successfully dealing with his addiction ("100%").

[78] Mr. Medjuck described a strong relationship between the children and their father and agreed in cross-examination that it was close, tight knit, "not fragile".

Ms. Dubrow

[79] Ms. Eliana Dubrow was born, and resides, in Los Angeles, California, where she is employed as a teacher's assistant and works as a weight loss transformation coach. She and the father had met through a dating site for Jewish singles and were married in Los Angeles, on February 14, 2019. Divorced twice before, she and her first spouse (D. Ghods) shared parenting of their nine-year old daughter (RY) on a week-about basis. Between 2018 and 2021 she had traveled to Ontario about eight times a year on average, less in 2021. The father had also travelled to Los Angeles. She had met the parties' children, observed their interactions with their father, describing him as "amazing" with the children. She had no concerns about his parenting abilities. The father had also met RY: that relationship was also positive.

[80] The father had told Ms. Dubrow about his addiction and treatment and, after reading the Bloom report, Ms. Dubrow said that she had no concerns about the father. After she and the father had become engaged, Ms. Dubrow started legal proceedings in California to move with RY to Ontario. Those proceedings were later withdrawn after what Ms. Dubrow described was a custody evaluation. She told the Court that she had no current plan to relocate with RY to Ontario. Her relationship with her former spouse had become more difficult over the past three years. They are the subjects of a California Court Order dated January 6, 2020 that RY is not to be alone with the father without another adult present.

[81] The day before her wedding to the father, Mr. Ghods brought a court motion in Los Angeles to restrict the nature of the father's contact or interactions with RY. While that motion was dismissed it was clear from the contents of the material filed by Mr. Ghods that someone - Ms. Dubrow speculated that it was the mother or an unknown intermediary - had shared with him information about the father and the Ontario litigation. But she didn't know whom.

[82] The day of the marriage was stressful. The mother insisted that the children be returned to her care for them to return to Ontario later that evening (a Thursday) so that they weren't travelling on Shabbat starting the following evening. The return flight was delayed. Ms. Dubrow drove with the father and children to the airport. The children appeared to have enjoyed themselves, they had "a great time", and were sad about leaving the wedding celebration so early, even before pictures could be taken after the ceremony.

[83] Although she hadn't read the OCL report, Ms. Dubrow agreed with that part of her interview with Ms. Garibotti that the father had successfully dealt with his addiction. That report also noted Ms. Garibotti's concern about the children being able to go back and forth between their parents easily. Ms. Dubrow testified that the children had an emotional bond with their father that was "currently in repair… building up, it's building back to be a strong emotional bond" that needed parenting time with the children in a continuous, consistent way. The children appeared comfortable with their father, an absence of tension.

Part 6: Credibility

[84] The mother challenged the father's evidence as "duplicitous" and either contradictory or unsupported. She submitted that during the trial he "routinely displayed patterns of avoidance, minimization, obfuscation and fabrication (all examples of "gaslighting")… the trial was riddled with examples of gaslighting".[29] Many examples were given. Moreover, unlike her, the father was repeatedly non-compliant with court Orders, notably the June 2019 Order of McGee J. requiring the parties to exchange names for a replacement therapist for EB and the December 2020 Order of Himel J. that the father advise the mother about his position on her proposal for a one-year trial relocation to Ohio. All these Orders contained response deadlines with which the father did not comply. Other Orders included payment of the children's s. 7 expenses and costs which, together with the unmet deadline Orders, led Bennett J. to conclude that the father had acted unreasonably and in bad faith.[30]

[85] The father argued that the mother, although "polished" in delivery of her evidence, was argumentative and combative when questions or propositions were put to her with which she disagreed, and that his evidence should be preferred to hers where there was conflict. Like the mother's description of his evidence, he submitted that she repeatedly contradicted herself and refused to admit facts where those were inconsistent with her narrative. Her catalogue of the efforts which she made to promote the children's time with him was transactional in that her proposals always came with a "hook" or condition, such as her agreeing to the children having more time with him only if he agreed to the Ohio move. Other examples were given.

[29] Closing submissions of the mother, para. 63 and following.

[30] During the time that this Decision was under reserve the mother brought a motion to require the father to pay his share of the children's private school expenses for the forthcoming 2021 academic year. On August 30, 2021 Vallee J. found that the father had acted in bad faith in misleading the mother and the court that he already done what was needed.

[86] Credibility assessment is not an exact science. In *Baker-Warren v. Denault* [31] Forgeron J. noted that,

> "It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events." *R. v. Gagnon,* 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization." *R v. R.E.M.,* 2008 SCC 51, para. 49."

[87] In *Christakos v. De Caires*[32], Nicholson J. adopted as helpful MacDonald J.'s following outline in *Re Novak Estate*[33]:

> [36] There are many tools for assessing credibility:
>
> a) The ability to consider inconsistencies and weaknesses in the witness's evidence, which includes internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the testimony of other witnesses.
>
> b) The ability to review independent evidence that confirms or contradicts the witness' testimony.
>
> c) The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in *Faryna v. Chorny*, 1951 CarswellBC 133, it is "in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those conditions", but in doing so I am required not to rely on false or frail assumptions about human behaviour.
>
> d) It is possible to rely upon the demeanour of the witness, including their sincerity and use of language, but it should be done with caution (*R. v. Mah,* 2002 NSCA 99 (CanLII) [at paras.] 70-75).
>
> e) Special consideration must be given to the testimony of witnesses who are parties to proceedings; it is important to consider the motive that witnesses may have to fabricate

[31] 2009 NSSC 59 (N.S.S.C.).
[32] 2016 ONSC 702 at para. 10.
[33] 2008 NSSC 283 (CanLII), 269 N.S.R. (3d) 84.

> evidence. *R. v. J.H.* 2005 CanLII 253 (ON CA), [2005] O.J. No. 39 (OCA) [at paras.] 51-56).
>
> [37] There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence (See *R. v. D.R.* [1966] 2 S.C.R. 291 at [para.] 93 and *R. v. J.H. supra*). [Emphasis in original.]

[88] In *Ouellette v. Udin*[34], Shelston J. described credibility assessment as a "holistic undertaking incapable of precise formulation". In *Al-Sajee v Tawfic*[35], Chappel J. described assessing credibility as a complex task and provided a comprehensive summary listing what courts should consider in weighing and assessing the credibility and reliability of witnesses.

[89] Mindful of these considerations, the following observations are pertinent to assessing the credibility of the parties and their witnesses, and the reliability of their testimony:

(a) Admissions against interest. It is the rare case that a parent will disclaim a child's love for the other parent. This is such a case. In responding to a Request to Admit served by the father before trial in which she was asked to admit that the children loved their father, the mother responded that the father's choice of terminology was "misleading" and that while she had "a general impression of the children's relationship with their Father, it is for them to voice the extent thereof".[36] The mother maintained this position at trial. Even Mr. Goldish admitted that the children seemed to love their father. Admitting the children's love for their father did not serve the mother's purpose. As for the father, he admitted his addiction and his responsibility for the parties' separation and the end of their marriage, but the mother resented his apparent lack of remorse for his behaviour. He downplayed the impact of his history of not responding to the mother's contacts with him which, in part, led to Bennett J. finding that he had been acting in bad faith;

(b) Bad Faith. As stated by the Court of Appeal in *Scalia v. Scalia*[37], the essential components of the legal test for bad faith in the family law context are intention to inflict harm (financial or emotional) or to deceive (concealment of information or deception of the other party or the Court). Bennett J. found that the father had acted in bad faith in deliberately disobeying Court Orders and, even if that determination was incorrect, the father's egregious failure to respond to the mother in a timely way, or at all, deserved sanction. The father avoided any meaningful explanation for his behaviour. He was aware of the mother's wish to relocate. He was aware of her

[34] 2018 ONSC 4520 at para. 9.
[35] 2019 ONSC 3857 at paras.41 and 42.
[36] Exhibit #35 at paras. 83 and 84.
[37] 2015 ONCA 494 (CanLII) at para. 68.

financial need and while he may have had his own, obvious, reasons for resisting relocation to Ohio he did not deal with her in good faith. Vallee J. also found that the father had acted in bad faith;

(c) Demeanour. The mother's evidence was delivered in a thoughtful but measured way, careful to seek clarification of questions that she didn't at first understand but unwilling to concede facts that didn't support her narrative or which could have reflected poorly on her parenting capabilities (which she described as "superior"[38]). However, her disdain of the father became obvious in her reply evidence. He had sullied the children by his "deviant behaviour".[39] The father displayed no remorse: he was not the "new man" he represented. The mother's anger and bitterness were palpable. As for the father, he acknowledged his martial misconduct (but not the mother's allegations of abuse), his addiction, and he demonstrated insight into the mother's disgust with him. Like the mother, he was thoughtful in his evidence but was less inclined than her in deflecting or qualifying answers to questions which reflected poorly on him or on his parenting abilities.

(d) Evasive evidence. Pursuant to the Order of MacPherson J. made December 19, 2019, the mother was specifically directed "during her trip…not [to] introduce the children to any schools proposed or homes she may want to reside in should the request to relocate be granted". In her trial affidavit, the mother acknowledged that the children had "already visited the school [in Cleveland] and spent a day in its classes; the experience was very positive for them."[40] No date for that visit was indicated but it appears that this happened before and after the Order. In cross-examination, the mother admitted that JB had attended (and she had facilitated) three virtual tours and attended classes at the school (the evidence is unclear whether the school visit to which the mother referred in her affidavit included these attendances, but those dates were the end of December 2020 and early January 2021). Ten days after JB's last attendance, Ms. Stefanutti interviewed JB and EB for her VOCR: she acknowledged that the enjoyment of that experience would have influenced the children's views. While a year had elapsed between the MacPherson J. Order and JB's more recent school attendances, the mother defended her conduct in facilitating them by pointing to the limiting "trip" term in the Order. The intent behind that term was, in this Court's view, clear: the mother's explanation is disingenuous.[41];

(e) Inconsistent evidence #1. The mother described in excruciatingly personal detail a non-exhaustive decade-long list of emotional, psychological and sexual abuse by the father. While the issue of "family violence" as set out in the *Act* will be considered later in these reasons as those may impact the children's best interests, the mother's cataloguing of this abuse must be contrasted with the "happy loving family" whose

[38] *Supra* #7, at para. 216(e).
[39] *Supra* #7, at para. 268.
[40] *Supra* #7, para. 211.
[41] In the Statement of Agreed Fact filed as Exhibit #1 the mother admitted that she had taken the children in 2018 to the school in Cleveland that she wanted them to attend and to visit a possible home there, without the father's consent or authorized by the court (paras. 105 and 106).

sunny future that she emailed the father after the parties separated he had "shattered". The language used by the mother in her December 23, 2015 email to the father to describe their relationship (see paragraph [20] above) is irreconcilable with her later abuse allegations. In addition, although family violence need not involve conduct constituting a criminal offence, several of the mother's allegations of sexual abuse clearly crossed the line but when the mother met with the police in their child protection investigation in mid-July 2016 and she raised the issue of sex and her concerns about the father's sex addiction, describing him as a sociopath, there is no mention in the record about any of the abuse allegations she later made. Claiming that she was victimized by the father's abuse, the mother referred to the Bloom report as supporting her allegations, but it was ruled as inadmissable;

(f) Inconsistent evidence #2. The mother's evidence was that she made "every effort" after the parties separated to ensure that the father remained in the children's lives in a meaningful way.[42] Yet after January 2016 she refused to allow the children to spend overnight time with their father until late 2018/early 2019, almost three years. After the release of the Bloom report at the end of February 2018, the mother linked any mediation involving the children's increased parenting time with their father to a non-negotiable agreement from him allowing her and the children to relocate to Ohio. While some overnight parenting time was negotiated, and took place at the end of 2018 until shortly after the father's wedding in February 2019, the mother stopped that, for "review" purposes, even though the therapist's position was that the review was intended to consider an *increase* in parenting time.[43] It was not until the June 2019 Order of McGee J. that the children were allowed overnight parenting time with their father;

(g) Investment in the outcome/Influencing the children. The mother was heavily invested in relocating to Ohio. Unlike the father, about whom the evidence is consistent that relocation wasn't discussed, the mother (according to Ms. Stefanutti's VOCR interviews of the children) "in particular…discussed the court proceedings and conflict with the children, as they seem to know exactly what is occurring".[44] While the mother accepted the conclusions made about the children's views and preferences, she claimed that not only had she not discussed the case or conflict with the children but also that Ms. Stefanutti misunderstood the children and that her report in that regard was inaccurate.

