Citation: ☼R.A.L. v. C.L.D.
2024 BCPC 235

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File No: F-1342378
Registry: Prince George

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

IN THE MATTER OF
THE *FAMILY LAW ACT*, S.B.C. 2011 c. 25

BETWEEN:

R.A.L.

APPLICANT

AND:

C.L.D.

RESPONDENT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE J.T. DOULIS

Counsel for the Applicant:	A. Sarkaria
Counsel for the Respondent:	K.A. Pavao and A. Phipps
Place of Hearing:	Prince George, B.C.
Date of Hearing:	April 25, 26, 29; May 24, 30; June 3, 18; July 4, 2024
Date of Judgment:	August 12, 2024

INTRODUCTION

[1] The Applicant, R.L. was born [omitted for publication], and is now [omitted for publication] years old. The Respondent, C.D. was born on [omitted for publication], and is now [omitted for publication] years old. R.L. and C.D. cohabitated as intimate partners for approximately 11 months in 2012. They never married. R.L. and C.D. are the biological parents of D.L.L., age [omitted for publication], born [omitted for publication] ("D."). R.L. and C.D. have been living separate and apart since January 15, 2013, when D. was approximately [omitted for publication] old. They have both repartnered. Since 2013, through a series of agreements and court orders, R.L. and C.D. have shared equal parenting time with D. in Prince George, BC. Shared co-parenting is no longer feasible because R.L. had to relocate to the lower mainland for work. R.L. wants D. to reside primarily with him in [omitted for publication]. C.D. wants D. to reside primarily with her in Prince George. I have the daunting task of determining where D. will primarily reside.

ISSUE

[2] The primary issue the Court must decide is with D.'s primary residence and the allocation of parenting responsibilities and parenting time.

THE TRIAL

[3] This matter came before me for trial on April 25, 26, 29, May 24, 30, June 3, 18, 2024. There are future trial dates set for November 18, 19, and 22, 2024, with respect to issues of retroactive and ongoing child support.

[4] From the applicant, I heard from R.L., his wife, C.L., his mother A.L., and the mother of D.'s best friend, C.P. From the respondent, I heard from C.D. and her partner, G.M., and the principal of [omitted for publication] School, J.S.

[5] I received into evidence 17 exhibits, which include tabbed binders containing multiple documents.

BACKGROUND AND PROCEDURAL HISTORY

[6] C.D. and R.L. met in 2009 or 2010. They cohabited briefly on one or two occasions, depending on who is the more accurate historian. They last lived together in an intimate relationship from February 15, 2012 to January 15, 2013. Until recently, C.D. and R.L. lived in Prince George, BC.

[7] When C.D. and R.L. met, R.L. had a son from a previous relationship, K.J.L., born [omitted for publication] ("K."). K. lived primarily with his mother, J.L.A., in Penticton or Vernon. C.D. had a daughter from a previous relationship, E.C. E.'s biological father resides in Edmonton, Alberta. E. is or will soon be [omitted for publication] years old and resides primarily with C.D.

[8] In 2011 C.D. began working as a [omitted for publication] at Prince George [omitted for publication]. ("[omitted for publication]"). Over the years she advanced in this position and is now responsible for recruiting [omitted for publication] for [omitted for publication]. In addition to her full time job, C.D. also owned and operated a number of small businesses over the years.

[9] R.L. was a [omitted for publication] for the City of Prince George from April 8, 2005 to November 16, 2022. He is now a [omitted for publication] investigator for [omitted for publication] Canada Inc. ("[omitted for publication]"), which is based in the lower mainland.

[10] The parties commenced this family court file on January 29, 2013, upon filing their Separation Agreement (the "Separation Agreement") that was recorded in the Court Electronic Information System ("CEIS") Document # 1: Exhibit 1, Tab 1. At the conclusion of this trial there were more than 140 documents file in the CEIS system. Over the years, this matter has involved not only the parties themselves, but multiple judges, lawyers, and duty counsel. As this is just the first phase of a lengthy trial, I have set out below the procedural history to assist the parties navigating through the burgeoning court file.

[11] The Separation Agreement stated, among other things, that R.L. and C.D. agreed to share equally, guardianship and parenting time with D.

[12] On June 20, 2013, R.L. filed an Application Respecting Existing Orders or Agreements (CEIS #2) seeking to amend the parenting time schedule set out in the Separation Agreement. On that same day, he also filed an Affidavit (CEIS #3) in support of his June 20, 2013 Application (CEIS #2). On June 20, 2013, C.D. also filed an Application Respecting Existing Orders or Agreements (CEIS #4) seeking an order varying the Separation Agreement. On June 21, 2013, C.D. filed an Affidavit (CEIS #5) in response to R.L.'s Application (CEIS #2) and Affidavit (CEIS #3). On June 21, 2013, C.D. filed a Reply (CEIS #6) to R.L.'s June 20, 2013 Application (CEIS #2), together with an Affidavit (CEIS #5). On June 25, 2013, R.L. filed a Reply (CEIS #7) to C.D.'s June 20, 2013 Application (CEIS #8).

[13] The catalyst to the June 2013 court filings was an altercation on June 18, 2013, wherein both R.L. and C.D. called the police who attended to keep the peace. Although D. (then [omitted for publication]) was present, MCFD does not appear to have involved itself in this incident.

[14] On June 27, 2013, R.L. and C.D. appeared in Prince George Provincial Court before Judge Callan. C.D. was represented by Ms. Oliver Dunbar, acting as duty counsel. R.L. was represented by Ms. D. O'Leary, also acting as duty counsel. On that date, Judge Callan directed the Judicial Case Manager to schedule a Family Case Conference ("FCC"), and ordered both parties to file and exchange a Financial Statement in Form 4 with attachments two weeks before the Family Case Conference (CEIS #12). On July 26, 2013, C.D. filed a Form 4 Financial Statement (CEIS #10).

[15] On July 26, 2013, this matter came before Judge Blaskovits at a Family Case Conference. R.L. and C.D. appeared self-represented. At the conclusion of the FCC, Judge R. R. Blaskovits ordered by consent (CEIS #11).

> This Court orders that:
>
> 1. The following is the parenting arrangements on a four week (16 day rotating schedule) beginning with:

July 26, 2013 at 7:20 a.m. to July 30, 2013 at 7:20 a.m. with R.L.;

July 30, 2013 at 7:20 a.m. to August 3, 2013 at 7:20 a.m. with C.D.;

August 3, 2013 at 7:20 a.m. to August 6, 2013 at 5 p.m. with R.L.;

August 6, 2013 at 5 p.m. to August 11, 2013 at 7:20 a.m. with C.D.

2. The exchange of the child, D.L.L., born [omitted for publication], shall be at the Jolly Market store in the Vanway area of Prince George, BC.

3. Each parent shall have the right of first refusal for child care should the parent with parenting time require child care during his or her parenting time.

4. Neither parent shall leave Prince George, BC, with the child without verbal notice to the other parent and emergency contact information.

5. The parties shall file and exchange their Financial Statements in Form 4 with attachments by September 30, 2013.

6. This matter is adjourned to the Judicial Case Manager to fix a date for a further Family Case Conference not before September 30, 2013.

[16] On August 21, 2013, C.D. filed a Notice to Withdraw her June 20, 2013 application for Child Support (CEIS #13).

[17] On October 1, 2013, this matter came before Judge Galbraith for a Family Case Conference. Judge Galbraith made the following order by consent (CEIS #15):

1. R.A.L. and C.L.D. are guardians to D.L.L., born [omitted for publication] hereinafter referred to as "The Child").

2. R.A.L. and C.L.D. shall have joint parental responsibility of The Child.

3. Contact with The Child shall be on a four day rotation. The times and places shall be agreed between R.A.L. and C.L.D.

4. Contact with The Child with regards to holidays shall alternate, with the exception of Christmas (December 25th) as follows:

2013- R.A.L.

2014 – C.L.D.

2015 - Shared contact with the Child

2016 – R.A.L.

C.L.D. shall have contact with The Child on Christmas during even-numbered years and R.A.L. shall have contact with The Child during odd-numbered years, henceforth.

> 5. R.A.L. and C.L.D. shall claim the eligible dependant tax credit as follows:
>
> R.A.L. - 25%
>
> C.L.D. - 75%

[18] On March 6, 2015, C.D. filed a Notice of Change of Address (CEIS #16) indicating that as of August 1, 2014, her address for service was [omitted for publication].

[19] In 2015 R.L. began dating his current wife, C.L. They began cohabitating in Prince George in August 2015 and married September 22, 2017. C.L. was a food service worker in the employ of Northern Health working at the [omitted for publication] senior's assisted living facility. Until recently, R.L. and C.L. lived at [omitted for publication], which is a rented three-bedroom duplex, where R.L. had resided for 10 or 11 years. Since 2018 they rented out the basement suite in their [omitted for publication] residence through Airbnb.

[20] In January 2019, C.D. began dating G. (J.) M. They moved in together in June 2019. R.L. and C.D.'s co-parenting relationship disintegrated.

[21] On August 30, 2019, C.D. and R.L. attended at the Family Justice Centre and with the assistance of Kelly Douglas, Family Justice Counsellor, mediated a written agreement varying Judge Blaskovits' July 26, 2013 Order and Judge Galbraith's October 1, 2013 Orders. On September 3, 2019, the parties filed the following documentation in the Prince George Provincial Court Registry in respect to this matter:

a. R.L. filed a Request for a Desk Consent Order (Rule 18) (CEIS #17);
b. R.L. and C.D. filed the August 30, 2019, written consent agreement signed pursuant to Rule 19 (CEIS #20); and
c. R.L. filed an Affidavit (CEIS #18) (commissioned by Kelly Douglas) in support of the consent agreement (CEIS #20); and
d. C.D. filed an Affidavit (CEIS #19) (commissioned by Kelly Douglas) in support of the consent agreement (CEIS #20).

[22] On September 6, 2019, Regional Administrative Judge M.J. Brecknell made an order that was filed in the Prince George Provincial Court Registry (CEIS #21) on September 9, 2019. It states:

> **THIS COURT ORDERS THAT:**
>
> Parenting Responsibilities
>
> 1. **THAT** R.A.L. (R.L.) and C.L.D. (C.) will each continue to exercise all parental responsibilities with respect to D.L.L. (D.):
>
> a. Making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child during their respective parenting time;
>
> b. Making decisions respecting where the child will reside;
>
> c. Making decisions respecting with whom the child will live and associate;
>
> d. Making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
>
> e. Making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
>
> f. Subject to section 17 of the *Infants Act*, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
>
> g. Applying for a passport, licence, permit, benefit, privilege or other thing for the child;
>
> h. Giving, refusing or withdrawing consent for the child, if consent is required;
>
> i. Receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
>
> j. Requesting and receiving from third parties health, education or other information respecting the child;
>
> k. Subject to any applicable provincial legislation;
>
> i. Starting, defending, compromising or settling any proceeding relating to the child, and
>
> ii. Identifying, advancing and protecting the child's legal and financial interests;
>
> I. Exercising any other responsibilities reasonably necessary to nurture the child's development.

Both Parties will consult with each other about any important decisions that must be made in the exercise of a parental responsibility.

2. **THAT** both Parties will notify the other party via e-mail if D. is absent from school.

Parenting Time

3. **THAT** the Parties will have regular parenting time on a weekly rotational basis from Thursday 8:30am to Thursday 8:30am. R.L. will have parenting time from July 25, 2019 to August 1, 2019 and C. will have parenting time from August 1, 2019 to August 8, 2019 and the parties will continue to alternate weeks thereafter.

a. D. is at liberty to contact the other parent during their non-parenting time week;

b. Both Parties may have phone access to D. during their non-parenting time week on Sundays between 6:30-7:30pm;

c. Both Parties may take D. for lunch, during the school year, during their non-parenting time week and will notify the other party of their intention to lunch with D. the evening before or the·morning of lunch.

4. **THAT** C. shall have parenting time on December 25, 2019 morning through to 2:30pm and R.L. shall have parenting time on December 25, 2019 at 2:30pm through to December 26, 2019 at 8:30am.

5. **THAT** future Christmas holidays are defined as December 23rd noon through to December 27th 5pm. R.L. shall have parenting time during odd-numbered years and C. shall have parenting time during even-numbered years.

6. **THAT** the Easter holiday is defined as Good Friday 8:30am through to Easter Monday 2:30pm. R.L. shall have parenting time during even-numbered years and C. shall have parenting time during odd-numbered years.

7. **THAT** both Parties shall make specific parenting time arrangements for Thanksgiving holiday no less than two weeks prior to the Thanksgiving holiday; one parent may have Sunday dinner with D. and the other parent may have Monday dinner with D.

8. **THAT** R.L. shall have parenting time on Father's Day each year from Saturday 5 pm through to Sunday 5pm.

9. **THAT** C. shall have parenting time on Mother's Day each year from Saturday 5pm through to Sunday 5pm.

10. **THAT** the Parties will alternate planning and hosting D.'s birthday party each year. R.L. will plan party during odd-numbered years and C. will plan party on even numbered years. Both Parties may attend D.'s birthday party.

11. **THAT** the Parties may have parenting time on Halloween (October 31st 2:30pm through to November 1st 8:30am if Halloween is during the school week or from October 31st 2:30pm through to November 1st - specific time to be agreed upon in writing. The parties will alternate years with R.L. taking D. out trick-or-treating during odd numbered years and C. taking D. out trick-or-treating during even-numbered years.

12. **THAT** the Parties may have parenting time with D. on New Year's Eve 2:30pm through to January 1st 2:30pm. Parties will alternate New Year's Eve parenting time with R.L. entering the New Year with D. on even-numbered years and C. entering the New Year with D. on odd-numbered years.

13. **THAT** both Parties shall follow the regular parenting time schedule, as noted in Paragraph 3 above, through the following school holidays: Christmas break, Spring break, summer vacation.

14. **THAT** C. shall have vacation time with D. from August 17-28, 2019.

15. **THAT** R.L. shall have vacation time with D. from September 7-14, 2019 to go to Disneyland. R.L. will drop D. off to C. on September 15, 2019 at 9am.

16. **THAT** both Parties will plan vacation times with D. during their respective parenting time week.

17. **THAT** both Parties shall discuss with the other party any proposed vacation plans with D. that may occur during the school year prior to booking travel arrangements. Both Parties will take into consideration such things as D.’s health and her school attendance when proposing vacation plans during the school year.