[90] Neither party was a wholly credible witness. While there is no doubt that the mother is a loving, caring parent and she did reach out repeatedly to the father seeking a more timely conclusion to their parenting issues, she dictated the tightly-controlled terms of the children's time with their father. She often justified this behaviour as following the recommendations of professionals but, for example, her refusal to permit expanded, overnight parenting time for eight months after the release of the Bloom report and her

[42] *Supra* #7, para. 38.
[43] The father testified that the overnight parenting time stopped as soon as he was served with the mother's Application that she started on February 22, 2019.
[44] *Supra* #22 (VOCR) at p.5.

arbitrary termination of the reinstituted overnight time right after she started these proceedings are revealing. Her distrust and barely concealed contempt for the father undermine her evidence that she tried to promote the children's healthy relationship with him and would support that relationship in future. She was less able than the father to admit to facts or to concede propositions where they didn't support her position or reflected poorly on her. She accepted those parts of the OCL report with which she agreed but criticized Ms. Garibotti's investigation as hurried and deficient because the report didn't deal with the mother's allegations of abuse. Knowing that a VOCR had just been ordered and that the case was expected to proceed to trial in May 2021, the mother should not have facilitated JB's attending the school she proposed, meeting school representatives and other children virtually, just before Ms. Stefanutti's interviews. She accepted what Ms. Stefanutti reported about the children's views and preferences but disagreed that she had discussed the case with, or influenced, them.

[91] The mother's allegations of "gaslighting" by the father were, essentially, her disagreement with the father's evidence where that conflicted with her narrative. Each party was able to point out deficiencies, or contradictions, in the other's evidence but none that individually or cumulatively would lead this Court to reject the entirety of the proponent's evidence.

[92] The father had no credible explanation for his failure, or reticence, in responding to the mother's numerous overtures to deal with parenting matters or complying with the deadlines contained in several Orders of the Court but his narrative about the mother's resistance to expanding the children's time with him is more consistent with the evidence than hers and certainly more logical despite his not moving more aggressively sooner to pursue increased parenting time. At least two judges of this court have found that he has acted in bad faith. The mother's frustration with the father and mistrust of him (particularly dealing with financial matters) are well founded.

[93] However, where the parties' evidence about the mother's efforts to support the children's relationship with their father conflicts, the father's evidence is to be preferred. So too with respect to concerns about fostering that relationship should a relocation Order be made. This is consistent with the OCL report.[45] Ms. Garibotti was a credible witness.

[94] Ms. Stefanutti was a credible witness too. Her evidence about the views and preferences of JB and EB simply confirmed, with somewhat greater emphasis, those made by Ms. Garibotti. It does not appear that she was aware that shortly before her first interview with the children JB had attended online classes at the school the mother was proposing (his third attendance in about two weeks). It was reasonable for Ms. Stefanutti to acknowledge (which she did) that such an event could have influenced the children, in that case JB.

[95] Mr. Goldish, Mr. Medjuck and Ms. Dubrow were all credible witnesses. Mr. Goldish was supportive of the mother. Given the mother's medical condition, much of the driving responsibility if relocation was allowed (and a mid-point exchange location ordered) would

[45] See para. 58 above, first paragraph "…over the years [the mother] has not demonstrated a willingness to fully support and encourage an open and easy relationship between [the father] and the children."

fall to him (for which he was prepared to assist). Mr. Medjuck's observations about the father's interactions with the children may have been overstated but they are consistent with the evidence of the father and Ms. Dubrow about the children when in their father's care. The evidence of the parties, Ms. Garibotti, Ms. Stefanutti, Mr. Goldish and, by inference, Ms. Dubrow, is consistent in describing the children's relationship with their father as less close than with their mother: it was more fragile, but recovering.

Part 7: Parenting law and analysis

[96] The recent amendments to the *Divorce Act* ("the *Act*")[46] extensively revised and codified the determinates dealing with parenting.

> 16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.
>
> **Primary consideration**
>
> (2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.
>
> **Factors to be considered**
>
> (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
>
> (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
>
> (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
>
> (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
>
> (d) the history of care of the child;
>
> (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
>
> (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
>
> (g) any plans for the child's care;
>
> (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
>
> (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

[46] R.S.C. 1985. C.3 (2nd Supp.) as am.

(j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Factors relating to family violence

(4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

(a) the nature, seriousness and frequency of the family violence and when it occurred;

(b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;

(c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;

(d) the physical, emotional and psychological harm or risk of harm to the child;

(e) any compromise to the safety of the child or other family member;

(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

(g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and

(h) any other relevant factor.

Past conduct

(5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

[97] What constitutes "family violence" is defined in s. 2(1) of the *Act*.

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

> **(a)** physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
>
> **(b)** sexual **abuse**;
>
> **(c)** threats to kill or cause bodily harm to any person;
>
> **(d)** harassment, **including** stalking;
>
> **(e)** the failure to **provide** the necessaries of life;
>
> **(f)** psychological abuse;
>
> **(g)** financial **abuse**;
>
> **(h)** threats to kill or harm an animal or damage property; and
>
> **(i)** the killing or **harming** of an animal or the damaging of property;

Best Interests

[98] In *W.S. v. P.I.A.*[47], a complicated parenting case involving two young children and allegations of family violence, McGee J. accepted (as does this Court) the following observations as informing any best interests test where such allegations are made:

> [24] A history of family violence has always been an important factor in the adjudication of parenting disputes. An Order for decision making is never appropriate when there is evidence that it will be misused to frustrate or control the other parent or a child in a manner that is not in the child's best interests. A history of family violence is also relevant when deciding a parenting plan, specifically, its impact on the ability and willingness of the parent who engaged in family violence to care for and to meet the needs of the child, and to cooperate with the child's other parent.

[99] The parenting factors mandated by the *Act* shall be individually considered.

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability

[100] The children were 8 ½ years old (JB), 6 years old (EB) and 6 months old (SB) when their parents separated. Both parties worked during their cohabitation and had careers, the family was integrated with, and had roots in, their community. There was no evidence of family dysfunction or instability requiring therapeutic assistance before separation. While the mother said that the family had moved frequently, the context for that evidence was never made clear except as implying (without more) that a relocation would not be as destabilizing to the children as suggested by the father and Ms. Garibotti.

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[47] 2021 ONSC 5976.

[101] The mother described the children as "maturing, intelligent and well-adjusted".[48] This is consistent with the observations made in the OCL and VOCR reports (although the latter did not involve SB):

(a) JB was an excellent student (learning skills and work habits), "good" on self-regulation.[49]. He was scheduled to start High School in September 2021. Ms. Stefanutti described JB as "confident, articulate and charismatic"[50];

(b) EB had transitioned to Middle School in September 2020 with, according to the mother "no marked difficulties and in several ways [was] doing better academically".[51] She had been diagnosed with ADHD and had an Individual Education Plan. She had a good report card. She had also been diagnosed with Anxiety and been treated for that, but the timing of that diagnosis was never made clear by the parties. The only evidence before the Court touching this diagnosis indicated that it followed soon after the parties' separation;

(c) The mother said that SB had transitioned from daycare to an entirely new school in September 2020 "seamlessly"[52]. SB told Ms. Garibotti that she thought her mother was "funner" but she also had fun when spending time with her father.[53]

[102] In her report Ms. Garibotti observed that the mother had provided good care of the children and had been proactive in ensuring that they received appropriate professional assistance. The evidence supports this observation. The mother has been able to meet the children's needs, they have done well in her care and, as Ms. Garibotti pointed out (and the parties did not dispute), they are meeting their developmental milestones.[54] There is no question that the children's primary residency should remain with their mother.

(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life

[103] The mother minimized the nature and strength of the children's relationship with their father. She described JB's relationship with his father as historically difficult and stressed after the parties separated. The police report in mid-2016 recorded that JB missed his father and enjoyed spending time with him. JB was taken to three therapists by his mother, the process going smoothly according to her until the father wanted to become involved. EB was described as "Daddy's little girl" by the mother, anxious to please her father, unwilling to hurt his feelings. Post-separation her anxiety escalated, manifesting itself in nightmares and panic attacks that the mother says the father denied and downplayed. As for SB, the mother's evidence was that the father was unsupportive of her pregnancy, that his role in

[48] *Supra* #7 at para. 218.
[49] *Supra* #12 at p. 13
[50] *Supra* #14 at p. 2.
[51] *Supra* #7 at para. 220.
[52] *Ibid* #7 at para. 221.
[53] *Supra*#12 at p.16.
[54] *Ibid* at p.16

the child's infancy was "minimal and perfunctory". However, SB looked forward to spending time with her father and enjoyed her visits.

[104] Ms. Garibotti noted that the children's relationship with their mother was "strong" and their relationship with their father observed to be "positive". He was able to respond to their needs and was noted to be affectionate, especially with [SB].[55] This evidence is consistent with that of Mr. Medjuck. It was clear to Ms. Garibotti that the mother and Mr. Goldish fostered a close relationship between the children and Mr. Goldish's family, the children identifying the latter as "their family". The children did not report the same kind of relationship with Ms. Dubrow and her daughter, given Covid-19 and the father's inability to travel with the children compared to the mother.

[105] The mother took issue with Ms. Garibotti's description of the strength of the father's relationship with the children and criticized the OCL report (as already noted) as deficient because minimal investigation was allegedly undertaken and Ms. Garibotti failed to account for what she (the mother) described was the father's "lack of attunement and awareness of his children's needs, as well as his utter lack of preparedness to parent them".[56] As for the father's extended family in the Greater Toronto Area ("GTA") and the children's relationship with those family members, the mother equated these relationships to those of her extended family in Montreal, which she said were "excellent": the children's relationship with their paternal grandparents was only fostered after the parties separated, especially after litigation ensued. The father's evidence, not impugned, was that before the parties separated the family attended Shabbat at his parent's home and that at least once a month his mother would babysit the children so that the parties could go out for dinner or spend some time alone together.[57] The father lived with his parents for two years after separation.

[106] The father described his current relationship with the children as "fragile" but recovering. He described an involved participation in the children's lives before separation that was negatively impacted afterwards by the mother's restrictions on the children's time with him, which excluded overnight time and Shabbat. He pointed out that he had over thirty family members in the GTA and that the children's entire lives had been rooted in the GTA, their schools, synagogue, friends, and cousins all living within a short walking distance of their mother's home.

[107] It is the Court's view that the children had a positive, supportive relationship with their parents before separation, the father's relationship more positive than acknowledged by the mother. This changed after separation by the restrictions imposed by the mother on the children's time with their father. Recourse to therapy, never indicated before separation, adversely impacted the children's relationship with their father, perhaps unwittingly. The mother's dismissal of the potential loss of the children's relationship with the father's extended GTA family as a "red herring", no different from her own parents in Montreal is

[55] *Ibid* at 2 and 4, page 18. The other italicized words in this paragraph are taken from the OCL report.
[56] *Supra* #7 at para. 189.
[57] *Supra* #16 at para. 23.

at best a false equivalent and, at worst, a tacit admission that the mother discounts the value of the children's relations with their father's GTA family.

(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse

[108] The mother's position is that she has "steadfastly supported the [father's] relationship with the children, in consultation with professionals".[58] The Court disagrees. While both parties catalogued examples of the other's behaviour with respect to this factor, the following evidence stands out:

(a) The mother declined to acknowledge that the children loved their father.[59] The evidence strongly suggests otherwise. Devaluing a child's relationship with the other parent is inconsistent with any support of that relationship;

(b) The mother acknowledged in cross-examination and to questions from the Court that JB needed a consistent role model in his life and that person was not the father but Mr. Goldish. She tried in her submissions to "spin" this admission by pointing that, logistically, it would be impossible for the father to be a consistent role model if relocation was permitted but, viewed in the context of her evidence elsewhere, it is clear to the Court that the mother places little value on the children's relationship with their father. She claimed that "[i]n Toronto, the children are judged by their father's reputation, sullied by his deviant actions…"[60] How will a relocation change her attitude?;

(c) On January 11, 2018 (a Thursday) the father asked the mother's permission to take the children to a Bris on the following Wednesday morning. The mother responded that she couldn't "accommodate" that request and that she didn't "feel it in the children's best interests".[61] The father reluctantly acquiesced. Six months later the mother sought the father's request to travel to Cleveland with the children to attend a Bris held by close friends. She attended without the father's consent[62];

(d) The delivery of the Bloom report at the end of February 2018 should have led to the mother permitting the children to have overnight parenting time. That did not happen until December 2018 and was then ended by the mother after about six overnights for reasons not supported by the professional (Mitchell) whom the mother was consulting and purportedly relying upon. It wasn't until the June 2019 conference that an overnight parenting schedule was implemented, by court Order;

(e) The father was excluded from JB's Tefillin ceremony.[63] This is an important event in the Jewish faith preceding a Bar Mitzvah: it is an event in which a person

[58] *Supra* #7 at para. 228.
[59] See para. 88(a) above.
[60] See para. 88(c) above.
[61] Exhibit 64.
[62] Exhibit 65.
[63] Tefillin is a set of small black leather boxes containing scrolls of parchment inscribed with verses of the Torah. They are worn by observant Jews during weekday morning prayers.

(traditionally the father) puts on his son a Tefillin for the first time. The mother's evidence is that she had invited the father's participation a year before the event and when she hadn't heard from him, she arranged a third-party coach to assist with this important religious ceremony for JB. The father contacted the mother several times in the months preceding the event asking to be involved, without a meaningful answer. The mother's explanation was, essentially, "too little, too late", that the father could make his own celebratory plans. The event was held via ZOOM due to pandemic restrictions and involved the children, their mother, Mr. Goldish and his daughters, members of the mother's extended family and friends in Canada and the United States. The father and his family were excluded and learned about it the next day. Ms. Garibotti viewed the father's exclusion as "concerning". The mother rejected Ms. Garibotti's concern saying that she "struggled" to understand why the father's "inattention" to time-honoured traditions should be flaws attributed to her.[64] The Court agrees with Ms. Garibotti. There is no reason why the father, even if late in seeking involvement in the event, should not have been the person putting the Tefillin on JB and there is no reasonable explanation why the father and his family members could not have been invited to attend by ZOOM;

(f) Post-separation the mother did not consult the father about enrolling JB in a hockey league and SB in music classes. Nor did she have the father's consent to enroll EB in dance and Hebrew classes. The mother sought the father's contribution to these expenses.

(d) the history of care of the child

[109] Both parties worked during their married cohabitation. The mother relied on the OCL report as acknowledging her role as the primary and residential parent and claimed that the children considered her their psychological support as they would confide in her and not their father. Ms. Garibotti observed that, given the children had "resided primarily with their mother it was not unreasonable that they may have a closeness and affinity with [her]."[65] The father's evidence was that he was a full participant in the children's care (much less so in the case of SB given her age when the parties separated) and that the parties employed a nanny after the mother returned to full-time employment following maternity leaves (about thirteen months for each of JB and EB). The parties also engaged daycare and before and after school care services.

[110] It is not possible on the evidence to determine the history of each party's care of the children before the parties separated but it is not unreasonable to find that the mother managed more of the children's care than the father: how much more would be speculative. Certainly, since the parties separated, the mother has been the primary care parent, a responsibility from which the father claims he was purposely excluded and the mother says he avoided.

[64] *Supra* #7, para.201.
[65] *Supra* #20, at p. 18.

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained

[111] In *Decaen v. Decaen*[66], a relocation case in which a mother who had primary care of the two children wished to move to Mississauga from Sudbury, the Court of Appeal identified the factors relevant to assessing children's views and preferences:

> In assessing the significance of a child's wishes, the follow are relevant: (i) whether both parents are able to provide adequate care; (ii) how clear and unambivalent the wishes are; (iii) how informed the expression is; (iv) the age of the child; (v) the maturity level; (vi) the strength of the wish; (vii) the length of time the preference has been expressed for; (viii) practicalities; (ix) the influence of the parent(s) on the expressed wish or preference; (x) the overall context; and (xi) the circumstances of the preferences from the child's point of view: See Bala, Nicholas; Talwar, Victoria; Harris, Joanna, "The Voice of Children in Canadian Family Law Cases", (2005), 24 C.F.L.Q. 221…

[112] In order, the Court finds the following relevant factors:

(a) *Adequate care*. Ms. Garibotti's evidence was that both parents were able to care for the children. The mother was more pro-active than the father in ensuring counselling for the children, in particular EB whose ADHD and anxiety diagnoses indicated that to successfully manage her anxiety both parents needed to be actively involved in learning about, and understanding, effective management strategies;

(b) *Clarity of wishes*. The Court understands that the VOCR was ordered because the father challenged the reliability of Ms. Garibotti's observation that all three children favoured a move to Cleveland. Ms. Stefanutti confirmed the consistency and strength of the children's wishes;

(c) *Informed expression.* More so than SB (the youngest), JB and EB understood that a relocation would impact their lives. JB didn't wish to be "in the middle" and wished to move. EB also wanted to move and was confident that frequent parenting time with her father could ease her worries about not seeing him as often;

(d) *Age of child/Maturity level.* Less than a year separated the OCL report and the VOCR. The children were 13, 11 and 4 ½ years old when the VOCR was completed. According to Ms. Garibotti, JB understood the clinician's role and, in the Court's view, demonstrated good insight about his parents, his siblings (although EB could be "annoying") and his friends (see also paragraph [58]). This was consistent with Ms. Stefanutti's interviews of the child and demonstrated an age-appropriate level of maturity. JB acknowledged to Ms. Stefanutti that leaving his father and friends in the GTA was hard but could be managed by frequent parenting time. He had no objection to his father seeing the VOCR because he thought that both his parents already knew how he felt. EB was also articulate and wasn't concerned that her parents didn't see or talk to each other. She also understood that a move would upset her father. She

[66] 2013 ONCA 218 at para. 42.

demonstrated an age-appropriate level of maturity. Ms. Stefanutti commented that with respect to the proposed relocation JB and EB appeared "to be thoughtful and confident".[67] The description of SB by Ms. Garibotti was that of an alert, happy child, comfortable with sharing her thoughts and feelings about her parents;

(e) *Strength of the wish.* Both clinicians confirmed that the children's views, principally the two oldest, were strong, clear and consistent. Ms. Stefanutti commented that the children "were able to excitedly provide sufficient, genuine, and concise reasons as to why they wanted to make this change."[68] Ms. Stefannuti did not interview SB*;*

(f) *Length of time of expressed preference.* Neither clinician addressed how long the children had expressed their wish to relocate. Nor did the parents. But at some point after the mother decided to relocate and discussed this with the father (around March 2017) JB became aware of his mother's intention and formed the belief that his parents had agreed to it but that his father had changed his mind. He told Ms. Garibotti that another reason why the relocation hadn't happened earlier was because there was no court Order allowing it. As the father never directly told the mother he was opposed to the move until late 2017/Spring 2018, it is not unreasonable to infer that JB began to prefer a move after he and his siblings met Mr. Goldish and his daughters, spent some time in the 2017 summer with them and, later in 2018, either became aware of, or attended for an interview at, the school proposed by the mother. So did EB. Accordingly, it is not unreasonable that JB, and by extension EB, began to think about and favour a relocation by mid-2018 at the latest. There is no evidence that any of the children resiled from their view afterwards;

(g) *Practicalities.* The distance between the children's current residence with their mother and Cleveland, Ohio is about 500 kilometers. There are no impediments to automobile and air travel once pandemic/border restrictions are rescinded, although air travel may be more costly if the move is allowed and the father spends time with the children in Cleveland. The mother investigated schools in the Cleveland area, their cost (including possible subsidies), blocked out parenting times for the children with their father, and identified a mid-point exchange location. She testified about her employment prospects and efforts and, with Mr. Goldish, described their plans to locate larger, less expensive accommodations in the Cleveland area within their Orthodox community and proximate to their synagogue and the children's schools;

(h) *Influence of the parents.* The mother has influenced the children's views and preferences: the father has not. JB told Ms. Stefanutti that his mother would tell him how beneficial a move would be to him.[69] His father avoided the topic. JB and EB denied that they had been influenced;

(i) *The overall context.* There are only two options open for consideration. If relocation is allowed, the children will live in a community in a combined household with their mother, stepfather and stepsiblings and spend parenting time with their father. If

[67] *Supra* #20 at p. 5.
[68] *Ibid.*
[69] *Ibid* at p.4.

relocation is not allowed, the children will continue to live in the community where they have been raised and they would (presumably) have three residences (i.e. the mother's residence in Thornhill, their stepfamily's Cleveland residence and the father's residence in Toronto). Their nascent relationship with their stepmother and her daughter, and time spent with them, would be a function of the travel distance between the GTA and Los Angeles with no current plan, or foreseeable likelihood, of unifying the households of the father and Ms. Dubrow;

(j) *The circumstances of the preferences from the children's point of view.* Both Ms. Garibotti and Ms. Stefanutti observed that the children viewed Mr. Goldish and his children as "their family", that they felt comfortable moving there and liked the community. It is clear to the Court from the clinicians' evidence that the children want stability and closure.

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage

[113] The children share their parent's faith. They have been raised in the Orthodox community and are active participants in that community. There is no evidence that either parent wishes this to change whether the children remain in Ontario or are permitted to relocate to Ohio.

(g) any plans for the child's care

[114] But for the pivotal determination about relocation and weekly residency, the parties' respective plans for parenting are very similar with respect to holidays/special days and more general parenting terms. If relocation is ordered, the mother and children will live in Cleveland, combine households with Mr. Goldish and his children, and look for a larger residence for their family. In that event, the mother has proposed (and the father agreed) to share joint decision-making authority but the mother seeks sole decision-making if relocation is not allowed, the reason being the father's consistent failure to respond to her in a timely way. The plans of both parties involve continuing the children's involvement in the Orthodox community. The mother has researched schools in Cleveland and, as already noted, involved the children (JB at least) in auditing his prospective school. She had also researched the school curriculum where it is proposed EB will attend, thinks it is excellent and that it replicates EB's Ontario school curriculum, except for its history component. The mother confirmed with EB's new therapist (Wachtel) that future sessions could be continued remotely. The father has proposed that the children continue with their current healthcare professionals.

[115] If the move is not allowed, the father proposes a week about parenting arrangement but there is no evidence that he intends to move closer to where the children and their mother currently live in Thornhill, the children's schools or of acquiring larger premises such as a home.

(h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child

[116] The mother is able and willing to care for and meet the needs of the children. The father is less able to care for the children given his work obligations. He can meet the children's needs when in his care and expressed his willingness to be a more active participant in their lives.

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child

[117] The mother catalogued her many efforts to engage the father in matters involving the children, describing the various stages (four) of the parties' post-separation negotiations to July 15, 2020. She was frustrated, and complained about, the father's failure to respond in a timely or constructive manner. While not directly answering the mother, the father said that he wanted to reconcile (at least before March 2017) and did not want to start legal proceedings so as to avoid conflict for the children's sake. Both Himel J. and Bennett J. (the latter more trenchantly) dealt with the father's unacceptable delays in communicating with the mother, observations well supported by the evidence at trial.

[118] Overall, the father has not demonstrated an ability to communicate in a constructive or timely manner with the mother on children's matters. He has misled her on financial matters and commitments. On her part, the mother has been reluctant to cooperate in expanding the children's time with their father. This was clear before the release of the Bloom report (for thinly supported reasons) and, even before that, certainly after declaring in March 2017 that she wanted to move to Ohio, her cooperation focused more on getting the father to agree to relocation.