18. **THAT** both Parties may attend D.'s hospital stays, appointments, examinations regardless if it is their regularly scheduled parenting time.

Transitions

19. **THAT** the party who is ending their parenting time week will drop D. at school during the school year AND during non-school times the party who is ending their parenting time week will drop D. off at the other party's residence by 8:30am.

Travel

20. **THAT** if the Parties agree, in writing, that either party may travel with D. outside of Canada, the non-traveling parent will sign any travel-related documents (such as travel authorization letter, written consent, passport etc.) within two-weeks of receiving them.

Relocation

21. **THAT** neither Party will move D. from Prince George without

a. The written consent of the other party; or

b. A court order.

If either party intends to move from Prince George, British Columbia for employment or any other reason, that parent will provide the other with written notice of an intention to change residence and of the new address as soon as possible, but no less than 60-days before the move.

Communication

22. **THAT** the Parties shall communicate primarily via e-mail for the purpose of making parenting plan arrangements. Regular planning arrangements will be discussed during the hours of 8am to 8pm. In the event of an emergency, the parties will contact the other as soon as reasonably possible. Communication will be child-focussed only. Both Parties will not speak disparagingly of the other parent when D. is present. Neither Party shall engage in conversations with D. regarding adult-related matters.

Special and Extraordinary Expenses

23. **THAT** both Parties shall pay their respective portion of D.'s school fees directly to the school.

24. **THAT** both Parties shall provide medical and dental insurance coverage for D. for so long as it is available through HIS/HER employment.

[23] On February 5, 2020, five months after consenting to Judge Becknell's September 6, 2019 Order, R.L. filed an Application About Relocation (CEIS #22) seeking to set aside the September 6, 2019 Order. He asked the Court to award him primary care of D. and grant him permission to relocate D. to the lower mainland so that she could attend the [omitted for publication] school in Maple Ridge. C.L. served C.D. with a copy of this application on February 5, 2020 (CEIS #23).

[24] On February 20, 2020, C.D. filed a Reply (CEIS #25) to R.L.'s February 5, 2020 Application About Relocation (CEIS #22). She did not make any counterclaim. She states:

I disagree because: The child, D.L.L. ("D."), is [omitted for publication] years old and has been in the shared care of the Applicant and the Respondent since she was approximately [omitted for publication]. She has always lived in Prince George. D. has special medical and educational needs, and those needs are being met with the assistance of professionals who are very knowledgeable of her special needs. The Respondent is steadily employed and provides a good home, care and

> guidance for D. D. has a half-sister with whom she is close, and who also resides with the Respondent. The Applicant has made no provisions to preserve D.'s relationship with the Respondent if he is permitted to relocate with her. The proposed relocation will not enhance the general quality of D.'s life. The proposed relocation is not in D.'s best interest.

[25] R.L.'s February 5, 2020 Application About Relocation (CEIS #22) was scheduled for a first appearance on March 19, 2020.

[26] The onset of the global COVID-19 pandemic caused the BC Provincial Health Officer to declare a public health emergency on March 17, 2020. On March 19, 2020, Chief Judge M. Gillespie announced the suspension of the regular operations of the Provincial Court of British Columbia at all of its locations. Consequently, R.L.'s February 5, 2020 Application About Relocation (CEIS #22) was adjourned to June 18, 2020 (CEIS #26, #27).

[27] On June 10, 2020, R.L. filed an Application for an Urgent Hearing (CEIS #29) of his February 5, 2020 Application About Relocation (CEIS #22). In support of his Application for an Urgent Hearing (CEIS #29) R.L. filed a Notice of Motion (CEIS #30) and Affidavit (CEIS #31). C.L. served a copy of these documents on C.D. on June 11, 2020 (CEIS #32). On June 10, 2020, Judge Brecknell granted leave for a hearing of R.L.'s Application for an Urgent Hearing (CEIS #31).

[28] On June 19, 2020, C.D. filed two Affidavits (CEIS #33, #34) with respect to R.L.'s February 5, 2020 Application About Relocation (CEIS #22). On June 23, 2020, R.L. filed an Affidavit (CEIS #34) in response to C.D.'s June 19, 2020 Affidavit (CEIS #33).

[29] On July 3, 2020, R.L.'s June 10, 2020 Application for an Urgent Hearing (CEIS #29) of his February 5, 2020 Application About Relocation (CEIS #22) came before Judge Mengering for a hearing. R.L. appeared in person, self-represented, and C.D. appeared in person and represented by legal counsel, Mr. D. Smith. Judge Mengering adjourned her decision about the urgent hearing until July 6, 2020.

[30] On July 6, 2020, R.L.'s June 10, 2020 Application for an Urgent Hearing (CEIS #29) of his February 5, 2020 Application About Relocation (CEIS #22) came before

Judge Mengering for a decision. R.L. appeared in person, self-represented, and C.D. appeared in person and represented by legal counsel, Mr. D. Smith. Judge Mengering dismissed R.L.'s application for an urgent hearing and adjourned R.L.'s relocation application it to a Family Case Conference on July 29, 2020.

[31] On July 9, 2020, the Court Registry issued a Notice of Hearing or Conference (CEIS #37) advising them R.L.'s February 5, 2020 Application About Relocation (CEIS #22) was scheduled for a Family Case Conference on July 29, 2020. On July 29, 2020, R.L.'s February 5, 2020 Application About Relocation (CEIS #22) came before Judge Keyes for a Family Case Conference. R.L. appeared by telephone self-represented, and C.D. appeared by telephone represented by legal counsel, Mr. D. Smith. At the conclusion of the FCC, Judge Keyes made a number of administrative orders and directed the Judicial Case Manager schedule a three-day trial with a Pre-trial conference ("PTC") on the issue of relocation.

[32] On August 20, 2020, the Court Registry issued a Notice of Hearing or Conference for the first appearance for R.L.'s February 5, 2020 Application About Relocation (CEIS #22) on September 17, 2020, a PTC on September 24, 2020, and an in person trial on October 29 and 30, 2020 and November 3, 2020.

[33] On September 24, 2020, R.L.'s February 5, 2020 Application About Relocation (CEIS #22) came before me for a PTC. R.L. appeared by telephone self-represented, and C.D. appeared by telephone represented by legal counsel, Mr. D. Smith. At that time, I adjourned the matter to October 29, 2020, for trial.

[34] On October 23, 2020, R.L. filed a Notice of Motion (CEIS #41) with a supporting affidavit (CEIS #42), seeking permission to have his witness, O.W., testify remotely in the upcoming trial of his February 5, 2020 Application About Relocation.

[35] On October 29, 2020, R.L.'s February 5, 2020 Application About Relocation (CEIS #22) and C.D.'s Reply (CEIS #25) came before Judge Mengering for the first day of trial. R.L. appeared in person and self-represented, and C.D. appeared in person and represented by legal counsel, Mr. D. Smith. On that day, Judge Mengering granted

R.L.'s October 23, 2020 Notice of Motion (CEIS #41) to permit O.W. to testify remotely at trial.

[36] The trial of R.L.'s February 5, 2020 Application About Relocation (CEIS #22) and C.D.'s Reply (CEIS #25) proceeded on October 29, 2020, October 30, 2020, and November 3, 2020, before Judge Mengering. R.L. appeared in person and self-represented; C.D. appeared in person and represented by legal counsel, Mr. D. Smith. As of that date, D. was [omitted for publication] years old and enrolled in Grade [omitted for publication] [omitted for publication], a parochial school run by the [omitted for publication] ("[omitted for publication]"). On November 3, 2020, Judge Mengering rendered her decision (CEIS #122). A transcript of Judge Mengering's Reasons for Judgment were filed with the court on March 8, 2024, and entered into evidence at trial as Exhibit 1, Tab 2.

[37] In her November 3, 2020 Reasons for Judgment, Judge Mengering stated she was satisfied R.L. relocation application was made in good faith (see para. 22), but that R.L. had not complied with s. 69(4)(a)(ii) of the *Family Law Act* in that he failed to propose suitable arrangements to preserve the relationship between D. and her mother and her half-sister E.: Exhibit 1, Tab 32 Judge Mengering concluded:

> [44] D. appears to be thriving when she is with her father and stepmother; and with her mother and Mr. [M.]. The current parenting time regime works well for the parties and, most importantly, for D.
>
> [45] In my view, relocation would have a significant and negative effect on D.'s relationship with her mother. And that is not in her best interest.
>
> [46] Education is important, as are all the things that go along with it including self-esteem and confidence. But the bond between a parent and child cannot be sacrificed on the altar of education. I do not fault Mr. L. for bringing his application.
>
> [47] I am heartened by the love that was expressed for D. by both Mr. and Mrs. L., and by Ms. D. She is a lucky girl and blessed with caring parents.
>
> [48] Accordingly, I deny Mr. L.'s application, filed February 5, 2020, to relocate D. outside of Prince George.

[38] On November 3, 2020, C.D. filed an Application to Obtain an Order (CEIS #43) seeking child support for D. retroactive to January 1, 2013. On that same day C.D. filed a Form 4 Financial Statement (CEIS #44) in which she states she was a Provincial Recruiter for BC [omitted for publication] earning a guideline income of $63,697.07. These documents were personally served on R.L. by Irvin Leroux, Bailiff, on November 5, 2020 (CEIS #45).

[39] On November 24, 2020, R.L. filed a Reply with Counterclaim (CEIS #47) to C.D.'s November 3 2020 Application (CEIS #43) for child support.

[40] On November 24, 2020, C.D. filed a Notice of Change of Address (CEIS #46) indicating that as of December 2019, her address for service was [omitted for publication].

[41] On November 26, 2020, the Court Registry issued a Notice of Hearing or Conference to the parties (CEIS #48) that the first appearance C.D.'s November 3, Application (CEIS #43), and R.L.'s November 24, 2020 Reply and Counterclaim (CEIS #47) would be heard by teleconference on December 17, 2020.

[42] On December 14, 2020, R.L. filed a Form 4 Financial Statement (CEIS #49, #50) indicating he had a guideline income for child support of $67,683.90.

[43] On December 17, 2020, C.D.'s November 3, Application (CEIS #43), and R.L.'s November 24, 2020 Reply and Counterclaim (CEIS #47) came before me for a first appearance. Both parties appeared remotely and self-represented. The matter was adjourned to January, 21, 2021 for a Trial Preparation Conference.

[44] On December 30, 2020, Court Registry issued a Notice of Hearing or Conference to the parties (CEIS #51) that a Trial Preparation Conference of C.D.'s November 3, 2020 Application (CEIS #43), and R.L.'s November 24, 2020 Reply with Counterclaim (CEIS #47) would be heard by MS Teams on January 21, 2021.

[45] On January 18, 2021, C.D. filed an Affidavit (CEIS #52) in response to R.L.'s November 24, 2020 Reply with Counterclaim (CEIS #47).

[46] On January 21, 2021, C.D.'s November 3, 2020 Application for child support (CEIS #43), and R.L.'s November 24, 2020 Reply and Counterclaim (CEIS #47) came before me for a Trial Preparation Conference. C.D. appeared before me by MS Teams and self-represented. R.L. appeared before me by MS Teams and represented by legal counsel, Mr. G. Petrisor. At that time, I ordered:

a. C.D. was to complete, file and exchange a full and complete financial statement and attachments for 2017, 2018, 2019;
b. C.D. was to provide any and all documents relating to expenses and revenue for any business operations including but not limited to [omitted for publication];
c. R.L. to provide income documentation from all sources for 2016, 2019, 2020;
d. R.L. was to provide his Canada Revenue Agency Notice of Assessments from 2013 to 2016 inclusive.

[47] On February 2, 2021, R.L. filed an Amended Reply with Counterclaim (CEIS #54) contesting C.D.'s Application (CEIS #43) for ongoing and retroactive child support and counterclaiming for child support and a variation of RAJ Brecknell's September 6, 2019 consent order.

[48] On February 16, 2021, C.D. filed an Affidavit (CEIS #55) attaching her 2016, 2017, 2018, 2019 R1 Summary and statement of Business Income.

[49] On February 17, 2021, R.L. filed a Form 4 Financial Statement (CEIS #56) indicating he was employed as a [omitted for publication] by the Prince George [omitted for publication]. He declared a guideline income for child support purposes of $110,867.55.

[50] On February 18, 2021, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Reply with Counterclaim (CEIS #47) came before Judge Brecknell for a PTC. C.D. appeared self-represented by MS Teams. R.L. appeared by MS Teams and represented by legal counsel, Mr. G. Petrisor. At that time the matter was adjourned to schedule a Family Case Conference.

[51] On March 2, 2021, the Court Registry issued a Notice of Hearing or Conference (CEIS #57), advising the parties of a Family Case Conference was scheduled with respect to C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) on April 6, 2021.

[52] On April 6, 2021, the parties appeared before Judge Brecknell for a Family Case Conference (CEIS #58). C.D. appeared by MS Teams and self-represented. R.L. appeared by MS Teams represented by legal counsel, Mr. G. Petrisor. No order was made and the matter was referred to the Judicial Case Manager ("JCM") to schedule a trial.

[53] The trial of C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) was scheduled for a three day trial commencing November 15, 2021, with a PTC on August 13, 2021.

[54] On August 5, 2021, Mr. G. Petrisor on behalf of R.L. filed a Trial Readiness Statement (CEIS #59). On August 12, 2021, C.D. filed a Trial Readiness Statement (CEIS #61).

[55] On August 12, 2021, C.D. filed an Affidavit attaching various financial documents (CEIS #60).

[56] On August 13, 2021, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) came before Judge McDermick for a PTC. It was adjourned to October 15, 2021, for a further PTC.

[57] On September 28, 2021, CD filed a further Affidavit attaching various financial documents, including bank statements (CEIS #62).

[58] On October 15, 2021, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) came before Judge McDermick for a PTC. It was adjourned to November 3, 2021, for a further PTC.

[59] On November 3, 2021, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) came before Judge McDermick for

a PTC. The trial dates were cancelled and the matter was adjourned to December 21, 2021, for a Case Management Conference.

[60] On December 17, 2021, C.D. filed a Notice of Change of Address (CEIS #68) indicating her new address for service as of December 17, 2021 was [omitted for publication], Prince George, BC.