[119] Each parent expressed their ability to communicate with the other on children's matters but their willingness to cooperate was compromised by the mother's desire to relocate and the father's opposition.

(j) Family Violence

[120] Subsection 16(4) deals with the factors that the Court must take into account where there are allegations of family violence:

> (a) the nature, seriousness and frequency of the family violence and when it occurred;
>
> (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
>
> (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
>
> (d) the physical, emotional and psychological harm or risk of harm to the child;
>
> (e) any compromise to the safety of the child or other family member;

(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

(g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and

(h) any other relevant factor.

[121] The mother's allegations of the father's emotional, psychological and sexual abuse describe the kind of coercive and controlling behaviour which, while it may not rise to the level of a criminal offence, is captured by the definition of "family violence" defined by the 2021 amendments to the *Act*. In this case what the mother is alleging are patterns of intimate partner violence ("IPV") over the decade of the parties' married cohabitation. IPV encompasses a broad range of behaviours from emotional and financial abuse to physical and sexual assault.[70] The vast majority of IPV is never brought to the attention of the authorities. Statistically, however, women are more likely than men to have spoken to someone about the abuse or violence they experienced. Symptoms consistent with a suspicion of PTSD are common.

[122] In this case, there is no evidence that the mother ever spoke to anyone about any of the abuse she alleged before the parties separated. The mother could have, for example, raised the issue with the police in May 2016 during the JCFS investigation where the father's behaviour was a focal point. While the mother's evidence is that she was diagnosed and treated for PTSD after separation (and possibly treated for this before then), no medical records or therapeutic evidence were tendered in evidence, nor was any explanation given for their absence. The fact is that while the mother may have experienced IPV, there is no credible evidence that the father behaved as the mother alleged. Her apparent PTSD diagnosis is equally consistent with IPV and the kind of behaviour captured by the amendments as it is with her response to the "shattered" future of which she wrote to the father when the parties separated. Her evidence is insufficient to find that the father acted toward her as alleged.

[123] To be perfectly clear, there is no evidence of family violence involving the children or to their exposure to any such behaviour.

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[124] The Court was not made aware of any safety or security concern currently relevant to the well-being of the children.

Additional factors

[125] Where a child's relocation is an issue, s. 16.92(1) mandates the consideration of additional factors. "Relocation" is defined in s. 2(1) of the *Act*.

[70] Survey of Safety in Public and Private Spaces, (2018) Statistics Canada.

> Relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility — or who has a pending application for a parenting order — that is likely to have a significant impact on the child's relationship with
>
> (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or
>
> (b) a person who has contact with the child under a contact order.

[126] Section 16.93 sets out the burden of proof when relocation is requested.

> **Burden of proof — person who intends to relocate child**
>
> **16.93 (1)** If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.
>
> **Burden of proof — person who objects to relocation**
>
> **(2)** If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.
>
> **Burden of proof — other cases**
>
> **(3)** In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.

[127] These provisions apply to interim, or temporary, orders but s. 16.94 of the *Act* permits a court to decline the application of subsections (1) and (2) above where an interim order exists. In this case, the only Order dealing with parenting time was made by McGee J. in June 2019 at a case conference, on consent. In circumstances where, as here, there has been no adjudication of issues involving parenting before litigation and the amount of time spent in the care of each parent has been disputed since the parties separated, caution must be exercised before resorting to subsections 16.93(1) and (2). In this case, only subsection 16.93(3) applies; each party has the burden of proving that the mother's proposed relocation to Ohio is in the children's best interests.[71]

[128] Section 16.92(1) sets out the best interest factors in addition to those set out in s.16 where the Court is being asked to authorize a child's relocation. While many of these factors may

[71] In *N.S. v. A.N.S.*, 2021 ONSC 5283, Horkins J. applied s.16.94(2) where there was a pre-existing 2018 final Order for parenting time and the mother (with whom the child resided) had started an Application to vary that Order. There had also been child protection proceedings. Pursuant to the 2018 Order the child had spent the vast majority of his time with his mother.

be subsumed under s.16, and would typically form part of the best interests analysis, they target critical considerations consistent with the observation in *Berry v. Berry*[72] that "the superordinate consideration in a mobility case is the best interests of the child from a child-centred perspective".[73]

(a) the reasons for the relocation

[129] There are two principal reasons for the relocation. The first is the mother's desire to join her husband in Ohio and for them to combine, and raise, their children in the Orthodox community there. The second is the mother's thinly-concealed wish to remove herself and the children from their community in the GTA where she says that the father has disgraced the family, impacting the children (although there was no evidence of that impact on the children at trial).

[130] While each of these reasons may have a child-focused basis, it is the latter that most concerns the Court and which led Ms. Garibotti to recommend against allowing relocation.

(b) the impact of the relocation on the child

[131] Each of the two older children expressed their wish to relocate to Cleveland. This would impact their relationship with the father, his extended family and their friends. JB and EB thought that, with frequent parenting time with their father in Cleveland and Ontario, they would be able to adjust.

(c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons

[132] As set out in paragraph 42, since the release of the OCL report, the children have had parenting time with their father every Tuesday after school to 7:30 pm, every other weekend from Thursday after school to Sunday at 7:30 pm, and on Thursdays preceding the children's weekend with their mother from after school to 7:30 pm. The parties also share parenting time equally for the summer and other holiday breaks. The father claimed that the mother had little choice but to permit expanded time in light of her position that she has always supported the children's relationship with him.

(d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement

[133] This is not applicable. The mother told the father in March 2017 that she planned to move to Ohio with the children and, ever since then, that plan has been the driving force of this litigation. The provisions of the *Act* dealing with relocation came into effect after the mother started this case. Without determining the transitional impact of the amended legislation, this Court can exercise jurisdiction under s.16.9(3) of the *Act* to decline to

[72] 2011 ONCA 705.
[73] *Ibid* at para. 10.

require notice or it can modify the prescribed notice requirements. Even if this Court is wrong about the application of the notice requirements in this case, the Court declines to apply them.

(e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside

[134] This is not a relevant consideration in this case.

(f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses

[135] As already noted, the mother's proposed plan has merit in the Court's view but requires some adjustments to incorporate the father's proposal if relocation is allowed.

(g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance

[136] There is no reason why the factors to be considered under this provision should be restricted to parenting. While the Court must be confident that a parent will support the terms of any relocation Order, a parent's history of complying with their non-parenting obligations whether ordered by a court or contractually agreed is relevant and may inform the viability of the terms of any Order.

[137] The father's history of timely cooperation with, and responding to, the mother and his non-compliance with court-ordered deadlines is concerning. In his January 26, 2021 Ruling Bennett J. found that the father had acted in bad faith and sanctioned the father's Order non-compliance and persistent delays for which "[s]omewhat to his credit" the Court observed that the father "did not try to invent an excuse".[74] This behaviour was contrasted with that of the mother's efforts, in particular, to pay for the children's private school costs.

Part 8: Summary (parenting)

[138] It is, perhaps, counter-intuitive that fostering a healthy relationship with the other parent may enhance the likelihood of a relocation Order being made. In *O'Brien v. Chuluunbaatar*[75] the Court of Appeal upheld a trial judge's Order permitting a mother to relocate to Mongolia with the parties' seven-year old son, born and raised in Ontario. Pivotal to the best interests' analysis were the benefits to the child of the mother's enhanced emotional, psychological, social and economic well-being if relocation was permitted, and the trial evidence that

[74] *Supra* 6 at paras. 83 to 95.
[75] 2021 ONCA 555

> "…even with the relocation, the mother would facilitate the relationship between the child and the father, which the mother recognized as important. On the trial judge's findings, the mother has always followed the court ordered access; been generous with additional access; encouraged telephone access between the father and the child even when they were in Mongolia; and, allowed the father to attend her residence for access in a period when the father had mental health difficulties."[76]

[139] In *Bourke v. Davis*[77], also a relocation case, the trial judge allowed the mother of the parties' two young children born and raised in Kitchener, Ontario, to move with her to Redmond, Washington where her new husband had found employment. A s.112 OCL report had recommended against the move because it would adversely impact the father's involvement in the children's health, education and religion. In upholding the move, the Court of Appeal observed that the trial judge had found that

> "… there was a reasonable measure of communication and cooperation between the parties regarding decisions about the children, including their dental care, additional access time for the [father], education issues, and the arrangement of events such as birthday parties."[78]

[140] What distinguishes *O'Brien* and *Bourke* from this case are the Courts' findings about the moving party's behaviour in fostering and supporting the children's relationship with the other parent. In *Kazberov v. Kotlyachkova*[79] the Court refused a mother's request to relocate with the parties' eight year old son from Waterloo to Michigan because the Court found that the mother had minimized the father's involvement in their child's life over several years, de-prioritized the child's relationship with the father's family and had demonstrated an inability to work collaboratively. The Court had no confidence that the mother's attitude would change if a move was allowed. The mother in this case distinguished *Kazberov,* pointing to the observations of an OCL clinician who recounted that the child was ambiguous about a move and preferred to remain in the Waterloo area. In addition, unlike the child in *Kazberov*, the children in this case are older (JB and EB at least) and have expressed a clear, consistent and strong desire to move. Relying on *Mattina v. Mattina*[80], another appellate decision, the mother submitted that the children's views "particularly those of the older children, deserve significant weight".[81] The superordinate consideration where relocation is under consideration must be approached from a child-centred perspective.[82]

[141] But the application of that principle to this case must be considered in the context of the mother's behaviour, the children's ages when their parents separated and the passage of

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[76] *Ibid* at para. 26.
[77] 2021 ONCA 97.
[78] *Ibid* at para. 23.
[79] 2019 ONSC 3042.
[80] 2018 ONCA 641.
[81] *Ibid* at para. 24.
[82] *Berry v. Berry*, 2011 ONCA 705 at para. 10 referring to *Gordon v. Goertz*, [1996] 2 S.C.R. 27.

time since then before trial. In the Bala article referenced by the Court of Appeal in *Decaen*, the authors commented on the reliability of children's views and preferences in high conflict cases where a parent engages in "alienating" behaviour,

> "…without the conscious intent to destroy the child's relationship with the other parent. Parents often fail to appreciate that the emotionally harmful effect that their hostile attitudes and conduct are likely to have on their children."[83]

[142] Before the parties separated the children had what, to all intents and purposes, was a happy, close relationship with their father, they missed him afterwards and were eager (SB less so because of her age) to spend time with him. It is now different, "fragile" as described by the father. But there is no evidence that the father's sex addiction negatively impacted his ability to appropriately parent the children. While not overtly, or perhaps even consciously, engaging in alienating behaviour, the mother's failure and refusal, until this case began to meaningfully expand the children's time with their father and support his greater involvement in their lives reflects a devaluation of him not inconsistent with alienation. The mother was traumatized by her discovery of the father's addiction and separate life and that impacted her attitude toward him and, by extension, her attitude toward his relationship with the children. The father acknowledged that the mother was a good mother, loved their children, but that she would never forgive him and that impacted her ability to let the children have a positive relationship with him.

[143] Devaluing or minimizing a parent by the other in a child's life, even subconsciously, can amount to parental alienation. It "is a legal concept as opposed to a mental health diagnosis".[84] In *Bors v. Beleuta*,[85], Van Melle J. approved of the following definition of parental alienation described by Dr. Michael Stambrook in the Manitoba case of *L.M.A.N. v. C.P.M.*[86]

> **It is a descriptive term that refers to a process. It is not a diagnostic label**. It doesn't appear in any nomenclature about mental health disorders. **It is a descriptive term that refers to a process where there is a systematic devaluation, minimization, discreditation of the role of, typically the other parent in a parental dyad**. One parent systematically, through a variety of physical, emotional, verbal, contextual, relational set of maneuvers systematically reduces the value, love, commitment, relationship, involvement of the other parent by minimizing, criticizing, devaluing that parent's role. It can involve children having their sense of history being "re-written" by a parent's redefinition of history, reframing things, repetitively talking about things. It can involve sometimes very subtle and sometimes not so subtle suasion, coercion, direction, misrepresentation and so on…

[83] See para. 112.
[84] *Malhotra v Henhoeffer*, 2018 ONSC 6472 at para. 107.
[85] 2019 ONSC 7029 at para. 119.
[86] 2011 MBQB 49.

> **So parental** alienation **is a process, an interactional process where systematically one parent's role in, for the children is eroded over the course of time.** (bolding added)

[144] Delay is a significant, troubling factor in this case, too. Almost five and a half years passed between the time that the parties separated in December 2015 and the start of this trial in May 2021. For three and a half years the children's time with their father was restricted by the mother and, sometimes, arbitrarily ended or changed until this case began and an Order was made by McGee J. in June 2019 giving the father greater parenting time. While the parties are to be commended for their serial mediation efforts, it should have been clear to them well before February 2019, to the father in particular, that far more urgent and definitive action was needed. The risk to young children is clear where meaningful time with the other parent is impeded and the child/parent relationship is unsupported. It is good that the children's time with their father was increased after this case started but, as the father pointed out, that only happened as a result of the recommendations contained in the OCL report.

[145] In *L. (A.G.) v. D. (K.B.)*[87] McWatt J. (as she then was) dealt with the concept and qualities of alienation influence and its effect on families.

> Dr. Fidler testified that children are more susceptible to alienation in certain age ranges. She explained that from 5 to 8 years of age, children can have shifting allegiances to parents. Once a child's brain develops to a point where the child can hold both positive and negative information about a parent, though, children can become confused. They begin to question whether a parent is telling the truth about things in general or the other parent in particular. When the child reaches the ages of 10 or 11 years old, it can become very difficult for them to hold the different views they may have come to about their parents and, as a result, may choose to side with one parent over the other in order to free themselves from emotional conflict and the stress it causes. This becomes extreme in alienated children of 12 years old and older. These children, Dr. Fidler testified, can internalize the effects of alienation to the point where even the alienating parent could not get the child to visit the alienated parent. The child creates its own reasons to dislike or hate the alienated parent – ones which are not real.

[146] JB was 8 3/4 years old when his parents separated, EB was just 6 years old and SB an infant.

[147] In *Hazelton v. Forchuk*[88], Gray J. highlighted the importance of quick and consequential action where alienation is suspected, warning that inaction poses serious risks to children's relationship with their parents,

> "…where parental alienation exists, **it is manifestly important that steps be taken immediately**. If they are not, the situation will only get worse…**At some**

[87] 2009 CarswellOnt 188.
[88] 2017 ONSC 2282 at para. 75.

> **point, the restoration of a relationship with the other parent becomes** much more difficult, if not impossible. (bolding added)

[148] In *Moreton v. Inthavixay*[89] the Court of Appeal observed that in relocation cases it was in children's best interests to have " the issue determined as quickly as possible to provide stability to [the children's] living arrangements, finality and closure".[90]

[149] In the OCL report, Ms. Garibotti implicitly recognized the children's emotional and psychological investment, and identification, with their mother and her wish, in relocating, and cautioned about the impact on them should that be refused.

> The parties must be careful in their communication to the children of the recommendations and next steps in their lives. The children have articulated to their respective therapists, and to this clinician, their desire to move and will be disappointed if they cannot go. They expressed concern with their mother's feelings, and would be worried about her happiness. In particular, JB has articulated that he has observed his mother sad, and feels it is his father's fault. It would be concerning if they were told that they cannot move because of their father. This would only continue to impede on the children's relationship with their father that must be resolved and encouraged. It is recommended that this report is shared with the children's therapists, and the children should be provided the opportunity to process their feelings, in a neutral healthy manner.[91]

[150] The OCL report and the VOCR are not determinative of the relocation issue but merely pieces of evidence, often very helpful, for the Court's consideration. The evidence of both clinicians - Ms, Garibotti's more comprehensive but cautious and Ms. Stefanutti's more limited but emphatic--is clear that the children are closer emotionally and psychologically to their mother than their father. The trial evidence also supports this conclusion. While the children's views and preferences, especially those of JB and EB, are not to be confused with their best interests, it is impossible to unwind the last five and a half years and, given the change in family constellations, there is considerable risk to the children's best interests if relocation is refused. That concern outweighs the risk of further compromise to their relationship with their father. Despite the Court's concerns about the mother's attitude toward the father- Ms. Garibotti noted that the mother could be expected to "comply with court orders and access schedules, but nothing more…"[92]-she has complied with the parenting time Order of the Court, increased the children's time with their father in excess of that Order and put forward a comprehensive, thoughtful plan.

[151] The mother may relocate with the children to Ohio. She will be expected to demonstrate a flexibility in the children's parenting arrangements and time with their father as she has represented to the Court (see paragraphs 47 and 48 above): the father will be expected to demonstrate a much greater degree of timely responsiveness to matters involving the

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[89] 2021 ONCA 501.
[90] *Ibid* at para. 10.
[91] *Supra* 20 at p. 22.
[92] *Ibid.*

children than he has shown to date. While he asked that the court require the mother to obtain an Order in Ohio mirroring any parenting Order made by this court, no evidence was led as to what that would involve in terms of cost, efficacy or how, if at all, his support obligations (including payment of support arrears) might incentivize compliance.

[152] Schedule A accompanying, and forming part of, these reasons combines elements of the parenting plans filed by each of the parties.

Part 9: Support

[153] The mother claims child and spousal support. Although she claimed basic child support in accordance with the *Child Support Guidelines*[93] (the "*Guidelines*"), she acknowledged the additional costs to the father should relocation be allowed; in that event, she was prepared to accept some reduction for his travel, stay and other expenses in Ohio, which she estimated would total about $600 each time. She also claims that the father should pay $71,127.33 for s. 7 expense arrears and that she would be prepared, on a going-forward basis, to accept the 70%(father)/30%(mother) allocation for those expenses as ordered in 2019 by McGee J. In addition, she seeks $500 monthly spousal support but conceded in her closing submissions that if the father paid guideline child support, s. 7 expense arrears and his share of those future expenses, an Order for spousal support would be precluded.

[154] The father submitted that if relocation was allowed the amount of child support should be reduced to account for his increased parenting time costs in Ohio. These would comprise flights, accommodations, rental cars, gas and ancillary expenses. He contends that the amount of s. 7 expenses awarded by Bennett J. should be reduced to $47,331.86. He agreed with the 70/30 expense allocation. As for spousal support, he submitted that even if the Court found that the mother was entitled to spousal support, nothing should be awarded due to his child support obligations.

[155] Section 15.1 of the *Act* deals with child support, the relevant provisions of which are (1), (3), (4) and (6).

> **Child support order**
>
> **15.1 (1)** A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.
>
> **Guidelines apply**
>
> **(3)** A court making an order under subsection (1)…shall do so in **accordance** with the applicable guidelines.

[93] SOR/97-175, as am.

Terms and conditions

(4) The court may make an order under subsection (1)…for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as it thinks fit and just.

Reasons

(6) Where the court awards, pursuant to subsection (5), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall record its reasons for having done so.

[156] In addition to table child support, the mother has claimed a contribution by the father to the children's special or extraordinary expenses pursuant to s. 7 of the *Guidelines.*

Special or extraordinary expenses

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

(a) childcare expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;

(b) that portion of the medical and dental insurance premiums attributable to the child;

(c) health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;

(e) expenses for post-secondary education; and

(f) extraordinary expenses for extracurricular activities.

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term ***extraordinary expenses*** means

(a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

(i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,

(ii) the nature and number of the educational programs and extracurricular activities,

(iii) any special needs and talents of the child or children,

(iv) the overall cost of the programs and activities, and

(v) any other similar factor that the court considers relevant.

Sharing of expense

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

Subsidies, tax deductions, etc.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

Universal child care benefit

(4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

[157] Section 15.2 of the *Act* deals with spousal support. Subsections (1), (3), (4) and (6) are relevant.

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Terms and conditions

(3) The court may make an order under subsection (1)…for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making an order under subsection (1)…the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

Objectives of spousal support order

(6) An order made under subsection (1)…that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Part 10: Support evidence and analysis

[158] The mother has a Bachelor of Art in Applied Sciences with a specialization in Therapeutic Recreation, and a Masters of Science in Rehabilitation Services. While not directly related to her education, the mother was employed by a Toronto health sciences hospital in a cultural engagement capacity principally serving the Jewish community. Excepting maternity leaves after the births of JB and EB, she worked for the hospital until shortly before SB was born in 2015, after which she took maternity leave. This leave was supposed

to expire in August 2016 but was extended to February 2017 because the mother was being treated for PTSD and chronic back issues. When she was scheduled to return to work in February 2017, she learned that her former position had been eliminated due to restructuring. She accepted a severance package and began to seek out new employment.

[159] In January 2018 the mother was injured when she was struck by a truck while walking. Between February and August of that year she made at least a dozen job applications without success, mostly focusing on securing employment in Cleveland. A possible job offer in Cleveland was declined when negotiations between the parties about relocation broke down. The mother's assessed 2018 income was "$0".

[160] When the parties appeared before McGee J. for the case conference on June 11, 2019, the mother agreed to have an income of $60,000 a year imputed to her for the purpose of sharing the children's s. 7 expenses. She had been working then since March for a local company as an Account Manager but was laid off on July 26th when the company ran into financial difficulties. The mother's assessed income for 2019 was $12,188.

[161] In 2020 the mother began working for two different employers (one of which jobs also ended for factors beyond her control) but which, with CERB, resulted in her earning $22,989.35. At the time of trial, she had been working full-time since mid-October 2020 as a Membership Coordinator in the Jewish community for the largest Orthodox Synagogue in North America. Although there was some cultural engagement overlap with her former employment, she had not worked in a capacity corresponding to her professional degrees since 2013. She denied that she had not sought out more remunerative employment consistent with her education because of her proposed move to Ohio. While she had no confirmed offer of employment if a relocation Order was made she had made inquiries when there and expressed confidence that as a result of contacts made at her former employment in Toronto and with a federation in Cleveland, she could secure a job working in a cultural engagement capacity as well as work with seniors in the areas of dementia and mental health. As recently as April 2021 she understood that such an opportunity was open to her. The income she could expect from this employment or from working in research at the local university (Case Western) would be significantly higher than in Ontario although there was no evidence before the Court about comparable salary levels.

[162] The mother's trial financial statement disclosed a total income of $85,118.04. On a monthly basis this figure comprises employment income ($1,343.38) and the balance child support from the father pursuant to the 2019 Order of McGee J. ($2,639.30), Child Tax Benefits ($2,100.39) and Community Charity Donations ($1,000).

[163] The father is a T4 employee. His trial financial statement disclosed a 2020 assessed income of $152,249.34 and a projected income for 2021 of $152,281.92 that he estimated in his closing submissions would rise to $153,186. All figures include a bonus which has amounted to $30,000 a year from 2017 to 2019. The Court will adopt a $153,000 level of income. Table child support for three children for a payor earning this amount is $2,742 monthly.

[164] The parties acknowledge that between January 2016 (when the father began to pay the mother uncharacterized support of $2,100) and December 31, 2020, he overpaid $15,623.96 table child support.[94] He shall be entitled to a credit in that amount, rounded to $15,624.