[61] On December 21, 2021, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) came before Judge Brecknell for a Case Management Conference. At that time, Judge Brecknell ordered:

> 1. Each party shall provide to the other, by February 11, 2022:
>
> > a. disclosure of all business interests which that party had as of January 1, 2019, including the status of each such business interest prior to January 1, 2019;
> >
> > b. disclosure of income from all sources, including employment, self employment, and income from proprietorships or corporations in which that party has an interest, from January 1, 2019, to the present;
> >
> > c. if he or she has not already provided it, copies of all personal Income Tax Returns, Notices of Assessment, and/or Notices of Reassessment, including schedules and attachments, and Corporate Income Tax Returns, Notices of Assessment, and/or Notices of Reassessment for any corporation in which that party has or had an interest, for the tax years 2013 to 2021, inclusive;
> >
> > d. disclosure of all money he or she has provided to any corporation or proprietorship in which that party has or had an interest from January 1, 2019, to the present;
> >
> > e. disclosure of all money he or she has received as a result of owning an interest in any proprietorship or corporation, from January 1, 2019, to the present;
> >
> > f. copies of all bank account statements for each proprietorship or corporation in which that party has or had an interest, noted to indicate the source of funds in and the destination funds out respecting all significant transactions, from January 1, 2019, to the present;
> >
> > g. an accounting of the disposal of any proprietorship or corporate assets with a value of $500.00 or more, relating to any proprietorship or corporation in which that party has or had an interest, from January 1, 2019, to the present;

> h. copies of all statements for each personal bank accounts in which that party has or had an interest, noted to indicate the source of funds in and the destination of funds out respecting all significant transactions, from January 1, 2019, to the present;
>
> i. an accounting of any personal assets disposed of by that party with a value of more than $500.00, since January 1, 2019;
>
> 2. R.A.L. shall provide to C.L.D. verification of all funds he has received from [omitted for publication] Investigations.
>
> 3. C.L.D. shall provide to R.A.L. an accounting of all funds she has received or expended in relations to the [omitted for publication].
>
> 4. C.L.D. shall advise the Solicitor for R.A.L. whether or not J.M. also known as G.M. will voluntarily provide financial disclosure relating to himself as described in the *Child Support Guidelines*, by January 14, 2022.
>
> 5. The approval of C.L.D. as to the form of this Order is required.

[62] On February 1, 2022, R.L. filed an Application for a Case Management Order ("ACMO") (CEIS #70) seeking an order for third party financial disclosure from J.M. a.k.a. G.M.

[63] On February 8, 2022, R.L. filed an Affidavit (CEIS #71) in support of his application an order for financial disclosure from G.M. a.k.a. J.M.

[64] On February 9, 2022, Process Server Vern Law served G.M. with a copy of R.L.'s February 8, 2022 ACMO (CEIS #70) and supporting Affidavit (CEIS #71): See CEIS #76.

[65] On February 9, 2022, C.D. filed an Affidavit (CEIS #72) with respect to her personal and business finances.

[66] On February 9, 2022, C.D. filed a Reply (CEIS #74) to R.L.'s November 24, 2020 Reply and Counterclaim (CEIS #47).

[67] On February 9, 2022, C.D. filed Form 4 Financial Statement declaring her guideline income to be $70,369.73.

[68] On February 10, 2022, C.D. filed a Written Response (CEIS #75) opposing R.L.'s February 1, 2022, ACMO (CEIS #70) seeking an order for third party financial disclosure from G.M. (CEIS #77).

[69] On March 2, 2022, G.M. filed a Written Response to R.L.'s ACMO for disclosure of third party records (CEIS #70).

[70] On March 3, 2022, R.L.'s February 1, 2022, ACMO (CEIS #70) for disclosure of third party records came before Judge Nadon for a first appearance. R.L., C.D., and G.M. appeared by MS Teams. R.L. was represented by Mr. G. Petrisor. On that date, Judge Nadon referred the matter to the JCM to schedule a one hour hearing.

[71] On March 8, 2022, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) came before me for a PTC. The matter was adjourned to April 12, 2022, for a further PTC.

[72] On March 14, 2022, the JCM scheduled a hearing of R.L.'s ACMO for disclosure of third party records (CEIS #70) and C.D.'s and G.M.'s responses to that application (CEIS #75 and #77).

[73] On April 6, 2022, R.L. filed a Form 4 Financial Statement (CEIS #79), declaring an annual guideline income for child support purposes of $110,673.11.

[74] On April 12, 2022, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) came before me for a PTC. On that date, I struck the April 19, 20, 21, 2022 Trial dates, but retained the May 10, 2022 trial date. The JCM was directed to reschedule three days of trial.

[75] On April 29, 2022, G.M. filed an Affidavit (CEIS #80) in response to R.L.'s ACMO for disclosure of third party records (CEIS #70).

[76] On May 10, 2022, C.D.'s Application to Obtain an Order (CEIS #43) and R.L.'s Amended Reply with Counterclaim (CEIS #54) came before Judge Malfair for trial. R.L., C.D. and G.M. appeared in person. R.L. as represented by Mr. G. Petrisor. On that date, Judge Nadon referred the matter to the JCM to schedule a one-hour hearing.

[77] On May 10, 2022, C.D. withdrew that portion of her November 3, 2020 Application to Obtain an Order (CEIS #43) seeking to change the apportionment of special extraordinary expenses.

[78] On May 11, 2022, the JCM issued a notice (CEIS #81) to the parties that the hearing of R.L.'s ACMO (CEIS #70) was scheduled for May 26, 2022.

[79] On May 16, 2022, Ms. K. Pavao filed a Notice of Appointment of Lawyer (CEIS #83) for C.D.

[80] On May 26, 2022, R.L.'s ACMO (CEIS #70) came before Judge Malfair for a hearing. R.L. was present and represented by his legal counsel, Mr. G. Petrisor. C.D. was present and represented by her legal counsel, Ms. K. Pavao. Judge Malfair declared a mistrial and recused herself and the matter was sent to the JCM to schedule a three-hour hearing before a different judge. Ultimately it was rescheduled to November 29, 2022.

[81] On August 15, 2022, C.D. filed an Affidavit (CEIS #85) with respect to her financial relationship with G.M.

[82] On September 29, 2022, Ms. K. Pavao filed an affidavit (CEIS #87) with respect to the parties reciprocating disclosure application.

[83] On October 20, 2022, Judge McDermick ordered (CEIS #89) C.D.'s ACMO for financial disclosure of third party records (CEIS #88) to be set for and heard concurrently with R.L.'s ACMO scheduled for November 29th 2022.

[84] On November 3, 2022, C.D. filed an ACMO (CEIS #88) for an order for disclosure from R.L. and his wife, C.L. This ACMO was served on C.L. on November 14, 2022 (CEIS #90).

[85] On November 16, 2022, the City of Prince George terminated R.L.'s employment as a [omitted for publication]. I understand this termination came after a lengthy dispute between R.L. and his employer. R.L. contested his termination, and I understand this issue is now subject to ongoing litigation.

[86] On November 25, 2022, R.L. filed through his legal counsel an Affidavit (CEIS #91) and Written Response (CEIS #92) with respect to C.D.'s ACMO for third party disclosure from C.L. (CEIS #88).

[87] On November 28, 2022, C.D. filed an Affidavit (CEIS #93) in response to R.L.'s November 25, 2022 Affidavit (CEIS #91).

[88] On November 29, 2022, C.D. and R.L. appeared before Judge Mengering for a hearing of the parties' reciprocating ACMO for third party disclosure (CEIS #88 and #70). C.D. was represented by her legal counsel Ms. K. Pavao, and R.L. was represented by his legal counsel, Mr. G. Petrisor. At the conclusion of the hearing, the matter was adjourned until December 20, 2022, for a decision by Judge Mengering.

[89] On December 20, 2022, R.L., C.D. and G.M. appeared before Judge Mengering for her decision on the parties' reciprocating ACMO (CEIS #70 and #88). R.L. was represented by Mr. G. Petrisor. At that time, Judge Mengering ordered (CEIS #100):

> 1. C.L. shall complete, file with the Registry of this Court, and deliver to Counsel for C.L.D., a sworn Financial Statement in Form 4 of the *Provincial Court Family Rules*, including all attachments as set out in Page 2 of Form 4, and also including copies of her Income Tax Returns, Notices of Assessment and Notices of Reassessment for the years 2015 to the present, and year to date income information from all sources, by January 20, 2023.
>
> 2. J.M. also known as G.M. shall complete, file with the Registry of this Court, and deliver to Counsel for R.A.L., a sworn Financial Statement in Form 4 of the *Provincial Court Family Rules*, including all attachments as set out in Page 2 of Form 4, and also including copies of hi[s] Income Tax Returns, Notices of Assessment and Notices of Reassessment for the years 2019 to the present, and year to date income information from all sources, by January 20, 2023.

[90] On January 5, 2023, this matter came before Judge Mengering for a PTC. It was adjourned to April 27, 2023 for a subsequent PTC.

[91] On January 19, 2023, C.L. filed a Form 4 Financial Statement (CEIS #96) declaring a guideline income for child support purposes of $47,987.37, and expenses totalling $39,006.72.

[92] On January 20, 2023, G.M. filed a Form 4 Financial Statement (CEIS #98) declaring a guideline income for child support purposes of $34,500, and expenses totalling $135,477.

[93] On April 27, 2023, R.L., represented by Mr. G. Petrisor, and C.D. represented by Ms. K. Pavao, attended before Judge McDermick for a PTC. The matter was adjourned to June 1, 2023, for a further PTC.

[94] On May 10, 2023, R.L. filed a Form 4 Financial Statement (CEIS #101) in which he declared a guideline income for child support purposes of $0 and annual expenses of $60,552.

[95] On May 22, 2023, R.L. entered into an employment contract with [omitted for publication] as a [omitted for publication] investigator. His work was based in the lower mainland, but he conducts origin and cause investigations of [omitted for publication] all over North America (Exhibit 4 Tab 14).

[96] R.L. maintained his current residence at [omitted for publication], where he exercised parenting time with D. every other week pending the trial of his relocation application. C.L. remained in Prince George and continued to work for Northern Health at [omitted for publication], a senior's facility, as a [omitted for publication].

[97] On June 1, 2023, R.L., represented by Mr. G. Petrisor, and C.D. represented by Ms. K. Pavao, attended before Judge McDermick for a PTC. The matter was adjourned to June 19, 2023, for trial.

[98] On June 8, 2023, C.D. filed a Form 4 Financial Statement (CEIS #102) declaring a guideline income of $69,832.19 and annual expenses of $55,050.00.

[99] On June 21, 2023, R.L. filed an Application About a Family Law Matter (CEIS #103) seeking an order that D. reside primarily with him in the lower mainland of British

Columbia and that C.D. have parenting time during the major school holidays and such other times as the parties may agree.

[100] R.L. struggled financially in the period between losing his job with the City of Prince George and starting with [omitted for publication]. A.L. shored up R.L. financially by providing him with “advances on his inheritance” totalling approximately $34,000.00.

[101] On June 21, 2023, R.L. filed an ACMO (CEIS #104) in which he sought case management orders:

> a. seeking a s. 211 Report under the *Family Law Act;*
> b. pursuant to Sections 202 and/or 203(1) and 216 of the *Family Law Act,* D. may be represented by counsel appointed by the Child and Youth Legal Center; or, in the alternative:
>
> > An Order that a Court appoint a person to assess (i) D.’s needs; (ii) D.’s views; and (c) the ability and willingness of each party to satisfy D.’s needs and to prepare for the court a report of such assessment.

[102] On June 21, 2023, the JCM issued a Scheduling Notice (CEIS #105) indicating the trial of C.D.’s Application to Obtain an Order (CEIS #43) and R.L.’s Amended Reply with Counterclaim (CEIS #54) would proceed on February 20 to 23, 2024, inclusive, with a PTC on January 11, 2024.

[103] On June 28, 2023, R.L.’s June 21, 2023 Application (CEIS #103) was adjourned to July 27, 2023 (CEIS #107).

[104] On June 28, 2023, R.L. filed a Notice of Change of Address (CEIS #106) noting his address for service was [omitted for publication].

[105] On July 20, 2023, C.D. filed a Written Response (CEIS #109) to R.L.’s June 21, 2023, ACMO (CEIS #104). C.D. opposed: (a) R.L.’s request for a lawyer to be appointed for D.; and (b) an order for the preparation of a s. 211 Report. She states:

> The Claimant's requests for a s. 211 Report and the appointment of a lawyer to represent D.L.L. ("D.") are not in D.’s best interests.

> R.A.L. has a history of attempting to influence and manipulate D. into adopting his viewpoints. D. will not be able to articulate her views free from the influence of R.A.L. if a s. 211 Report is ordered. C.L.D. fears that if a s. 211 Report is ordered that R.A.L. will pressure D. into adopting his viewpoint by manipulating her and exerting undue pressure and stress on D.
>
> It is inappropriate to have a lawyer appointed for D. in light of R.L.'s attempt to influence D.'s views and decisions. C.L.D. believes that involving D. in the capacity of a party in this proceeding will result in D. feeling the pressure to conform to the views of Mr. L. and that D. will adopt the viewpoint of R.A.L. as a means to pacify R.A.L.
>
> D. is not of an age where she is equipped to make decisions regarding these matters. D.'s involvement should be minimized to the furthest extent possible, in order to protect her relationship with both parents.

[106] C.D. opposed R.L.'s request to relocate D. to the lower mainland on the basis it was *res judicata.*

[107] On July 21, 2023, C.D. filed a Reply with Counterclaim (CEIS #110) to R.L.'s June 21, 2023 Application (CEIS #103) contesting R.L.'s application for a change of parenting responsibilities, parenting time and conditions on parenting time. C.D. counterclaimed for a change of parenting responsibilities, parenting time and conditions on parenting time. C.D. sets out her reasons for opposing R.L.'s application for relocation and primary residence of D.

[108] In her July 21, 2023 Counterclaim, C.D. sought an order that: (a) R.L. will have parenting time on dates and times agreed upon by the parties; (b) C.D. will have all other parenting time; (c) the parties will share holiday parenting time at times that are to be determined at a later date; and (d) the parties may agree to such further and other parenting time in addition to the parenting time set out in the court order. In her Counterclaim, C.D. asserts her proposed change to the current parenting was in D.'s best interests because in Prince George, D. has:

> a. her mother, sibling, step-parent, step-siblings with whom she resides on an ongoing basis;
> b. established supports to address her learning difficulties that have allowed her to thrive and improve;

c. a life that includes her friends, her community, her activities, both through school and her extra-curricular activities such as musical theatre;

d. increased stability and security in her life, so to remove D. from Prince George would cause a significant disruption to her life, her relationships and to the advances in her learning and development.