[165] A significant issue between the parties has been the children's s. 7 expenses. This was one of the issues before Bennett J. on January 22, 2021. The circumstances leading to that Order and its relevance to the s.7 expense trial issue involve the following facts:

(a) The children were involved in extracurricular activities before their parents separated and participated in dance, hockey, music and skating afterwards but the evidence about the range of their activities pre-separation is unclear;

(b) The parties agreed that the mother enrolled the children in dance, music and hockey without either first consulting the father or obtaining his agreement/written consent;

(c) Post-separation the mother incurred expenses for the children's counselling, daycare (SB), dental expenses (the uninsured portion), Hebrew tutoring (EB), summer camp and private school tuition. The children attended private school before separation. Part of this cost has always been funded by charity;

(d) The mother enrolled EB in Hebrew tutoring without first consulting the father;

(e) Paragraph 13 of the Order made on June 11, 2019 by McGee J. provided,

> The parties shall share mutually agreed upon Section 7 expenses (school tuition, daycare, uninsured medical/dental, counselling/therapy) with the Respondent paying 70% and the Applicant paying 30%. For the purpose of sharing Section 7 expenses, the Applicant's income shall be imputed at $60,000.00, and the Respondent's income shall be $146,016.00.

(f) Apart from the monthly support he paid before and after the McGee J. Order, the father did not contribute to the children's extracurricular activity expenses or their presumptive s. 7 expenses;

(g) The father was asked many times to contribute to the children's expenses. On September 30, 2019 the mother provided him with her initial summary of them. In his January 26, 2021 Ruling Bennett J. accepted (as does this Court) the mother's evidence that in April 2020 the father had copies of all the expense receipts. Bennett J. also accepted that by the time of the parties' first Settlement Conference held by Himel J. on September 14, 2020 the father had not responded, or objected, to the mother's $177,920.46 reimbursement claim;

[94] The $2,100 was paid monthly until July 2017 when the amount was increased to $3,000 monthly to May 2019 after which McGee J. ordered that $2,639 be paid. The parties' consensus is set out in paragraph 87 of the mother's closing submissions and paragraph 38 of the father's closing submissions.

(h) At the Settlement Conference Himel J. ordered the father to respond to the mother's expense claim by September 30, 2021. The father complied and contested $28,884.86 of the expenses. Putting that amount aside for later determination at trial, the balance remaining totalled $149,035.60 which, pursuant to the 70/30 allocation ordered by McGee J., resulted in a figure of $104,324.92, rounded to $104,000;

(i) On October 10, 2020 the mother provided the father with further expense receipts for daycare, therapy and school uniform costs (paragraph 4 of the McGee J. Order required the father to purchase uniforms prior to the start of the school year in September). A motion scheduled for October 14, 2020 was adjourned to January 20, 2021;

(j) At a second Settlement Conference held by Himel J. on December 3, 2020 the father was ordered to advise the mother by December 10th about his position on contributing to payment of the $104,000 in s. 7 expenses which he had not contested. He was also ordered to provide a re-payment plan. The father did neither until January 21, 2021 after he was granted a two-day adjournment of the mother's motion to the next day;

(k) When the motion was argued on January 22, 2021 Bennett J. noted that the mother revised her claim to $79,993.29 because she had found an error in her tuition expense calculations after she was provided with the father's (late-served) response to her motion. The father was ordered to pay this amount without prejudice to his later arguing at trial that a lesser amount was owing.[95]

[166] Paragraphs 1, 2 and 4 to 6 of the Order made by Bennett J. provided as follows:

> 1.The respondent shall pay to the Applicant representing his share of outstanding Section 7 expenses the sum of $79,993.00.
>
> 2.This amount shall be payable by him at the rate of $1,500 per month, plus an additional $10,000 payment to be made by the Respondent to the Applicant each December 15 when his bonus is paid to him by his employer.
>
> 4.In addition to the above, on a go forward basis, the Respondent shall pay when due, 70% of the children's school tuition.
>
> 5.To clarify the 2019 Order of Justice McGee, he shall also pay 70% of any other reasonable Section 7 expenses for the children. The Applicant shall seek his consent prior to incurring any of those expenses for which she is seeking reimbursement which consent shall not be unreasonably withheld.
>
> 6.The requirement that the respondent pay $79,993.79 is without prejudice to the Respondent seeking clarification of the December 3, 2020 Endorsement of Justice Himel. Should Her Honour render a further Endorsement indicating that this Court's interpretation of that calculation is incorrect, (or should Her Honour consent to the release of the transcript of that Conference and a reading

[95] *Supra* 6 at para. 15.

> of that transcript reveals that this Court misinterpreted Her Honour's December 3, 2020 Endorsement) then the Respondent may argue at Trial that the $79,993.29 ordered herein should be recalculated.

[167] Pursuant to paragraph 6 of the Order, Himel J. authorized the release of the December 3, 2020 transcript. After it was released, the mother sought clarification of certain issues in Bennett J.'s ruling. These dealt primarily with the school years captured by the amount of the payment sought by the mother (2015 to the 2019-2020 school years) and setting the timing for the monthly $1,500 payments on the $79,993.29 ordered (on the 15th of every month starting February 15, 2021). Although the father was copied with the mother's written clarification request, the Court noted that he did not respond. Nothing in the clarification request or the Order made by Bennett J. on April 21st dealt with the costs of a full-time caregiver in 2016 and 2017 which the mother claimed as part of the $79,993.29 ordered. This is noteworthy because the father disputed at trial that he should be obligated to contribute to this expense.

[168] The other s. 7 expense issues for trial involved the father's claim that a further reduction of $17,746 should be allowed relating to the $28,884.86 in expenses to which he had objected on September 30, 2020.

The caregiver costs

[169] The mother claimed that she incurred $25,422 in total for this expense in 2016 and 2017 in respect to which the father's presumptive contribution would be $17,795.47 after applying a 70/30 allocation. There was no evidence that the parties had incurred a full-time *live-in* caregiving expense before the parties separated: the mother acknowledged in cross-examination that she had not obtained the father's consent before incurring this expense.

[170] The father contended that during the period for which his contribution was sought, the mother was either not working or only working part-time. The facts are that the mother was on maternity leave in 2016 until February 2017 after which she accepted a severance package, returning to employment outside the home in early 2018. The mother argued that SB's age warranted some caregiving contribution by the father and that the amount of her claim was not unreasonable. The Court disagrees.

[171] In *Romita v Humphries*[96], a case to which the mother referred the Court (although for a different proposition) the Court held that where a parent makes a choice to incur a s. 7 expense for which a contribution from the other parent is sought without that parent's knowledge or involvement, it would not be fair to require the other parent to contribute retroactively to the expense. There was no evidence that the mother provided the father with the caregiver's cost before September 2019 and no persuasive evidence that live-in caregiving assistance was needed while the mother was not working.

[172] The father is entitled to a $17,795.47 reduction in the amount of arrears awarded by Bennett J.

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[96] 2018 ONCJ 18 at para. 189.

Contested expenses ($28,884.86)

[173] After the father was presented with the mother's initial $177,920.46 claim, he contested $28,884.96 of that amount. When the mother's support motion was argued before Bennett J., the Court only dealt with that part of the mother's claim that was (at that time) undisputed by the father. The father argued at trial that this contested amount comprised items totalling $17,746 and represented the total expenses for summer and school break camps, tutoring, extra-curricular programs and psychological assessments for EB. These totalled $17,746. There was no evidence from the father setting out his objection to $11,138.96 above this amount.

[174] Dealing with each of the contested items, the Court finds the following:

(a) Summer and school break camps ($10,974.25). The father claimed that he had never agreed to this expense, the historical cost of which was primarily covered by subsidy. He said that he would have been willing, if asked, to have the children spend parts of their time under this category with him after the parties separated. The children had, however, attended camps before then but, afterwards, the mother had changed to camps having higher fees. He also said (and the mother did not disagree) that the amount claimed represented the total cost. He was prepared to contribute to 50% of this expense ($5,487.12, rounded to $5,487). The father's position is not unreasonable. The mother could have proposed that the children spend some of their "camp" time with their father, and she could have consulted and kept him apprised of the costs. The father shall contribute $5,487 to this expense;

(b) Tutoring ($2,430). The father disputed that he should be required to contribute to this expense because his siblings are teachers and could have provided tutoring at no cost. Even so, the evidence is clear that EB had been assessed as having a learning disability and ADHD. She had an IEP at her school. The evidence is also unchallenged that EB's academic performance had improved since separation. The Court is persuaded that even if the father was not consulted beforehand he should have been aware that EB was being tutored at some point afterwards. It is not unreasonable to conclude that the child benefitted. The father shall contribute 70% of this expense, or $1701, rounded to $1700;

(c) Extra-curricular programs ($2,475.01). Ordinarily this expense is captured by table support. The Order of McGee J. not only set out what expenses would fall within this category (and extra-curricular programs were not identified in the parties' Consent on which the Order was based) but the Order also required the parties' mutual consent. While the father may have been aware of some of the children's activities, they do not fit within the definition of an extraordinary expense to which s. 7(1.1)(b)(iv) and (v) of the *Guidelines* apply. The mother's claim for this expense is denied;

(d) EB's psychological assessment ($1,885). EB has special needs. The Order of McGee J. recognized this. The father proposed that, if relocation was denied, EB continue with her current therapist: the mother proposed this, too, but the sessions done

remotely. The father's objection was less about the necessity for this cost than with the mother's untimely submission to him of the information required so that he could submit a claim to his insurer which, according to his unchallenged evidence, he could no longer claim becuase it was staledated. The father shall pay one-half of the allocated 70% of this expense, or $659.75, rounded to $660.

Summary of table and s. 7 expense claims

[175] Until such time as the mother relocates, the father shall pay *Guideline* table support for the children in the amount of $2,742 monthly effective January 1, 2021. This amount is based on the *Guidelines* for a parent earning $153,000.

[176] Based on the Bennett J. Order, the adjusted amount owing by the father for his unpaid share of s. 7 expenses is $81,183.78 (i.e. $79,993.29+$11,138.96-$17,795.47+ $5,487+$1,700+$660) rounded to $81,184.

[177] Subject to any adjustment for table support paid in 2021 to date, the father is entitled to a credit of $15,624 for overpaid table support. Accordingly, he owes the mother $65,560 for s. 7 expenses (i.e. $81,184 -$15,624).

[178] Neither party addressed in their evidence or submissions, and the Order of Bennett J. was otherwise unclear as to, the effective date corresponding to the calculation of the arrears although it appears to be December 31, 2020. Leave is granted to the parties to address this issue, if necessary, after a scheduling teleconference is held with the Court to be arranged though the judicial assistant.

Part 11: Future table and s.7 expense support

Table support

[179] The mother proposed that if relocation was allowed, she was prepared to accept $2,000 monthly for child support instead of the *Guideline* table amount to account for the cost of the father's travel, accommodation and other expenses in Ohio. This reduction was based on her estimate of the father's cost of exercising parenting time in Ohio for five non-consecutive weekends over a four-night period.

[180] In his Opening Trial Statement, the father proposed that no table support be paid but modified that position in his closing submissions to ask that table support be reduced on a prospective basis but did not tell the Court what figure he proposed.

[181] Absent better evidence from the parties, and the fact that the father will have additional parenting time costs related to the Jewish Holidays, the mother's proposal is not unreasonable. Effective the first day of the first month that the children reside in Ohio, the father shall pay $2,000 monthly child support. This amount may be adjusted annually starting July 1, 2022. At that time the $2,000 amount payable shall be varied by that percentage by which the father's assessed income for 2021 exceeds his assessed 2020

income, and so on in future years.[97] If the father's 2021 income is less, the amount payable shall be adjusted according to the preceding formula.

S. 7 expenses

[182] The mother's s. 7 arrears claim in these proceedings has involved the father's failure, in a timely way (or at all), to pay his share, or the entirety of his share, of the children's 7 expenses. This has been a constant complaint. Bennett J. noted in his Ruling that it fell to the mother and her family to keep the children in private school (in particular) because that was an important part of their religion and culture. The father claimed credit for charitable contributions for schooling from his family.

[183] On November 12, 2020, this Court dealt with a motion by the mother for leave to file an affidavit in advance of a support motion. She wished to file more than two hundred and twenty-five pages of exhibits mostly consisting of expense receipts and ledgers. In reviewing the material, this Court observed that "…it appears that some child-related expenses may not even qualify as a s. 7 expense. The parties should take guidance from s. 7 of the Guidelines as to what constitutes a s. 7 expense and be mindful that a non-table expense for which a contribution is sought should first involve notice and consultation". The mother's request for leave was dismissed without prejudice to its renewal if the mother complied with the Court's practice. Himel J. dealt with this issue at the conferences held on December 3 and 10, 2020 which led, ultimately, to the motion being heard by Bennett J. on January 22, 2021. The mother was claiming that the children's s. 7 expenses totalled $179,920.46.