[109] C.D. also believes that D. living primarily with R.L. is contrary to her best interests due to what C.D. perceives as R.L.'s multiple deficits as a person, a parent, and a co-parent.

[110] On July 23, 2023, the parties appeared before Judge M.J. Nadon for a hearing of R.L.'s June 21, 2023, ACMO (CEIS #104). R.L. appeared in person and represented by legal counsel, Mr. G. Petrisor. C.D. appeared in person and represented by legal counsel, Ms. K. Pavao. At the conclusion of the hearing, Judge Nadon ordered (CEIS #112):

1. The Application to appoint a lawyer for the child D. is dismissed.
2. Family Justice Counsellor will prepare a full s. 211 Report to assess:
    a) the needs of a child in relation to a family law dispute;
    b) the views of a child in relation to a family law dispute; and
    c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.
3. The parties shall:
    a) put the best interests of the child before their own interests;
    b) encourage the child to have a good relationship with the other parent and speak to the children about the other parent and that parent's partner in a positive and respectful manner; and
    c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the child.
4. The parties shall not:
    a) question the child about the other parent or time spent with the other parent beyond simple conversational questions;
    b) discuss with the child any inappropriate adult, court or legal matters; or
    c) blame, criticize or disparage the other parent to the child.

> 5. The parties shall encourage their respective families to refrain from any negative comments about the other parent and his or her extended family, and from discussions in front of the child concerning family issues or litigation.
>
> 6. The Applications of the parties filed by R.A.L. on July 21, 2023 as [CEIS #103] and the Reply and Counterclaim filed by C.D. on July 20, 2023 as [CEIS #110] are adjourned to the trial scheduled for hearing to commence on February 20, 2024 and are to be addressed at the Pre-trial Conference Scheduled for January 11, 2024.

[111] On August 1, 2023, the Court Registry sent a Request for a s. 211 Report to the Family Justice Services (CEIS #111) to provide a "Section 211 – Full Report that included assessment, recommendation and views of the child, to address the issue of relocation.

[112] On October 17, 2023, Family Justice Counsellor Erica McCuaig, ("FJC McCuaig") conducted "a parent-child" observation at R.L.'s home and C.D.'s home. By this time R.L. had rented a residence in [omitted for publication], BC. He describes it as a new 1,500–1,800 square foot, two-bedroom, two-bathroom suite above a garage. The second bedroom is reserved for D.

[113] On October 17, 2023, R.L., C.L. and A.L. were packing up a number of R.L.'s belongings and furnishings to ready them for transport to R.L.'s new residence in [omitted for publication].

[114] On December 12, 2023, FJC McCuaig, submitted her s. 211 Family Law Report pursuant to Judge Nadon's Order made July 27, 2023: Exhibit 1, Tab 2. The s. 211 Report (CEIS #114) was filed with the Prince George Provincial Court Registry on December 20, 2023.

[115] On January 11, 2024, the parties attended before Judge Simpkin for a PTC. C.D. attended by MS Teams and represented by legal counsel, Ms. K. Pavao. R.L. attended self-represented. At that time, the matter was adjourned to a subsequent PTC on February 9, 2024.

[116] On January 24, 2024, R.L. filed a Form 4 Financial Statement (CEIS #115) indicating he had a guideline income for child support purposes of $103,616.78.

[117] On January 24, 2024, R.L. filed a Trial Readiness Statement (CEIS #116) indicating he was ready for trial scheduled on February 20, 2024, and that he would proceed self-represented. He indicated he would call C.R.L. and A.M.L. as his witnesses.

[118] On January 24, 2024, C.L. filed a Form 4 Financial Statement (CEIS #117) indicating she had a guideline income for child support purposes of $45,221.96.

[119] On February 1, 2024, C.D. filed a Trial Readiness Statement (CEIS #118) indicating she was ready for trial scheduled on February 20–23, 2024, and that she was represented by Ms. K. Pavao. C.D. indicated she would call herself, J.S., and G.M. as her witnesses.

[120] On February 1, 2024, C.D. filed a Form 4 Financial Statement (CEIS #119) indicating she had a guideline income for child support purposes of $82,549.40.

[121] On February 2, 2024, G.M. filed a Form 4 Financial Statement (CEIS #120) indicating he had a guideline income for child support purposes of $54,300.00.

[122] On February 9, 2024, the parties attended before Judge McDermick for a PTC. C.D. attended by MS Teams and represented by legal counsel; R.L. attended self-represented. On that date Judge McDermick ordered (CEIS #123) that R.L. was to provide his T1 income tax returns, with attachments, for the taxation years of 2014–2019, and requested inheritance documents, to Ms. Pavao, legal counsel for C.D., on or before February 14, 2024.

[123] On February 20, 2024, R.L. appeared self-represented before Judge McDermick at the first day of trial. Legal counsel, Ms. J. Davis appeared as agent for Ms. K. Pavao and C.D. appeared in person. Ms. Davis sought and obtained an adjournment of the trial due to Ms. Pavao having tested positive for COVID-19. Judge McDermick ordered the next trial dates peremptory on C.D. (CEIS #124).

[124] On February 21, 2024, the JCM issued a Scheduling Notice (CEIS #121) confirming the trial had been rescheduled the trial for April 25, 26, 29, May 24, 30, 2024.

[125] On March 28, 2024, Ms. Arsh Sarkaria, filed a Notice of Lawyer (CEIS #125) as legal counsel for R.L.

[126] On April 22, 2024, R.L. provided C.D. his latest proposal for parenting arrangements if the Court allowed D. to relocate to [omitted for publication] to live primarily with him: Exhibit 1, Tab 5.

[127] On April 23, 2024, C.P., filed an Affidavit (CEIS #127). She subsequently testified at trial as to the longstanding friendship between her daughter T. and D.

[128] Given additional days of trial could not be rescheduled until November 2024 (CEIS #128), I directed that R.L.'s contested application to relocate D. to the lower mainland would proceed first and C.D.'s contested application for ongoing and retroactive child support would follow. I determined that I could not fairly adjudicate the child support application without first determining R.L.'s relocation application (CEIS #103, #110).

[129] On May 2, 2024, the JCM issued to the parties a Scheduling Notice (CEIS #128) indicating the trial of this matter was to continue on November 18, 19, and 22, 2024.

[130] On June 4, 2024, the JCM issued to the parties a Scheduling Notice (CEIS #129) indicating the trial of this matter was to continue on June 18, 2024.

[131] On June 24, 2024, the JCM issued to the parties a Scheduling Notice (CEIS #133) indicating the trial of this matter was to continue on August 21, 2024.

[132] On July 4, 2024, this matter came before me for a PTC. I advised the parties that August 21, 2024, was too close to the new school year to receive closing submissions and the parties agreed to provide the court with written submissions instead.

[133] The Court received Ms. Sarkaria's closing submissions on behalf of R.L. on July 12, 2024, Ms. Pavao's closing submissions on behalf of C.D. on July 22, 2024, and

Ms. Sarkaria's reply submissions on July 26, 2024. These written submissions were thorough, thoughtful, and helpful and I thank counsel for their considerable and timely efforts in this regard.

ASSESSING RELIABILTY AND CREDIBILITY

[134] In the trial, I heard from seven witnesses, including the parties themselves. As the trial judge, I must assess the reliability and credibility of these witnesses. This is a highly-contextual, fact-specific exercise. Witnesses are not presumed to tell the truth: *R. v. Thain*, 2009 ONCA 223, at para. 32. I must assess the evidence of each witness is in the light of the totality of the evidence without any presumptions. I can believe none, part, or all of a witness' evidence and may attach different weight to different parts of a witness' evidence. In assessing credibility, I am "expected to apply common sense and human experience as a benchmark against which to weigh the plausibility of the evidence": *R. v. Kruk*, 2024 SCC 7, at para. 155.

[135] Reliability and credibility are not the same. Reliability involves the accuracy of the witness' testimony. It engages consideration of the witness' ability to observe, recall and recount: *Kruk*, at para. 146. Credibility, on the other hand, concerns the witness's honesty or sincerity. Simply put, credibility addresses whether a witness is lying, whereas reliability is about honest mistakes. It goes without saying that evidence that is not credible is not reliable; however, the corollary is not true, evidence can be credible but nevertheless unreliable.

[136] In assessing the witnesses' credibility I am guided by the approach set out in *Bradshaw v. Stenner*, 2010 BCSC 1398, at paras. 186–187, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), and *Faryna v. Chorny*, 1951 CanLII 252 (BC CA). Assessing credibility engages a number of factors, including: (a) the plausibility of the witness' evidence; (b) any independent supporting or contradicting evidence; (c) the external consistency of the evidence; (d) the internal consistency of the evidence; (e) the "balance" of the evidence, meaning the witness' apparent willingness to be fair and forthright without any personal motive or agenda;

and to a lesser extent (f), the witness' demeanour while testifying, meaning not so much what is said but how it is said.

[137] I have set out below my assessment of a particular witness's credibility and reliability in relation to certain pieces of contested evidence proffered.

LEGISLATIVE FRAMEWORK ON RECLOCATION

[138] *Hayun v. Hayun,* 2022 BCCA 34 (CanLII), Griffin J.A., reminds trial judges the challenges to deciding a relocation case …

> [3] Deciding where a child should live when the parents do not wish to live in the same jurisdiction as each other is one of the most difficult decisions judges are called upon to make. No matter what decision is made, the child cannot live in both jurisdictions at the same time. A fair decision requires listening to and coming to grips with the evidence of the two parents and other witnesses at trial, keeping in mind what is in the best interests of the child . . .

[139] In *B.W.H. v T.B.H*, 2024 BCSC 1235 (CanLII), Justice Wolfe, said, "This Court has, on numerous occasions, recognized that a relocation decision is 'one of the most serious decisions the court is asked to make' including because it can have lifelong impacts on children and their relationships with their parents."

[140] Because there is a pre-existing parenting order, I must consider and apply relevant s. 69 of the *Family Law Act,* which states:

> **Orders respecting relocation**
>
> **69** (1) In this section, **"relocating guardian"** means a guardian who plans to relocate a child.
>
> (2) On application by a guardian, a court may make an order permitting or prohibiting the relocation of a child by the relocating guardian.
>
> (3) Despite section 37 (1) *[best interests of child],* the court, in making an order under this section, must consider, in addition to the factors set out in section 37 (2), the factors set out in subsection (4) (a) of this section.
>
> (4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,

> (a) the relocating guardian must satisfy the court that
>
> (i) the proposed relocation is made in good faith, and
>
> (ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
>
> (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.
>
> (5) If an application is made under this section and the relocating guardian and another guardian have substantially equal parenting time with the child, the relocating guardian must satisfy the court
>
> (a) of the factors described in subsection (4) (a), and
>
> (b) that the relocation is in the best interests of the child.
>
> (6) For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following:
>
> (a) the reasons for the proposed relocation;
>
> (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
>
> (c) whether notice was given under section 66 *[notice of relocation]*;
>
> (d) any restrictions on relocation contained in a written agreement or an order.
>
> (7) In determining whether to make an order under this section, the court must not consider whether a guardian would still relocate if the child's relocation were not permitted.
>
> [Underlined emphasis added]

[141] As the parties have substantially equal parenting time, s. 69(5) of the *Family Law Act* places the onus on R.L. to show the proposed relocation, (a) is made in good faith; (b) there is a reasonable and workable arrangement to preserve the relationship between D. and her mother; and (c) the proposed relocation is in D.'s best interest.

Section 69(4)(a)(i) Family Law Act: the proposed relocation is made in good faith…

[142] In *Pepin v. McCormack*, 2014 BCSC 2230, Justice Kent, in considering the issue of good faith, states:

> [69] Good faith is a subjectively held state of mind. It involves an assessment of whether the reasons asserted by [the relocating parent] for the proposed relocation are the real reasons for the move. If so, and if the court determines on an objective basis that relocation will likely enhance [the children's] general quality of life, then the decision to relocate will normally be found to have been made in good faith.

[143] In *L.V.R.L. v M.A.E.S*, 2022 BCSC 2437 (CanLII), Justice Sharma comments:

> [31] Many cases talk about good faith, and often it really amounts to an absence of bad faith. As noted by Justice Betton in *L.J.R. v. S.W.R.*, 2013 BCSC 1344:
>
> > [71] Good faith is a subjectively held state of mind. Yet, some of the characteristics [listed under FLA, s. 69(6)] are undoubtedly objective. I find that to the extent a factor listed in s. 69(6) is objective, a positive or negative finding suggests an inference that the relocating guardian either possessed or did not possess the required subjective good faith.
> >
> > [72] The language of s. 69(6) makes it clear that the above four considerations are not an exhaustive list, but those considerations do establish a tone for the concept of good faith in Division 6 relocation proceedings. They are, in my view, consistent with a common understanding of the phrase.

[144] It also bears mentioning that even where good faith (and reasonable and workable arrangements) is not made out, relocation will still be granted if it is in the best interests of the child upon an analysis of the s. 37(2) factors: *L.V.R.L. v. M.A.E.S.*, 2022 BCSC 2437, at paras. 31–32.

[145] In order to be satisfied the proposed relocation is made in good faith the Court must consider "all relevant factors" including: (i) the reasons for the proposed relocation; (ii) whether the relocation is likely to improve the quality of life of the child or of the guardian, including increasing emotional well-being or financial or educational

opportunities; (iii) whether notice of the proposed relocation was given under s. 66; and (iv) any restrictions on relocation contained in a written agreement or an order: s. 69(6). I will address each of these four factors in turn.

[146] In *L.J.R. v. S.W.R.*, 2013 BCSC 1344, Justice Betton states at para. 73:

> Parties seeking to relocate cannot gain advantage by carrying out the relocation in advance of any prospective court approval.

[147] In this case R.L. has now fully relocated to [omitted for publication]; however, for over a year he maintained a residence in Prince George, where he exercised his parenting time with D. In *B.W.H.,* the father had already relocated and then applied to have his children move to join him. Justice Wolfe considered whether this changed the analysis under s. 69. She states:

> [50] . . . In *Scruton v. Wilson*, 2020 BCSC 1850, Justice Saunders held that a parent's "*fait accompli* limits the Court's options, but does not change the analytical framework, which remains centred on the children's best interests" (at para. 8). In terms of timeframe for the analysis, it is clear that the best interests of the children and whether reasonable and workable arrangements have been proposed must be assessed at the time of the application. The good faith analysis, however, may require consideration both at the time the parent relocated and at the time of the application: see for example, *L.J.R. v. S.W.R.,* 2013 BCSC 1344 and *J.K.C. v. B.F.G.P.,* 2016 BCSC 2392.