[184] A significant component of the expenses claimed involved school. Before and after the parties separated, the children attended Jewish private schools whose expense was partially subsidized, the amount of the subsidy varying annually. According to calculations made by the mother, the 2017-2020 average annual subsidy was $19,025. The father did not substantially disagree, although he thought that the subsidies were increasing. He submitted that he should only be required to contribute seventy percent (70%) of the private school tuition based on the children's 2020/2021 school year, the net cost of which to the parties was $15,575 after accounting for that year's subsidy of $32,815.[98] That year was the lowest of the four years, the three year average before then being about $20,370. The father reduced this amount to $10,500 and asked the Court in his submissions to cap his private school contribution exposure to that figure although he testified that he was prepared to contribute $10,902 a year. He was also prepared to pay fifty percent (50%) of the children's camp expenses (also subsidized) although his proposed Ohio parenting plan for the summer school break had the children spending seven of their ten weeks' time with him. There was no evidence whether he planned any camp for them or about any likely subsidy. The father was not prepared to pay for any other contributory expense, or more for school and camp.

[97] The father's 2020 Notice of Assessment was unavailable for trial. He filed a copy of his 2020 T4 Statement of Remuneration Paid that disclosed employment income of $155,249.34. The calculations on which the overpayment of table support was calculated relied on the T4 statement. Presumably this was the information before Bennett J.
[98] Exhibit #66. The pre-subsidy cost for all three children was $48,690.

[185] The mother's evidence is that the private school expense for JB would increase in September 2021 as he would graduate to another school. The mother estimated that this would increase the total of children's private school costs from $48,690 for 2020/2021 to $61,875 for 2021/2022. After her estimate of the likely subsidy ($19,790), the father's proportionate share of the expense (again using a 70/30 ratio) would amount to $29,460, or about $2,455 monthly. As already noted, the mother investigated private school costs in Cleveland. Private school costs for all the children, adjusted for the Canada/United States exchange rate, would amount to $26,120 (CAD) of which the father's contributory share would amount to $18,284, or $1,524 (rounded) monthly. The father testified that he had no idea whether the children's private school costs would be higher or lower for future years in Ontario nor any idea what the subsidized funding was available for the children in Ohio, particularly with respect to JB.

[186] Many of the children's other expenses for which the mother was seeking a contribution earlier in these proceedings involved children's recreational activities. These should be captured by the table support paid. In Schedule B to her trial financial statement dealing with Special or Extraordinary Expenses for the Children, the mother claimed an annual amount of $19,675, most of which related to the children's tuition ($15,575, as above) and the balance comprised counselling/therapy for EB ($3,600) and dental costs ($500) not covered by insurance. Mr. Goldish testified that he had a comprehensive health benefits plan through his employment having a $7,000 (USD) deductible and that the mother and the parties' children were already covered. The mother testified that, after payment of the deductible, there was complete coverage. While she also testified that EB's therapy could be continued remotely from Ontario, there was no evidence whether that kind of cost could be covered under Mr. Goldish's benefits plan. There was no evidence either of future camp expenses for any of the children, regardless where they resided, or what might be the available subsidy.

[187] Given the father's history, and the evidence at trial, of his failure to respond to payment (and many other) deadlines, the mother submitted that the Court should calculate in advance the father's share for enforcement purposes of the children's s. 7 expenses (to include tuition and activities), leaving to the Court the task of determining the structure of that advance payment if other than a monthly amount. Absent any better proposal, it makes sense that there should be added to the table support ordered an average amount to account for these expenses. The challenge, however, is determining that amount.

[188] The most significant expenses for the children have been, and are likely to be, private school and camp. These have been generously subsidized by the parties' Orthodox community and related charities, before and after separation, and will likely continue to be subsidized in the future although their amounts can't be determined at this time with any satisfactory precision. If the father paid table support of $2,000 a month after relocation and contributed $1,524 a month for the children's private school costs then he would be left with a net disposable income of $3,662 a month, *excluding his bonus*. If mother's figures for therapy and dental services were included, the father's net disposable income, again before his bonus, would be $3,423 a month. The father's trial financial statement disclosed that he incurred $2,450 monthly for housing, $235.58 for utilities and $750 for household expenses, totalling $3,435.58. None of these figures was disputed by the mother.

[189] Bennett J. ordered the father to pay $1,500 a month on account of the s. 7 arrears and $10,000 a year from the father's end of year bonus until the s.7 debt was retired. As already noted, that bonus has been $30,000 for several years.

[190] It is clear that, excluding his bonus, if the father was required to pay $3,423 a month for child support, he would have $12.58 left over monthly with which to pay for his transportation, personal and other living expenses. Parenting time in Ohio would be financially impossible. Receipt of a $30,000 bonus would attract a 48.29% marginal tax, leaving the father with about $15,513 before the $10,000 payment to the mother, or $5,513 net.

[191] The evidence supports this Court finding that the child support arrears arose as a result of the actions of both parties. The mother continued to incur a level of expense for the children inconsistent with the changed circumstances of the family. She was either not working or earning less than she earned before separation and expected the father to subsidize what she spent without, in most instances, his knowledge or agreement in order to maintain a pre-separation lifestyle made even less affordable by uninsured therapy and significant legal costs. As for the father, he lived with his parents for two years, during which many of the expenses for the children were incurred by the mother but he ignored her repeated requests to fund what she maintained were his financial obligations and chose instead to redirect what disposable income he had available to regularly travel (for non-business purposes) to New York and Los Angeles (2018, 2019 and early 2020 before Covid-19).

[192] The mother submitted that the father has demonstrated "an ability to borrow significant sums of money."[99] There was evidence, too, that a trust managed by extended members of the father's family regularly made charitable contributions, some to the children's private school, but there was no evidence at trial about that trust, its settlor(s), its terms, beneficiaries or its assets.[100] In this case absence of evidence really is absence of evidence. A court should not be expected to guess.

[193] The fact is that neither party acted in a financially prudent way in the aftermath of their separation. The mother's actions are more justifiable than those of the father: her decision to re-partner and relocate to Ohio is a lateral move that will unlikely change her combined family's financial dynamics in the near term but, at least, offers her better employment prospects and happiness. The father will have to deal with the financial impact of the children's relocation to Ohio. This Court must adjust the father's obligation to pay the s. 7 arrears so as not to irreparably jeopardize his ability to have parenting time with the children.

[194] The dilemma posed by relocation in this case is that, irrespective of either parties' Ohio plan or Schedule A, it is financially unaffordable for the father unless the payment terms (not the amount) of the temporary Order are varied. Even so, the viability of the children's private schooling and payment of their other presumptive s. 7 expenses is fragile. Either way the children's best interests are compromised. Their relationship with their father and

[99] Closing submissions at para. 89.
[100] *Supra* 6. Bennett J. also referenced the trust at paras 104-109.

his extended family must be maintained. This will come as a cost to both parties who will need to better coordinate their spending expectations and behaviour to minimize further disruption to the children.

[195] Accordingly, the monthly amount payable by the father for the children's s. 7 expenses as set out in the temporary Order shall be varied to $1,250 monthly effective December 1, 2021, of which $500 shall be attributable to arrears and $750 for prospective s. 7 expenses. The father shall not be responsible for any such prospective expense in excess of this $750 amount without his written consent: the mother may apply those funds to whatever child-related expense she chooses.

[196] The father shall also pay annually the lesser of one-third and $10,000 of his annual bonus to the mother to be applied to the s. 7 expenses arrears until they are extinguished.

Part 12: Spousal support

[197] Section 15.3 of the *Act* deals with the priority to be given to child support Orders where there is also a spousal support claim and the Court's obligation to give reasons if the amount of spousal support is less than would otherwise be appropriate.

> **Priority to child support**
>
> **15.3 (1)** Where a court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.
>
> **Reasons**
>
> **(2)** Where, as a result of giving priority to child support, the court is unable to make a spousal support order or the court makes a spousal support order in an amount that is less than it otherwise would have been, the court shall record its reasons for having done so.
>
> **Consequences of reduction or termination of child support order**
>
> **(3)** Where, as a result of giving priority to child support, a spousal support order was not made, or the amount of a spousal support order is less than it otherwise would have been, any subsequent reduction or termination of that child support constitutes a change of circumstances for the purposes of applying for a spousal support order, or a variation order in respect of the spousal support order, as the case may be.

[198] The mother sought spousal support but abandoned that claim in her closing submissions *provided that the father paid child support.* That position was advanced, however, in the context of the larger child support claim she was making. If the Court were to determine that spousal support was owing the mother maintained that the duration should be 5.25 to 18 years and the monthly amount range between $261 to $900.

[199] The father's position was that the mother did not meet the entitlement threshold for support, that the parties' marriage was only ten years (despite three children being born)-so it was not long term-and that the mother had worked full-time throughout the period of married cohabitation (except for maternity leaves). The parties were thirty-two years old when they separated and the mother has remarried. She testified that she had every intention of securing full-time employment in Ohio, likely for more money than she could earn in Ontario.

[200] Given the impact of the child support Order on the father's financial circumstances, no Order for spousal support will be made *at this time.* The issues of the mother's entitlement to spousal support, its duration and amount is dismissed without prejudice to the mother renewing her request before December 31, 2024, after which her claim is extinguished.

Part 13: Equalization

[201] Although both parties claimed equalization of their net family properties, and the mother raised the equalization issue in her Opening Trial Statement (without elaborating any further), it was not an issue for trial as set out in the Trial Scheduling Order. The parties' trial financial statements disclosed that neither had any net worth when they separated. No net family property statements were filed at trial and no evidence was led dealing with this issue.

[202] Each party's claim for an equalization of net family properties is dismissed.

Part 14: Disposition

[203] The following is ordered:

(a) The Parenting Plan appended to, and forming part of, these Reasons shall apply to the children's primary residency, decision-making, relocation and parenting times;

(b) Effective January 1, 2021 the father shall pay to the mother table child support in the amount of $2,742 and thereafter on the first day of every following month until the first day of the first month following the children's relocation to Ohio when the monthly amount shall be varied to $2,000 monthly. This amount is based on the *Guidelines* tables for a parent earning $153,000 adjusted to account for the father's parenting time costs following relocation;

(c) The monthly amount of child support set out in (b) may be adjusted annually starting July 1, 2022. The amount payable shall be varied by that percentage by which the father's assessed income from 2021 exceeds his assessed income for 2020. If the father's 2021 income is less, the amount payable shall be adjusted according to the preceding formula;

(d) The father shall pay to the mother s.7 expenses in the amount of $65,560 calculated as of December 31, 2020. This amount is subject to adjustment for any difference

between the monthly payments paid by the father in 2021 pursuant to the Order of McGee J. and subparagraph (b) of this Order;

(e) The father shall be credited with all payments made pursuant to paragraph 2 of the January 26, 2021 Order of Bennett J;

(f) Effective December 1, 2021, paragraph 2 of the Order of Bennett J. shall be varied. The father shall pay $1,250 monthly to the mother for the children's s. 7 expenses of which $500 shall be attributed to the arrears as set out in (d) above and $750 shall be applied to the children's prospective s. 7 expenses. Neither party shall be required to contribute to any other expense for the children without the other party's written consent or court Order;

(g) Paragraph 2 of the Order of Bennett J. is also varied. The father shall pay the lesser of one-third or $10,000 of his annual bonus to be applied to the arrears set out in (d) above effective December 2021 (or whenever the bonus is paid). The father shall provide to the mother full written details of his bonus, as provided to him by his employer, by December 31st of each year. The father's obligation to make this remittance shall continue until the support arrears set out in (d) above, as adjusted, are fully paid. Full payment of the arrears will constitute a material change in circumstance with respect to child and, if applicable, spousal support;

(h) No spousal support shall be paid by the father to the mother at this time. The issues of entitlement, duration and amount are dismissed without prejudice to the mother moving for a determination of these issues before December 31, 2024;

(i) The father shall designate the mother as trustee for the children as beneficiaries of his life insurance through employment and shall provide to the mother by January 31, 2022 satisfactory evidence of coverage. This obligation shall continue for so long as the children are entitled to support. The obligation of the father's estate for support is not exhausted by payment of insurance proceeds;

(j) The father's support obligation shall be a first charge on his estate;

(k) For so long as the father is entitled to medical and health-related benefits through his employment, he shall identify the children as eligible dependants and shall provide satisfactory evidence of that coverage to the mother by January 31, 2022 and, upon request, on each anniversary date thereafter for as long as the children, or any of them, are eligible for coverage. In the event of any loss or change of employment, the father shall so advise the mother within fifteen days of such event and, in the event of a change in employment that provides benefits, provide to the mother full details of the benefits with thirty days of commencement of employment;

(l) Any party submitting a claim for health benefits for the children shall be reimbursed within seven (7) days of the claim being processed. Upon request, a party shall sign an authorization and direction (to be prepared by the other party at their expense)

authorizing the other party to communicate with the insurer on the same basis as the covered party.