Section 69(6)(a): the reasons for the proposed relocation;

[148] R.L. claims he is relocating for employment. On November 16, 2022, after 14 years working as a [omitted for publication], the City of Prince George terminated R.L.'s employment. He has sued the City of Prince George for wrongful dismissal and that litigation is ongoing.

[149] I accept R.L. did not voluntarily leave his employment as a City of Prince George [omitted for publication]. I also accept R.L.'s evidence there are scant jobs locally for a [omitted for publication] with his seniority and skill set. He is not independently wealthy and needs to work to support himself and his family through his labours. Hence R.L. retrained as a [omitted for publication] investigator and sought work elsewhere. On May

22, 2023, R.L. entered into a contract with [omitted for publication] to work as a [omitted for publication] investigator. His work is based in the lower mainland, but requires him to travel throughout North America to conduct investigations.

[150] I do not find R.L. relocated in bad faith or for any improper motive. Specifically, I do not find that R.L. has orchestrated his move to the lower mainland in an effort to frustrate C.D.'s parenting time with D. It was not, as Justice Prowse describes, "a thinly disguised attempt to thwart contact with the other parent…": *Stav v. Stav*, 2012 BCCA 154, para. 89, leave to appeal to SCC refused, [*Lilach Stav v. Gil Stav*] 2012 CanLII 49985 [(SCC)]. I accept R.L.'s evidence that he has relocated for work. I find his relocation was reasonably necessary in the circumstances and entirely distinguishable from *J.L.L. v A.J.M,* 2023 BCSC 1698, where the relocating mother moved her much younger children from Mission to Kamloops to follow her new boyfriend.

[151] I take guidance from the Supreme Court of Canada's decision in *Barendregt v. Grebliunas,* 2022 SCC 22 (CanLII), paras. 128–130, that cautions against casting judgment on a parent's reasons for relocating. The relocating parent need not prove the move is justified, and a lack of a compelling reason for the move, in and of itself, should not count against a parent, unless it reflects adversely on a parent's ability to meet the needs of the child. The parent's reasons for relocating must be considered only to the extent they are relevant to the best interests of the child.

Section 69(6)(b): whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;

Increased Financial Opportunities

[152] In *D.T.S. v S.P.M*, 2022 BCSC 547 (CanLII), Justice Francis states:

> [62] . . . As Betton J. noted in *L.J.R.,* objective factors such as whether the proposed relocation will enhance the quality of life of the child, while obviously relevant to the best interests of the child, are, at this stage of the analysis, aimed at discerning the subject good faith of the relocating parent.

[153] Evidence regarding any potential enhancement of the child or guardian's life must rise above mere speculation. I must balance the potential positive effects against the potential negative effects.

[154] In his financial statement filed May 10, 2023, (CEIS #101) R.L. declares his guideline income for child support purposes to be $0.0. In his Financial Statement filed on January 24, 2024, as a result of his position with [omitted for publication], R.L. indicates his employment income for child support purposes is $97,200.24 (CEIS #115).

[155] In *Stav,* the BC Court of Appeal emphasized that a move justified by financial or emotional gains that will ultimately inure to the benefit of the child is a relevant consideration to weigh in the balance.

[156] I take guidance from *A.H. v O.H*, 2021 BCSC 1240 (CanLII), wherein Justice Masuhara allowed the mother to relocate to Israel with the parties' six-year old child. The father had sought an order to have the child live primarily with him in Vancouver, BC Justice Masuhara found that both parents have good parenting skills and that the child had a strong attachment to each parent, as well as an attachment to both jurisdictions. The father was thriving in British Columbia, but the mother was not. Justice Masuhara found that the inequity in the parent's circumstances, if both remained in BC, would impact negatively on the child. The father appealed. Justice Griffin for the unanimous appellate court held [*Hayun v. Hayun,* 2022 BCCA 34]:

> [30] In *Duggan* [*v. White*, 2019 BCCA 200 (CanLII] this Court found it important to the relocation analysis to consider the unequal circumstances of a mother who, if not allowed to relocate, would remain in a low-income situation and not be able to attain financial security. Justice Saunders noted:
>
> > [63] … It is difficult to see, absent evidence particular to the case, how the prolongation of such unequal circumstances can be in the best interests of the child, as he grows to understand the relative placement of his parents in his family structure.
> >
> > …
> >
> > [65] I would observe that although this case concerns the living arrangements of a child and not spousal support, the stance of family law in Canada has long been to promote the economic

> self-sufficiency of each party within a reasonable time: e.g., *Divorce Act,* s. 15.2(6)(d). That stance recognizes the general advantages of individual financial independence in the family context, including the stronger safety net for the child to protect against the unexpected, consistent with the best interests of children caught in the breakdown of family relationships. This consideration, too, goes into the round.
>
> [66] The *Family Law Act* directs a court to consider "the best interests of the child", "the child's ... psychological and emotional safety, security and well-being," and "all of the child's needs and circumstances". It seems to me that a full understanding of these phrases provides room for considering the concepts of equal opportunity, review of the present disparity between the economic circumstances of the parents, and recognition of the potential prolongation of that disparity consequent on the decision made by the judge on the application before him. Such considerations surely inform, to borrow a phrase from Justice L'Heureux-Dubé, "the conditions which are most conducive to the flourishing of the child": *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3 at 65 (dissenting in the result), quoted favourably in *Manitoba (Director of Child and Family Services) v. C.(A.)*, 2009 SCC 30 at para. 88. I consider that in narrowing his review to the "necessity" of the move, the judge fell into error in failing to give a large consideration of the best interests of the child.

> [31] The father suggests that before a judge may consider the inequality between the parents, it is necessary first to have evidence that the inequality is having a negative impact on the child, citing *Hellberg v. Netherclift*, 2017 BCCA 363 at para. 88.
>
> [32] As explained subsequently in *Hellberg v. Netherclift*, 2018 BCCA 404 at paras. 65–67, the earlier *Hellberg* appeal decision does not stand for the proposition that a parent wishing to relocate must show that current living arrangements are having an adverse impact on a child. This is also clear from the analysis in *Duggan* set out above.

[157] In *Barendregt*, the Supreme Court of Canada recognized the interests of the relocating parent and the child can be aligned by stating (at para. 171), "Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child's wellbeing. . . "

[158] I am satisfied that R.L.'s moved to [omitted for publication] for a good faith reason, namely, for employment purposes. I am satisfied R.L.'s move is reasonable and necessary for his financial security, which will directly and indirectly benefit D.

[159] C.D. submits that R.L.'s increased financial security will benefit D. without D. relocating to [omitted for publication]. If she remains in Prince George, D. will benefit from R.L.'s economic enhancement by him paying child support. Essentially C.D. argues that D. is well-settled in Prince George, and the preservation of the status quo provides her consistency and stability. I am mindful, however, there should be no presumption in favour of the *status quo*, as such a presumption detracts from the individual justice to which each child is entitled: *Nunweiler v. Nunweiler*, 2000 BCCA 300 (CanLII), para. 30; *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230, para. 26; *Barendregt,* paras. 123, 128, 137–141.

[160] Section 65 of the *Family Law Act* defines "relocation" as "a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with a child or a guardian or . . . one or more other persons having a significant role in the child's life." Section 37(3) of the *Family Law Act* holds that an order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being. In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and it must not be presumed that parenting time should be shared equally among guardians: s. 40(4)(b). The child's need for stability is an important factor in assessing a child's best interests, but it in itself is not determinative, thereby rendering the relocation provisions in the *Family Law Act* a virtual nullity.

Increased Emotional Well-being

[161] The difficulty in weighing other factors that may enhance or detract from D.'s quality of life is the fact that D.'s circumstances will change no matter where she lives because the parents cannot reasonably maintain a shared parenting arrangement when they live 800 kilometres apart.

[162] The overwhelming positive potential benefit to her relocating to [omitted for publication] is the fact that D. will continue to live with her father, R.L., her step-mother C.L., and paternal grandmother A.L. D. will also be able to spend significant time with

her best friend, T.P., who lives in [omitted for publication]. D. will be close to her paternal aunts, uncles and cousins, who also reside in the lower mainland. I understand that many of D.'s maternal extended family also reside in the lower mainland. D. will have plenty of devoted and trustworthy people to watch over her and care for her.

[163] Another potential positive benefit of D. relocating to reside with R.L. is [omitted for publication] close proximity to other large cities and communities in the lower mainland and potential access to increased resources and services not otherwise available in the north.

[164] The overwhelming detriment to her relocating is the fact that D. will experience extended periods without in-person parenting time with her mother, C.D. D.'s relationship with her half-sister, E., may also suffer. D.'s relationship with her extended family in Prince George, which includes C.D.'s new partner G.M., and his three children, may not develop as quickly as if D. continued to live in Prince George.

Increased Educational Opportunities

[165] D. suffers from a learning disability and has special educational needs as detailed in Dr. Thursfield's psychoeducation report. If she were to relocate to [omitted for publication]. D. would have to change schools, which could disrupt her current academic journey. D. has attended [omitted for publication] since Kindergarten.

[166] R.L. and C.D. disagree whether changing schools will enhance D.'s academic progress. C.D. states in her Reply and Counterclaim (CEIS #110):

> D., while having struggled with learning difficulties in the past, has made significant improvements and has now established an Individual Education Plan, tutoring and educational supports and resources that have facilitated her progress. It would be detrimental to uproot D. and to take her out of the established routine.

[167] At trial, the court received persuasive evidence indicating D. is progressing at [omitted for publication]. In preparation of the s. 211 Report, FJC McCuaig interviewed D.'s educational support team at [omitted for publication]. These included the school

principal, J.S., learning resource teachers, Ms. E.C. and M.O., and D.'s Grade [omitted for publication] classroom teacher, M.V. Ms. E.C. states "she has noticed steady and consistent progress this year and D.'s recent reading assessment indicates she has improved three levels." FJC McCuaig reports that R.L. and C.D. both attend the student-teacher meetings and receive regular updates on D.'s progress. I glean from J.S.'s evidence that contrary to R.L.'s belief, D.'s resource team at [omitted for publication] are appropriately certified. D. will continue to have the same support team at [omitted for publication] for as long as she continues to attend at that school and her teachers continue to work there.

[168] R.L. maintains that he is the parent who took the initiative to and incurred the expense of obtaining the Psychoeducational Assessment for D. by Dr. Jonathan Thursfield: Exhibit 1, Tab 4. R.L. acknowledges that [omitted for publication] provides D. with a learning assistance teacher and an educational assistant. Where [omitted for publication] falters, in R.L.'s mistaken view, is that none of the teachers is certified in Orton-Gillingham methodology. R.L. believes that D.'s progress has plateaued.

[169] Another of [omitted for publication] shortcomings, according to R.L., is the practice of pulling D. out of class to provide her learning assistance. R.L. says this is something D. "absolutely hates." It singles her out from her classmates, which D. finds embarrassing and stigmatizing. This situation was discussed at the first relocation hearing. Judge Mengering notes in her November 3, 2020 Reasons for Judgment:

> [Mr. L.] and his wife, C.L., emotionally describe their perception of D.'s experience in being pulled out of class eight times per week to access specialized resources at [omitted for publication], including tearfulness, anxiety, sadness, embarrassment, low self-esteem, and a lack of confidence. They believe that her attendance at [omitted for publication] School would be easier and less stigmatizing because it caters to students with learning disabilities with a learning environment that does not single out students.

[170] Judge Mengering ultimately determined it was in D.'s best interest to maintain the *status quo*. At the time, R.L. was still gainfully employed as a [omitted for publication] for the City of Prince George. Nevertheless, Judge Mengering did state that she was

satisfied that the proposed relocation "may increase the quality of certain aspects of D.'s life, including her happiness at school".

[171] J.S. confirms that D. is still being pulled out of her regular classroom three or four times per week to receive one-on-one reading intervention with a learning assistance teacher. C.D. points out that Dr. Thursfield recommends D. have one-on-one and small group learning, which are the very instructional supports [omitted for publication] provides. C.D. submits the comments made by D.'s education team in the s. 211 Report and on D.'s report cards expressly identified small group and one-on-one instruction as learning environments in which D. excels and are aspects of her learning plan that D. enjoys.

[172] I do note that D.'s dislike of being "pulled out of class" for learning assistance is noted in the s. 211 Report, wherein M.V. is cited as stating:

> D. is wishing to be an independent learner. D. is socially aware and does not wish to be perceived as different.

[173] J.S. testified that although she did not recall any specific complaints about D. being taken out of the classroom, "it is a common concern for parents of children who are being pulled outside of the classroom for interventions."

[174] R.L. recognizes that [omitted for publication] has tried to implement Dr. Thursfield's recommendations, but remains of the view that [omitted for publication] is not the right school for D. It is for this reason that on February 5th, 2020, R.L. filed his Application (CEIS #22) seeking the court's permission to relocate D. to Maple Ridge so that she could attend the [omitted for publication] School. [Omitted for publication] is a private school that provides an educational environment expressly adapted to the individual needs of students with specific learning disabilities. Its principal, O.W., testified at the first relocation hearing on October 30, 2020. Ultimately, Judge Mengering refused R.L.'s relocation application for the reasons set out in her November 3, 2020 decision. Nevertheless, Judge Mengering did find R.L. was acting in good faith when he sought the relocation. The appropriateness of [omitted for publication] for D. remains a live issue.

[175] On a rare point of consensus, R.L. and C.D. agree that D. does not like the religious aspect of [omitted for publication]. It is a [omitted for publication] school and D. is not religious and hates wearing a uniform. D.'s dislike of the religious focus of [omitted for publication] is noted in FJC McCuaig's s. 211 Report (at 5).

[176] R.L. testified that when he initially filed his application in June 2023, he investigated D.'s educational opportunities at [omitted for publication] School in [omitted for publication]. This is the public elementary school in the catchment area where R.L. now resides. He testified that he spoke to Ms. J., the learning assistance teacher, as to what accommodations [omitted for publication] could offer D. Ms. J. provided R.L. with a letter on what accommodations [omitted for publication] could offer D. As the relocation did not proceed in the summer of 2023, R.L. researched the learning assistance programs suitable for D. commencing in September 2024.

[177] R.L. testified that if she relocate to [omitted for publication], D. would attend the [omitted for publication] School ("omitted for publication"), which is just a few blocks from R.L.'s residence. R.L. learned that once D. was registered as a student, the school would obtain a copy of her Psychoeducational Assessment and then build a plan. I understand from J.S.'s testimony at trial that where a student, such as D., meets the criteria provided by the BC Ministry of Education as a student with a learning disability, the student is required to have an Individual Education Plan to "state specific goals and strategies for the student."

[178] I am prepared to take judicial notice the BC Ministry of Education requires public schools to accommodate children with learning disabilities.

[179] According to R.L., at [omitted for publication], students requiring learning assistance receive these services without being removed from their regular classroom. [omitted for publication] has Orton-Gillingham certified teachers. Their learning assistance teachers works with students in the classroom because many students do not like being singled out. The learning assistance teacher comes into the classroom and provides one-on-one assistance to multiple students. Hence, D. could obtain assistance without being singled out.

[180] R.L. said he went as far as he could in investigating what learning assistant modalities may be available to D. in [omitted for publication] prior to D. registering as a student. R.L. was advised to wait until D. is registered before providing the school with her Psychoeducational Assessment. R.L. says that although she is very good at math, D. has not progressed with her reading and writing. R.L. perceives D. as bright, but needing the right direction. He cannot say definitively D. will do better at [omitted for publication] than at [omitted for publication] but he "hopes so – absolutely."

[181] C.D. submits that R.L. ought to have "secured or at least arranged for better educational opportunities in the lower mainland." I find it entirely plausible that administrators of public schools are reluctant to engage in a time-consuming speculative exercise as to how they might accommodate a particular student with learning disabilities before that student even registers at their school. This is distinct from J.S. who was able to testify how [omitted for publication] accommodates D., a student who has attended that school for seven years.

[182] The evidence I accept indicates [omitted for publication] is accommodating D.'s special needs arising from her learning disability. [Omitted for publication] is a very small school of [omitted for publication] students. I do not fault R.L. for believing a larger school in a larger community may have more resources available for students such as D.

[183] In her s. 211 Report, FJC McCuaig describes R.L. "as a parent who is trying to access the best resources for his daughter." I accept that R.L. is sincere, even passionate, about D.'s ability to progress academically in school. He is disappointed that she is going into Grade [omitted for publication] when she should be going into Grade [omitted for publication]; he is worried that she can still not read nor write a simple sentence. I do not find that by expressing concern about D.'s lack of academic progress in [omitted for publication] that R.L. is belittling or criticizing D. or her educational achievements as C.D. submits. He is simply defending his view that D. could do better than she is doing at [omitted for publication].

[184] R.L. also believes that D. is unhappy at [omitted for publication] and is convinced she will fare better elsewhere. C.D. believes D. is thriving at [omitted for publication] and intends for her to remain at that school until she completes Grade [omitted for publication].

[185] Objectively, I cannot find that relocating her from Prince George to [omitted for publication] will dramatically enhance D.'s scholastic opportunities and progress. Having said that, I do accept that is what R.L. believes. I also recognize that D. herself has expressed some dissatisfaction with [omitted for publication]. Nevertheless, I do not find D.'s discontent has stalled her academic progress or interfered with her forming friendships at [omitted for publication] or participating in and enjoying its extracurricular activities. However, it may well be that if she remains in Prince George, D. may wish to change her school in any event.

[186] Although at one time D. participated in dance and musical theatre, I gather she is no longer engaged in these activities. She has expressed a desire to play volleyball in the upcoming school year. I am aware that BC School Sports makes available to its students a number of individual and team sports, including volleyball. With respect to extra-curricular activities for D., she is now of an age where she will have some choices as to which extracurricular activities she may wish to check out. Many of the team sports involve competitions for limited positions. R.L. cannot assume that D. will succeed in winning a competitive spot on a team in [omitted for publication] or Prince George. As she will live in a fairly large community, be it Prince George or [omitted for publication], D. will likely have multiple extracurricular activities from which to choose.

[187] In her closing submissions, Ms. Pavao submits that "like the Court in *J.L.L. v. A.J.M.,* [2023 BCSC 1698], that this Court should infer that Mr. L. does not have any genuine concerns regarding D.'s educational progress or her needs being met by the current arrangements at [omitted for publication], as being the reason for the proposed relocation." I am not that cynical and make no such inference. In any event, I accept R.L.'s purpose in relocating to [omitted for publication] is for employment, and not specifically to enhance D.'s educational opportunities. I take guidance from Judge

Mengering's comments in her November 3, 2020 Reasons for Judgment that "the bond between a parent and child cannot be sacrificed on the altar of education."

Section 69(4)(a)(ii): the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life…

[188] [Omitted for publication] is based in Richmond, BC, but R.L. has the opportunity to work in its Langley office. R.L. was required to reside somewhere in the lower mainland for his work. Ultimately he chose [omitted for publication], a community that is closer to Prince George than most other cities in the "lower mainland". [Omitted for publication] is roughly 800 kilometres from Prince George – about a nine hour drive. I am not sure if there are any direct flights between Prince George and [omitted for publication], but there are many between Vancouver (YVR) and Prince George (YXS). In any event, there is no doubt that if she relocates to [omitted for publication], D.'s ability to return to spend in-person parenting time with her mother, friends and extended family in Prince George will be attenuated.

[189] In his June 21, 2023 Application (CEIS #103), R.L. states:

> I am asking for an Order that the child reside with me and attend school in the Lower Mainland of British Columbia, and that C.L.D. have parenting time during specified times, including during school Spring Break, school Summer Holidays, Christmas Holidays, and other periods agreed to in writing, in advance.
>
> . . .
>
> I was wrongfully terminated from my employment with the Prince George [omitted for publication]. I have found employment as a British Columbia [omitted for publication] Investigator in the Lower Mainland of British Columbia. I am able to provide the child with a good home and environment in the Lower Mainland, where the child will have contact with extended family and opportunity to participate in sports, extracurricular and recreational activities. I will ensure that the child has ongoing meaningful contact and in person parenting time with C.L.D.

[190] Realistically, the distance between [omitted for publication] and Prince George is too great for D. to transition between her Prince George and [omitted for publication]

homes except when school is not in session. Still, we live in a highly mobile society. As D. is [omitted for publication] years old, she is of an age she could fly as an unaccompanied minor, so that will increase her flexibility in spending time with both parents.

[191] When she received R.L.'s relocation application C.D. responded with her Counterclaim (CEIS #110) seeking an order D. live primarily with her and R.L. have "parenting time on dates and times agreed upon by the parties".

[192] I agree that R.L.'s proposal for parenting time with D. as set out in his June 21, 2023 Application (CEIS #103) is somewhat vague. I note that C.D.'s proposed parenting time in her July 2023 Reply and Counterclaim is even less precise. Both parties had since provided a more detailed proposal for parenting arrangements.

[193] When R.L. obtained his job offer from [omitted for publication], he was living in Prince George with his wife C.L. and sharing equal parenting time with D. Both R.L. and C.D. were represented by legal counsel and the family litigation was active. A trial was looming. R.L.'s legal counsel, Mr. G. Petrisor, K.C., notified C.D. of his client's intention to relocate by filing an Application About a Family Law Matter (CEIS #103), and delivering it to Ms. Pavao, C.D.'s legal counsel. I assume Mr. Petrisor drafted the application. I see nothing inappropriate of R.L. relying on his legal counsel to notify C.D. of his intention to relocate.

[194] If Ms. Pavao asked Mr. Petrisor to provide C.D. with further and better particulars of R.L.'s proposed parenting time, this was not brought to my attention. My understanding is that C.D. was unwavering in her position that D. ought to remain in Prince George living primarily with her. In the circumstances, I am not prepared to fault R.L. for failing to present C.D. with a roster of precise times and dates when she might exercise parenting time with D. C.D.'s Reply and Counterclaim did not indicate she was open to negotiating parenting time arrangements if D. relocated.

[195] I also accept that by the time he filed his June 21, 2023 Application (CEIS #103), R.L.'s co-parenting relationship with C.D. had unravelled. C.L. testified after commencing her relationship with G.M., C.D.:

> . . . was no longer willing to meet with R.L. She didn't want to do things together with R.L. anymore. She only wanted to communicate via email and not the phone calls. She was not willing to get together and sort out things for the sake of D. She completely was unwilling to do anything at that time.

[196] In these circumstances R.L.'s ability to negotiate parenting arrangements was greatly diminished.

[197] I recognize that in this case, R.L. and C.D. were and remain at an impasse because R.L. wants D. to reside primarily with him in [omitted for publication] and C.D. wants D. to reside primarily with her in Prince George. Neither can be faulted for their position.

Section 69(6)(c): whether notice of the proposed relocation was given under s. 66 [*notice of relocation*];

[198] Section 66 states:

> **Notice of relocation**
>
> 66 (1) Subject to subsection (2), a child's guardian who plans to relocate themselves or a child, or both, must give to all other guardians and persons having contact with the child at least 60 days' written notice of
>
> (a) the date of the relocation, and
>
> (b) the name of the proposed location.
>
> **Resolving issues arising from relocation**
>
> 67 (1) If notice is required under section 66 *[notice of relocation]*, after the notice is given and before the date of the relocation, the child's guardians and the persons having contact with the child must use their best efforts to cooperate with one another for the purpose of resolving any issues relating to the proposed relocation.
>
> (2) Nothing in subsection (1) prevents
>
> (a) a guardian from making an application under section 69 *[orders respecting relocation]*, or

[199] R.L. accepted an offer of employment from [omitted for publication] at the end of May 2023. R.L. testified that in early June 2023, he notified C.D. by email that he was intending to relocate to the lower mainland. He told her that D. had indicated she wanted to move with him. C.D. responded to R.L. by email with a settlement proposal that was attached to R.L.'s Trial Readiness Statement.

[200] On June 21, 2023, R.L. filed an Application About a Family Law Matter (CEIS #103) seeking an order that he be permitted to relocate D. to the lower mainland. Despite this application was in writing and filed with the court and properly served, C.D. claims it does not constitute proper notice under s. 66 of the *Family Law Act* because it did not include the name and date of the relocation.

[201] R.L.'s June 21, 2023 Application states he was wrongfully terminated from his employment with the City of Prince George and found employment as a [omitted for publication] investigator in the lower mainland. I accept the 'lower mainland" is a geographical expression rather than a precise location. At the time he filed his Application (CEIS #103) all R.L. knew was that he had to relocate to some community in the lower mainland.

[202] In my view R.L. satisfied the s. 66 requirement when he advised C.D. he was relocating to the lower mainland, which includes [omitted for publication]. In this regard, I am guided by the BC Court of Appeal decision in *Lewis v. Eaton*, 2023 BCCA 338 (CanLII), wherein the mother gave notice of her intention to relocate from Squamish to Houston, BC. The mother actually moved to Telkwa, not Houston. Justice Griffin for the appellate court commented that there was "not a strong argument as to a deficiency in the notice since the two communities [Telkwa and Houston] are in close proximity." On a purposeful interpretation of s. 66, I am of the view R.L.'s notice he was relocating to the lower mainland sufficed and his failure or inability to say precisely where in the lower mainland at that point in time was not indicative of bad faith.

[203] C.D. also submits that in his July 21 2023 Application (CEIS #103) R.L. did not specify the date of his relocation. R.L. was not planning on relocating D. without her mother's consent or a court order and did not do so. Even at the time of trial, R.L.

maintained his residence in Prince George, where he exercised his parenting time. I understood that he did so pending the completion of the trial and the Court's decision on his relocation application.

[204] It is clear from the Reply with Counterclaim (CEIS #110) that C.D. was not going to agree to D. relocating with R.L. to any lower mainland community on any date. This is not a criticism. C.D. believes D. should remain living with her in Prince George. I do not see how R.L. could provide a precise date of D.'s relocation absent a court order where there was no hope of a consensus. I do not agree R.L. failed to give C.D. sufficient notice of his own intention to relocate. I am satisfied he did so shortly after he accepted [omitted for publication] offer of employment.

[205] In my view, C.D. was not confused or misled or prejudiced by R.L.'s June 21, 2023, Application About a Family Law Matter (CEIS #103). I find her allegation that R.L. did not provide her with proper notice of his intent to relocate is without merit.

Section 69(6)(d): any restrictions on relocation contained in a written agreement or an order.

[206] As set out above, Judge Brecknell's September 6, 2019 Order (CEIS #21) prohibits either party from removing D. from Prince George without the written consent of the other or a court order. R.L. has not wrongfully relocated D. He maintained his residence in Prince George for over a year in order to exercise his parenting time with D. pending the outcome of this trial.

Section 69(5)(b): that the relocation is in the best interests of the child.

[207] In determining the relocation issue I must consider D.'s best interests. Section 37(2) of the *Family Law Act* provides that in determining what is in the best interests of the child, all of the child's needs and circumstances must be considered, including the specific factors listed in that section.

[208] In *L.P. v. A.E.*, 2024 BCCA 270 (CanLII), Justice Dickson, discusses the judge's formidable task of determining a child's best interests. She states:

> [2] Determining the best interests of a child is a heavy responsibility. As explained in *Barendregt v. Grebliunas*, 2022 SCC 22, it involves a discretionary, intensely fact-specific, often nuanced inquiry with profound impacts on children, their families, and society. The goal in each case is to reach a just result while striving to achieve order in family law proceedings and, to the extent possible, finality . . .

[209] In this case, assessing D.'s best interests is exceedingly complex given the tangle of competing benefits and detriments posed by R.L.'s and C.D.'s respective proposals for parenting arrangements. In undertaking this exercise, I will consider the non-exhaustive list of factors enumerated in s. 37(2) of the *Family Law Act*.

Section 37(2)(a): the child's health and emotional well-being.

[210] As a young child, D. had a weak immune system, which made her susceptible to respiratory disease. D. was hospitalized for pneumonia when she was [omitted for publication] old for about two and one-half weeks. In 2018, at the beginning of Grade [omitted for publication], D. was air-lifted to the BC Children's Hospital where she stayed for six or seven weeks. D. caught colds and fractured bones easily. Fortunately D.'s health issues abated with time and she is now a healthy girl.