[204] Leave is given to the parties to schedule a conference with the court to be held within two months of relocation to clarify or resolve any ambiguities in the Schedule A Parenting Order. Any such request shall be accompanied by a joint letter from counsel identifying the issue(s), without argument. This will not be an opportunity to reargue or dispute the terms of Schedule A but to facilitate their implementation. Any such event may be preceded by a teleconference with counsel (no clients).

Part 14: Costs

[205] The Court is not inclined to consider an award of costs. The parties have negligible assets, and each is heavily in debt. The mother disclosed debts exceeding $287,000 of which over $200,000 is owed to members of her family. The father has debts exceeding $196,000 (including the s.7 support arrears ordered by Bennett J. as adjusted by this judgment) of which $100,000 is owed to his mother for legal expenses related to this trial. Any costs award is likely uncollectible. Even so, if either party wishes to claim costs, the following directions shall apply:

(a) The party seeking costs shall deliver their submissions by November 26, 2021;

(b) The responding party shall deliver their submissions by December 10, 2021;

(c) Reply (if any) to be delivered by December 17, 2021;

(d) All submissions shall be single page, double-spaced. In the case of (a) and (b) the limit shall be four pages; reply shall be two pages. These submissions shall be filed in the Continuing Record, and a copy of the filed material forwarded to the judicial assistant (Laura.Gosse@ontario.ca);

(e) Offers to Settle, Bills of Costs and any authorities upon which a party may wish to rely shall be filed by the above deadlines (also copied to the judicial assistant) but shall not form part of the Continuing Record;

(f) Counsel are to advise the judicial assistant when they have filed their material.

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Justice David A. Jarvis

Date: November 3, 2021

Schedule A

Parenting Plan

Relocation

1. The children shall primarily reside with their mother.

2. The mother and children are allowed to relocate to Cleveland Ohio.

Decision making

3. The parents shall share decision making with respect to any major decision related to the children's Health, Education, Religion and extra-curricular activities.

4. The parent with whom the children are residing shall make the daily decisions affecting their welfare.

5. In a health emergency, the parent with care of a child at that time shall make treatment decisions, on the advice of medical personnel. If a parent makes an emergency health decision, the parent who has made the decision must immediately inform the other parent.

6. The parents shall engage a parenting coordinator as appropriate and agreed, should they reach an impasse about any single major parenting decision (not involving an issue of support), an impasse being defined as the inability to make the decision within seventy-two (72) hours of an emergent issue arising, and within thirty (30) days of a non-emergent issue arising. The costs of the parenting coordinator shall be apportioned as determined by the parenting coordinator in their sole discretion and may be enforceable as support Order, or a credit to support otherwise payable, by filing an affidavit with the Director, Family Responsibility Office.

7. Neither party shall change the children's names without the written consent of the other parent.

Regular Parenting Time

8. The father shall have the children in his care for five (5) non-consecutive weekends as agreed, throughout the school year, in Ohio, from Thursday after school until Sunday at 7 pm. The father may extend this time to Monday drop off at school if he is able to do so provided that he gives the mother 14 days' written notice. These weekends shall be agreed upon by the parents at least 14 days in advance and, if no agreement is reached, it shall be the second weekend. The father's weekends for each school year shall be agreed upon by August 31st of each year starting August 31, 2022.

9. In addition to #8, for American Thanksgiving in alternating years starting in 2022, the children shall be with their father from 7 pm on the Wednesday before the start of the holiday until Sunday at 7 pm. The children shall be with their mother for odd-numbered years.

10. In further addition to #8, the children shall visit with their father in Toronto in May (Victoria Day weekend) from the Thursday after school until Sunday at 7 pm. The mother shall be responsible for facilitating the children's transportation to and from Toronto at her cost. In the alternative, the mother may elect to exchange the children at the Angola, NY exchange location, in which case the father will be entitled to a support credit of $750 to be applied, firstly, to child support arrears and, secondly, to on-going support if there are no arears.

11. The father shall have the children in his care during all winter school breaks every year from 11 am of the first day of winter break until 7 pm the day before school resumes.

12. Summer Break shall be defined as the period starting with the first Sunday after the last day of school until the Sunday before school resumes. All summer exchanges shall take place at 12 p.m. on Sunday.

13. The Father shall have the children in his care for 6 full weeks of their 10-week summer school Break, as follows:

    a. The first full three (3) calendar weeks of summer break from the first Sunday after school ends, and, the final full three (3) calendar weeks of summer break until the Sunday before school resumes; or,

    b. A total of seven (6) weeks over the summer break as otherwise agreed between the parties no later than March 30th each year.

14. If it is mutually agreed between the parties that the children will attend "sleep-away" camps for a period of a minimum of 4 weeks (or more as agreed), the Father shall have the children in his care for all other weeks of summer except for one week, which the Mother will have. Whether the children will attend "sleep-away" camps and for how long will be mutually decided between the parties by March 15th of each year.

15. All parenting exchanges (except for when the father elects to exercise his parenting time in Cleveland or during the specific time that the mother brings the children to Toronto as set out in para. 10) shall occur at the "Angola Travel Plaza", NY, or other mutually agreed upon time and location, as practicable. The parents shall both confirm the transfer at the agreed upon time and location in writing by 7 p.m. the evening before the transfer. If 7 p.m. the evening before the transfer coincides with a Jewish Holy Day where electronic communication is not permitted, such confirmation will occur in writing by 10am on the day of the Holy Day onset (*erev*).

Parenting Time (Jewish Holidays)

16. The parents shall equally share Jewish Holiday time, as follows:

a. **Purim** – The father shall have the children in his care on even-numbered years, after school prior to the Purim Eve until school resumes after the holiday. In odd-numbered years the children shall be with their mother.

b. **Passover –** Passover begins the morning after the last day of school prior to the holiday. The exchange from the first half to the second half would begin at 9 a.m. on the third intermediate day of Passover (Chol Hamoed). The holiday ends the day before school resumes. During even-numbered years, the father shall have the 2nd half of the holiday, and the mother shall have the 1st half of the holiday. During odd-numbered years, the mother shall have the 2nd half of the holiday, and the father shall have the 1st half of the holiday;

c. **Shavuos** – This holiday begins at 9 a.m. on the day prior to the holiday until school resumes after the holiday. The father shall have the children for even-numbered years, and the mother shall the children for odd-numbered years;

d. **Rosh Hashanah –** This holiday begins at 9 a.m. on the day prior to the holiday until school resumes after the holiday. The mother shall have the children for even-numbered years, and the father shall the children for odd-numbered years;

e. **Sukkot** – This holiday begins at 9 a.m. the morning after the last day of school prior to the holiday until 7 p.m. the evening before school resumes. The exchange from first half to second half of this holiday shall be at 9 a.m. on the 3rd intermediate day of Sukkot (Chol Hamoed). During even-numbered years, the mother shall have the 2nd half of the holiday, and the father shall have the 1st half of the holiday. During odd-numbered years, the father shall have the 2nd half of the holiday, and the mother shall have the 1st half of the holiday; and,

f. **Chanukah –** This holiday begins prior to the first night of Chanukah, after school, until the morning following the 8th night. The exchange shall be on the fifth night, either after school or if there is no school, at 4 p.m. During even-numbered years, the father shall have the 2nd half of the holiday, and the mother shall have the 1st half of the holiday. During odd-numbered years, the mother shall have the 2nd half of the holiday, and the father shall have the 1st half of the holiday;

Other parenting time terms

17. All parenting exchanges, except as otherwise provided herein, shall occur at 12 p.m. at the "Angola Travel Plaza", NY, or other mutually agreed upon time and location.

18. Each parent shall ensure that, depending with whom the children are then spending time, the children contact their mother on Mother's Day and their father on Father's day.

19. The children shall celebrate their birthdays in accordance with the regular parenting schedule above. The parent who has the children in their care shall arrange a video or telephone call between the children and the other parent on the child's birthday.

General parenting terms

20. Both parents, their spouses and extended family members may attend the children's extracurricular activities even if they occur when the children are not scheduled to be in the other parent's care. The parents shall cooperate in registering the children for extracurricular activities, shall not unreasonably withhold their consent to a child participating in an activity and shall ensure that the activity does not interfere with the child's time with the other parent, particularly the father without his written consent. The parents shall mutually exchange any information necessary for the other parent to participate.

21. Notwithstanding the above subparagraphs, if special occasions, extracurricular activities, friend's birthday parties, excursions or other opportunities become available to the children, or to either parent, each parent shall try to reasonably accommodate the other parent's request.

22. The parents shall encourage the children to respect and honour the other parent and the other parent's family and neither parent shall alienate or attempt to alienate or diminish the affections of the children from the other parent, or disparage or allow others to disparage the other parent in the presence of the children. The mother and father shall promote a healthy and ongoing relationship between the children and both of their extended families/friends and spouses. The children shall not be involved in or exposed to any animosities that may exist between the parents, or involving their respective families, friends or other relatives. There should be no unreasonable limitation on the ability of either parent's extended family contacting the children while they are in the other parent's care.

23. The mother shall have possession of the children's legal documents. The father shall cooperate in obtaining or renewing legal documents for the children. The mother shall provide the father with notarized copies of all such documents at her cost upon his request.

24. The children shall be permitted to call the non-residential parent from the residential parent's home as they wish. The parties are to ensure that they each have a working landline or cell phone so that the children can freely contact the other parent. The non-residential parent shall be able to call to speak with the children at the residential parent's home once daily a6 6 pm via facetime or video call. The residential parent shall ensure that the children are available for the call and that a method is available to enable or facilitate the call.

25. The parties shall continue to use Our Family Wizard to exchange all child-related information, save and except in emergency situations.

Travel

26. If either parent plans to travel with the children, that parent shall give the other notice of their plan at least sixty (60) days before the planned departure date and at least twenty-one (45) days before travel begins a detailed itinerary, including the name of any flight carrier, flight numbers, and flight times, accommodation, including address and telephone numbers, and details as to how to contact the children during the trip.

27. There shall be a standing annual Consent as between the parties, executed on or about January 1st each year as practicable, and relating to cross-border travel between Canada and the United States for the purpose of the children's residency there, and parenting time with their father.

28. If either parent plans to travel outside the continental United States or Canada, the travelling parent shall provide to the other parent a Travel Consent Form authorizing the children's travel for the other party to sign and have notarized. The cost of preparation of the Travel Consent and notarizing it shall be borne by the travelling parent.

29. The non-travelling parent shall not unreasonably withhold consent to the children's travel.

30. The non-travelling parent shall provide the notarized Travel Consent Form to the travelling parent within fourteen (14) days of it being provided to them.

31. If the father is the travelling party, the children's passports shall be provided to the father for travel at least 10 days before the proposed departure date. The father shall immediately return the passports to the mother when the children are returned to her care.