[211] D.'s learning disability became manifest when she began school. R.L. describes it as a form of dyslexia. As a result of this disability and her lengthy illness, D. was required to repeat Grade [omitted for publication] at [omitted for publication].
Dr. Jonathan Thursfield, Registered Psychologist, provided a Psychoeducational Assessment for D. when she was [omitted for publication] old: Exhibit 1, Tab 4.
Dr. Thursfield states (at para. 16) that D.'s academic deficits do not impact her wider communication skills. Dr. Thursfield opined that as of the assessment date (February 2020) D. met the criteria provided by BC Ministry of Education as a student with a learning disability. He states (at 160):

> Briefly, these criteria include (a) persistent difficulties in the acquisition of pre-academic and academic skills in spite of appropriate opportunities to learn, (b) average to above average cognitive ability, and (c) weaknesses in cognitive processing that contribute to persistent difficulties in learning.

[212] Dr. Thursfield stated (at 16):

> The present assessment indicates that D. meets the criteria for the diagnosis of Specific Learning Disorder (moderate) with impairment in Reading and Written Expression. DSM-V Moderate Specific Learning Disorder is defined as *'Marked difficulties with learning skills in one or more academic domains, so that the individual is unlikely to become proficient without some intervals of intensive and specialized teaching during the school years. Some accommodations or supportive services at least part of the day at school, in the workplace, or at home may be needed to complete activities accurately and efficiently*.'

[213] D. will be going into Grade [omitted for publication] in September 2024. Because of her learning disability, D. requires additional resources and accommodations in school. If she remains in Prince George, D. would continue to attend [omitted for publication]. If the Court grants R.L.'s relocation application then D. would attend Grade [omitted for publication] in a public middle school in [omitted for publication], BC. I accept that wherever she goes to school, D. would require and receive the necessary interventions to progress academically.

Section 37(2)(b): the child's views, unless it would be inappropriate to consider them.

[214] D. is [omitted for publication] years old. Although she suffers from a learning disability, she is an intelligent, healthy and happy child. Section 37(2)(b) of the *Family Law Act* requires the court to consider D.'s views unless it would be inappropriate to do so. A child's views are considered inappropriate where the child is very young or suffers from a serious cognitive impairment. As Dr. Thursfield opines, D. has an "average to above-average cognitive ability" with an academic strength in mathematics.

[215] I glean from J.S.'s evidence that D. is functioning well at [omitted for publication]. D. has "a nice group of friends"; she is happy and socializes well with her peers. She is not bullied at school. D. participates in various aspects of school life, including intermural sports. She does not present a discipline problem to the staff. Given these strengths, I can find no reason why this Court should not seriously consider D.'s views on parenting arrangements.

[216] Although the child's views is but one factor the court must consider when assessing the child's best interest, it is a factor that increases in significance with the child's age. In *A.R. v J.R*, 2023 BCSC 2266 (CanLII), Justice Walkem discusses the importance of the court in considering the views of children. She states:

> **VIEWS OF THE CHILDREN**
>
> [57] Family law conflict is often an area of incredible vulnerability for all parties. Children's lives may be drastically impacted by legal disputes, and yet often children are left without any voice in legal proceedings. Children are not pawns on a legal board game to be moved about according to the will of the adults involved in a dispute about how they will be cared for, where they will live, and how decisions will be made about their lives. The law has increasingly evolved to recognize that children have the right to have their voice heard in matters which impact their lives.
>
> [58] Children, in the words of the Supreme Court of Canada in *Michel v. Graydon*, 2020 SCC 24, at para. 77 [Graydon], are "full rights bearers". There is a corresponding responsibility on the part of courts to guard children's interests, an important aspect of which can include ensuring that their voices are heard. Where a child has the ability to form and express an opinion on matters related to their own lives, their voices should be heard, considered and reflected in decisions. Listening to the voices of children in decisions made about their lives honours their essential human dignity.
>
> [59] The right of a child to be heard in legal matters affecting them is articulated in the *United Nations Convention on the Rights of the Child* ("*UNCRC*"), November 20,1989, Can T.S. 1992 No. 3, ratified by Canada on December 13, 1991. Article 12 requires contracting states to provide children "the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body". The Supreme Court of Canada has affirmed the presumption that domestic statutes are presumed, absent clear evidence to the contrary, to conform with a state's international legal obligations: *R. v. Hape*, 2007 SCC 26 at para. 53.
>
> [60] Justice Martinson in *B.J.G. v. D.L.G*., 2010 YKSC 44 [B.J.G.], described features of a child's right to be heard, as reflected in the UNCRC, as including: "the right to express their views so long as they are capable of forming their own views", as well as "the right to have those views given due weight in accordance with their age and maturity", (para. 10). A child's right to be heard encompasses both procedural and substantive elements:
>
> > [47] More than just lip service must be paid to children's legal rights to be heard. Because of the importance of children's

> participation to the quality of the decision and to their short and long term best interests, the participation must be meaningful; children should:
>
> 1. be informed, at the beginning of the process, of their legal rights to be heard;
>
> 2. be given the opportunity to fully participate early and throughout the process, including being involved in judicial family case conferences, settlement conferences, and court hearings or trials;
>
> 3. have a say in the manner in which they participate so that they do so in a way that works effectively for them;
>
> 4. have their views considered in a substantive way; and
>
> 5. be informed of both the result reached and the way in which their views have been taken into account.

[217] In this case, I have heard D.'s voice through the December 2023 Section 211 Report of the FJC, Erica McCuaig (CEIS #114). In *B.W.H.* Justice Wolfe states at para. 106,

> The facts in a s. 211 report are *prima facie* evidence of their truth, but a court retains discretion to review background information, carry out an independent assessment based on the evidence at trial and reach different conclusions: *S.A.H. v. J.J.G.V.,* 2021 BCSC 2132 at para. 32.

[218] D. says she has a good relationship with her father and describes him as "very loving", "kind" and "nice". D. says it is her father who helps her best with her problems and worries. She feels closer to him because he understands her, does fun things, and engages with her when she is bored. On the other hand, she does not appreciate it when her father gets mad and stressed. D. also gets along well with C.L., who she says is nice.

[219] D. says she gets along with her mother, but not as well as she does with her father. She describes C.D. as "nice" and she enjoys it when they watch movies together. D. does not appreciate it when her mother is rude.

[220] FJC McCuaig writes in her s. 211 Report:

> D. would like to move with her dad because she has more family and friends in the Lower Mainland. She would like to see her mom during the holidays and for long weekends. She would call her mom regularly unless she is busy. D. is aware her mom does not want her to move. Her mom said, "No. This is your home."
>
> D. recognizes she will miss her mom if she moves but she will also miss her dad if she does not go with him. Either way will be difficult.
>
> D.'s mom asks her questions about her dad which causes D. to feel annoyed. Her dad asks generic questions about how she enjoyed her weekend. D. is fine with this as he is not asking direct questions about her mom unlike her mom who asks about her dad. Neither parent says anything bad about the other.
>
> D. is worried about making her parents sad, stressed, or mad but would like the court to know she wishes to live with her dad. If her dad remained in Prince George, D. would like the one week on and one week off schedule to continue.

[221] C.D. cites with approval those sections of the s. 211 Report that record FJC McCuaig's interviews with D.'s support team at [omitted for publication].

[222] C.D. asks the court to reject as coerced or coached, those sections of the s. 211 Report that suggest:

a. R.L. and C.L. spend more time with D. than C.D. or G.M.;
b. C.D. discusses with or questions D. about her parenting arrangements in R.L.'s household;
c. D. has a closer relationship with R.L. than with C.D.; and
d. C.D. works long hours or in any case longer than a standard work day.

[223] I glean from C.D.'s evidence and submissions that the Court ought to reject any views attributed to D. in the s. 211 Report that conflict with C.D.'s or G.M.'s evidence. In other words, I should accept C.D.'s and G.M.'s evidence as accurate and conclude D.'s views to the contrary are the product of R.L.'s manipulation or undue influence. Specifically, C.D. submits the comments attributed to D. in the s. 211 Report "were not

truly indicative of D.'s feelings and beliefs as they do not align with the reality of what D.'s life is like in the D.-M. household."

[224] C.D. references FJC McCuaig's concluding comments in her s. 211 Report as confirmation that R.L. has suborned the process:

> D. expressed a desire to follow her father to the Lower Mainland. She does not wish to live with her mother and says her father understands her more and does more activities with her when she is bored. It is unfortunate she has been placed in the middle of this discussion and believes she has the ability and need to choose one parent over another.

[225] C.D. submits that R.L. has instilled in D. the belief that she needed to "pit one parent against the other or to have a 'one or the other' mentality when it comes to affection for her parents." C.D. cites for example, D.'s comments. "I get along good with mom, but not as well as my dad".

[226] C.D. also takes issue with FJC McCuaig's observation at p. 6 of the s. 211 Report:

> D. is worried about making her parents sad, stressed, or mad but would like the court to know she wishes to live with her dad. If her dad remained in Prince George, D. would like the one week on and one week off schedule to continue.

[227] C.D. points out that FJC McCuaig only described R.L. as being "sad, stressed, or mad" and urges the court to infer that FJC McCuaig's reference to "parents" in the above comment means only R.L.

[228] Ms. Pavao writes in her submissions that, "Mr. M. in his evidence said D. can be easily influenced." When G.M. was asked in his direct examination to describe D. he responded unprompted: "D. is her own person. She's unique, she's outgoing, she's funny. She is stubborn. She's just a great -- great human." Subsequently, C.D.'s counsel, in what I would characterize as one of too many leading questions, asked G.M. if D. was "impressionable", G.M. responded, "very . . . she's very easily persuaded to do anything."

[229] C.D. points out that Judge Nadon expressly prohibited R.L. and C.D. from discussing “any inappropriate adult, court or legal matters.” This is a standard conduct order routinely made when the child’s parents are embroiled in litigation. It was not intended to prevent the parents from informing D. her father was relocating to [omitted for publication], or listening to D.’s worries and concerns about what impact this may have on her, or her thoughts about where she would like to live. D. is not a piece of luggage that gets hauled out of the closet on moving day. The reason the Court orders a s. 211 Report on a relocation application is to obtain the views of the child on the impending change to the existing parenting arrangements. How could the Court possibly learn D.’s views if she had to be kept in the dark about the relocation until it was *fait accompli?*

[230] On October 17, 2023, when FJC McCuaig interviewed R.L., C.D. and D., R.L. had already rented a house in [omitted for publication]. He had started working for [omitted for publication] at the end of May 2023. R.L. was in the throes of packing up his belongings and furnishings to ship them to his [omitted for publication] residence. Frankly, I do not see how a parent can pack up a house and arrange to relocate to a new community without disclosing to his [omitted for publication] year-old daughter who is living with him that he is moving. It is not unexpected that the child would inquire what that would mean to her living arrangements.

[231] C.L., who was present when FJC McCuaig conducted her interviews and observations, denies that anyone told D. she would be moving with R.L. to [omitted for publication]. A.L., also present in R.L.’s home at the same time, testified it was obvious to anyone living in the residence that R.L. was moving. A.L. says she did not tell D. nor hear anyone else tell D. that she was going to be moving to [omitted for publication] with her father. When counsel for R.L. asked A.L. in direct examination whether anyone in her family told D. that she's moving to [omitted for publication], she responded:

> No, Never. Never … That would be mean. You just don't do that. I mean, we don't know where she's going to be living and if it's with her mom, we'll do everything to support it. If it's with her dad, then that's great too. But no. No. No, never.

> . . .
>
> We did talk about the house. . . of course we talked about him [R.L.] moving. There were boxes there. D. had to know what was going on, but . . . There was nothing said about D. living with either parent at that time.

[232] A.L. admits to speaking to D. about moving to [omitted for publication]. When asked in direct examination if she had any conversations with D. about where she wanted to live, A.L. replied:

> . . . She has mentioned to me that, you know, she wants to live with her dad. I told her, you know, we don't know yet what's going to happen and that even if she wants to live with her mom, I would back her 100 percent. It's -- it's what D. wants, I -- you know, C.'s not a bad mom. If she wants to live with her mom, she can live with her mom, but she wants to live with her dad.
>
> Q: And why -- why did you feel the need to have this conversation to know what D. wants? Why did you feel the need to do that?
>
> A: I think it's important to know what D. wants, to begin with. I don't want her -- to force anything on her. Her voice is necessary.

[233] C.L. testified that when FJC McCuaig arrived in their small house it was very apparent that they were in the middle of moving. C.L. said that FJC McCuaig followed D. around and "just did a lot of observing . . . it was . . . around Halloween, at the time, so we had some Halloween activities. R.L. did some baking. Actually, Grandma was also – A. was also present for the visit as well. And, yeah, she just came and watched us with D. for an hour."

[234] I believe A.L. and I believe C.L. Although they obviously supported R.L., I still found them truthful witnesses upon whose evidence I can rely. I accept that R.L., C.L. and A.L. discussed R.L. moving because they were in the throes of packing his belongings. Even if she remained living primarily in Prince George with her mother, D. would still spend time with her father in [omitted for publication]. I accept the Ls did not tell D. that she was going to be moving with her father to live primarily in [omitted for publication]. I do not see anything untoward in reassuring D. that despite her father's move, she will still continue to spend time with both her mother and father. To do less would be cruel.

[235] Neither party arranged for FJC McCuaig to attend the trial to respond to questions and provide clarification or amplification of her s. 211 Report. Given this opportunity was open to both parties, I am not prepared to embark on an in depth interpretive exercise in search of inferences to draw from what FJC McCuaig has written.

[236] C.D. submits that "D.'s preferences or stated opinion as to her desire to relocate with Mr. L., while to be considered by the Court, should not be given any weight, as D.'s opinions are more likely than not to be the parroted opinions of Mr. L. or the verbalization of the seeds Mr. L. has planted." Ms. Pavao cites as authority the cases of *Pruden v Pruden*, 2015 BCSC 2695, and *S.T. v A.T*, 2023 BCSC 875 (CanLII). I have reviewed these cases and considered the principles espoused therein. I have also considered the decision of Justice Walkem in *A.R.* and Justice Martinson in *B.J.G.,* wherein she states:

> [3] The *Convention*, which was ratified by Canada, with the support of the provinces and territories, in 1991, says that children who are capable of forming their own views have the legal right to express those views in all matters affecting them, including judicial proceedings. In addition, it provides that they have the legal right to have those views given due weight in accordance with their age and maturity. There is no ambiguity in the language used. The *Convention* is very clear; all children have these legal rights to be heard, without discrimination. It does not make an exception for cases involving high conflict, including those dealing with domestic violence, parental alienation, or both. It does not give decision makers the discretion to disregard the legal rights contained in it because of the particular circumstances of the case or the view the decision maker may hold about children's participation.
>
> [4] A key premise of the legal rights to be heard found in the *Convention* is that hearing from children is in their best interests. Many children want to be heard and they understand the difference between having a say and making the decision. Hearing from them can lead to better decisions that have a greater chance of success. Not hearing from them can have short and long term adverse consequences for them.

[237] D. is now [omitted for publication] years old, although she was [omitted for publication] when interviewed by FJC McCuaig. I was open to arranging for D.'s views

to be updated or canvassed further, provided this was done by an independent third party. R.L. was open to a second interview with D.; C.D. was not.

[238] I bear in mind that Parliament has fixed the age of criminal responsibility at twelve years by s. 13 of the *Criminal Code*. Nothing in the *Youth Criminal Justice Act* has modified the requirements of criminal liability as they apply to young persons.

[239] I also note that where a child is 12 years older or over, the *Child, Family and Community Service Ac*t, RSBC 1996, c 46, requires the Director to take into account that child's views with respect to a plan of care. Children 12 years of age or older have a legislative right to receive notice of legal proceedings that affect them and in some cases obtain their consent.

[240] I do not accept that D.'s views under these *Family Law Act* proceedings should be dismissed as a mere product of R.L.'s manipulation. Suffice it to say that not infrequently parents are taken aback when they learn from a s. 211 Report the views their child espouses to the family justice counsellor does not accord with the parents' expectation. C.D. is obviously convinced that any further interview will simply confirm D.'s expressed views. Perhaps that is true, but not necessarily because of R.L.'s coercive control over D.'s psyche. Absent evidence to the contrary, I accept the s. 211 Report accurately reflects D.'s views at the time of her interview. I am cognizant that, "D. believes her mom does not understand or listen to what she is saying."

[241] In considering the C.D.'s request to give no weight to D.'s preferences, I take further guidance from Justice Walkem's comments in *A.R. v J.R*:

> [64] There are real and practical costs to children, to families, and to our shared society, of dictating resolutions where the voice of children is not heard. Failing to listen to the voice of children risks potential "loss of closeness in parent-child relationships; continuing resentment if living arrangements don't meet their needs in time or structure; less satisfaction with parenting plans, less compliance, more 'voting with their feet'; and longing for more or less time with the non-resident parent": *B.J.G.* at para. 24; See also: *O'Connell v. McIndoe* (1998), 1998 CanLII 5835 (BC CA), 56 B.C.L.R. (3d) 292 (C.A) at para. 13; *H.M.H. v. J.E.,* 2023 BCSC 922 at para. 25. Orders which contradict the expressed wishes of children,

> or attempt to force children to act against their will, risk doing more harm than good.

[242] *A.E.H.M. v K.A.F*, 2022 BCSC 403 (CanLII), was an appeal of a Provincial Court decision on the basis the trial judge failed to properly consider the views of an 11-year-old child contrary to s. 37(2) of the *Family Law Act.* Justice Taylor allowed the appeal, indicating that in the particular circumstances of that case, the Provincial Court Judge ought to have engaged in a real inquiry to determine why it would be inappropriate to consider the child's views. Justice Taylor states:

> [39] . . . In this regard, the Provincial Court Judge certainly had options. For example, he could have required the author of the Hear the Child Report to testify, or he could have conducted a judicial interview with D. himself. He could also have ordered a full s. 211 report.
>
> [40] Unfortunately, the Provincial Court Judge exercised none of those options and instead accorded no weight to D.'s statements (thereby negating D.'s expressed views) on the basis of a credibility finding not against D., but against A.M. [the mother]. In my view, this had the effect of silencing rather than considering the views of the child and was the complete opposite of what is intended by s. 37(2)(c) . . .

[243] This is not a circumstance where I ought to give D.'s views "no weight". The most recent and best evidence I have before me with respect to D.'s views are those set out in the s. 211 Report. D. is clear she would like to live with her father in [omitted for publication]. I intend to give due consideration to D.'s expressed wishes, to do otherwise would be unfair to D. and an error in law.

Section 37(2)(c): the nature and strength of the relationships between the child and significant persons in the child's life;

[244] I accept D. has a close and loving relationship with both her parents. D. has spent roughly equal time with R.L. and C.D. since she was an infant. I echo Judge Mengering's views in her November 2, 2020, reasons for judgment, that D. "is a lucky girl and blessed with caring parents."

[245] I accept that D. has meaningful relationships with various members of her extended family wherever they may live. I accept D. also has age appropriate friends in Prince George and [omitted for publication].

[246] C.L. and A.L. both testified as to their positive relationship with D.–and E., when she was younger. Both girls spent a lot of time with R.L.'s parents. A.L. travelled to Prince George six to seven times per year to spend time with her son and his family.

[247] While in [omitted for publication] D. will reside with her father and her step-mother. She will be in close proximity to her grandparents, aunts, uncles and cousins, and of course, her best friend, T.P.

[248] While in Prince George, D. will reside with her mother, C.D., and her half-sister, E. In her closing submissions, Ms. Pavao states:

> In addition to those family members in Prince George, Ms. D. and Mr. M. in their testimony described how D. and Ms. D. have been welcomed into the M. family and who, through the recent marriage of Ms. D. and Mr. M., have officially become extended family to D.

[249] I accept that D. has forged a positive relationship with C.D.'s new partner, G.M., and his children, M.M., who is [omitted for publication] years old, D.M. age [omitted for publication], and K.M. age [omitted for publication]. Ms. Pavao submits that C.D. and G.M. "historically, spend as much time with D. as Mr. L. and C.L. do." I do not agree with this proposition. She also states that, "While not all of Mr. M.'s children live with D. full-time in the household, they do frequent the household and do stay over from time to time, as they live between Mr. M. and their mother." I understood from the evidence that the G.M. children do not stay with G.M. and C.D. on any set schedule, they do not stay overnight, and "so they kind of come and go as they please."

[250] In the s. 211 Report, D. describes her life at her mother's household as follows:

> She likes the dogs, hanging out with her sister [E.] but gets lonely and bored "a lot." Her mom works at home, so she does not get to have enough quality time with her mom. J. works outside the home everyday, and E. works too. After school D. sees the puppies and then goes

> upstairs. D. "chills out" and goes to bed. Sometimes they will go on walks with the dogs. J. and her mom both cook on different days. Some of the fun things D. does with her mom will be to go shopping or camping.

[251] C.D. denies working more than a regular work day. Although that may now be the case, I understand that for years C.D. operated her own home-based businesses in addition to her full-time job, which included rental accommodations, [omitted for publication], [omitted for publication], [omitted for publication] ([omitted for publication]), and [omitted for publication]. She did not say how much time she devoted to these enterprises, but it is unfair to D. to suggest she was been untruthful in her comments to FJC McCuaig.

[252] C.D. and G.M. have testified as to the many activities in which they engage with D. and the other children. C.D. also put into evidence photographs of their various ventures. I accept C.D. and G.M. have provided all their children with opportunities to engage in family outdoor recreational activities, such as camping, ice fishing, quadding, and dog walking. They also have family dinners out and take family vacations, including to Mexico.

[253] G.M. testified that he has a “great relationship” with E., as does D. G.M. claims that D. has an “incredible” relationship with and loves all three of his children. He says they have a “great relationship” devoid of conflict. In particular, G.M. says D. is “super close to K.M.” and that D. spends a lot of time with the G.M. children. In the s. 211 Report, however, D. barely mentions the G.M. children, other than to note their presence in C.D.’s household.

[254] I am not persuaded that D. is as bonded to G.M. or his children as C.D. would have the Court believe. The fact parents repartner does not mean their children will seamlessly blend into a newly constituted family structure. This can happen quickly, or slowly over time–or never.

[255] The evidence suggests to me that R.L. fears C.D. is wanting G.M. to replace him as D.’s father. This fear is fuelled by G.M. showing up at D.’s dance recitals on R.L.’s parenting time and at D.’s IEP meetings at [omitted for publication]. It is fuelled by

C.D.'s hostility towards R.L. since she repartnered with G.M. When asked I C.D. why it was that G.M. went to D.'s school activities, C.D. responded:

> Because he's family. He wants to watch her do her dance recitals or be there to support me and her and she's part of his family . . . To support her."

[256] C.D. recognizes G.M.'s presence on these occasions creates dissension with R.L., but they try to keep their distance and not engage with R.L. G.M. stopped going to school meetings about D. where R.L. might be present.

[257] In my view, the conflict between G.M. and R.L. is disquieting. It contributes to the destabilization of D.'s parenting arrangements and exacerbates the polarization of the parties. Even if I could divine who is responsible for this discord, I am not sure it would assist me in determining the relocation issue.

[258] In the s. 211 Report, D. described the most important people in her life as her father, her grandmother, A.L., and her friend T. Whether or not this is a reflection about how she felt at the moment of her interview, it confirms that D. perceives her father, her paternal grandmother and her best friend T., as very important people in her life. All of these people live in the lower mainland.

[259] C.D. has rightly pointed out that D. has been able to maintain her relationship with her paternal grandparents and T. in the lower mainland while residing in Prince George. There is no reason to believe that if D. were to remain in Prince George she would not be able to maintain and develop those relationships. Although I accept that is a possibility, I assume the reason D. has been able to maintain those relationships is because her father lived in Prince George and facilitated D.'s visits with her friends and family in the lower mainland.

[260] I concur with C.D. that D. does not have to live in [omitted for publication] to continue to benefit from and maintain those relationships she has fostered with her friends and family situated in the lower mainland. Equally true is that if she were to relocate to [omitted for publication], D., could continue to benefit from and maintain

those relationships with her friends and family in Prince George. The roux that will bind those relationships is C.D.'s and R.L.'s willingness to foster those distant relationships without acrimony or resentment.

[261] The evidence suggests that in the past few years, C.D. has excised R.L. and his family from her life and E.'s life. R.L. and C.D. now "silo parent" rather than co-parent D. This is underscored by D.'s reluctance to contact the absent parent by telephone and by her refusal to go to R.L.'s residence during C.D.'s parenting time, even to pick up a sweatshirt she wanted to wear.

[262] I gather that over the past year, D.'s relationship with C.D. has deteriorated. G.M. testified that in the past year, D. has become short with her mother. From his perspective C.D. cannot ask D. anything without inciting an "instant fight." D. becomes very upset and emotional. C.D. acknowledges that some of this behaviour may be attributable to the fact that D. is becoming an adolescent, but believes it is also due to D. believing she has to choose between her two parents.

[263] D. grew up with E. I accept they have a close and loving sibling relationship. Until 2019, E. spent a considerable amount of time with R.L. and his family. R.L. testified that he first met E. when she was [omitted for publication], then living with her mother. R.L. often provided child care for E. when she was young. He had a bedroom in his house with bunkbeds for D. and E. He took both girls to hockey games, the movies and parks. He engaged in a variety of activities with both girls on his days off. At trial, R.L. entered into evidence photographs from happier times. There is also a schedule of times documenting when R.L. provided child care for E.

[264] I gather E.'s relationship with R.L. and his family has been non-existence since 2019. He attributes this falling out to a disagreement with C.D. over scheduling time with E. He says that C.D. got mad and that was the last time that he spoke to or saw E. This does not mean that D. and E. have not maintained their relationship. I accept that despite their difference in ages, D. and E. do spend time together while D. is in C.D.'s care. I understand E. often drives D. to school.

[265] In *B.W.H.* Justice Wolfe discusses the impact of separating siblings in relocation cases. She states:

> [73] While the Court may ultimately determine that the best interests of multiple children are aligned, the analysis must be an individual one, focused on the specific best interests of each child and open to idea that the evidence may reveal their best interests diverge from those of their siblings. In *Forrest v. Forrest*, 2019 BCSC 1323, rev'd on other grounds *Forrest v. Aerin,* 2022 BCCA 184, Justice Macintosh found an arbitrator erred when determining the best interests of twin siblings because she did not distinguish between their best interests and those of their older brother. While Macintosh J. concluded the best interests of the twins themselves could be considered together, that was only because all of the evidence and the parties' positions demonstrated their best interests were "in fact one and the same" (at para. 14). The Court held:
>
> > [12] It was seen above in s. 37(3) of the *FLA* that an order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's psychological and emotional well-being. "[C]hild" is in the singular throughout s. 37. *Treating each child individually is essential in determining that child's best interests.* If there are, for example, four children from a marriage, the legislature does not intend the adjudicator to somehow amalgamate their four respective interests into one. Not surprisingly, the best interests of an eight-year old boy may differ from those of a 14-year-old girl of the same parents. *The best interests assessment therefore must examine each child's interests standing alone.*
> >
> > [Italic emphasis in original]
>
> [74] At paragraph 13, *Forrest* confirmed there is no legal presumption that keeping siblings together is in the best interests of a child, citing the Court of Appeal's decision in *Poole v. Poole*, 1999 BCCA 203. In *Poole*, the Court of Appeal endorsed the view that the breadth of the best interests test does not support treating certain factors—including sibling unity and preservation of the status quo —as presumptions or determinative. The Court of Appeal held that "keeping siblings together is but one of several relevant considerations" (at para. 22).

[266] In this case, D. and E.'s sibling relationship has already significantly changed because E. no longer spends anytime with the L. family. D.'s relationship with E. will inevitably change again given E. is or is soon to be [omitted for publication] years old. I understand E. will soon graduate from high school next June and may leave Prince George to pursue her post-secondary education.

Section 37(2)(d): the history of the child's care;

[267] D. was approximately [omitted for publication] old when R.L. and C.D. separated in 2013. Since that time, she has spent equal time with her mother and father. Initially the parties transitioned D. every four days. In 2019, the parties changed to an equal parenting time on a week on week off basis.

[268] I accept that over the past [omitted for publication] years of D.'s life there have been periods and circumstances when one parent or the other took on a greater share of child care responsibilities for D. These circumstances include times when:

a. C.D. travelled internationally for a vacation and D. did not go with her, or times when D. did go with her;
b. D. was in the hospital for a lengthy period;
c. D. attended various medical, dental or optometrist appointments; and
d. the parents had to work unexpectedly.

[269] It is not unexpected that an equal parenting arrangement will require some flexibility on the parent's part. These anomalies have little bearing on my decision as to where D. ought to primarily reside.

[270] I also accept that during R.L.'s parenting time D. is often cared for by C.L., and A.L., if she is present. During C.D.'s parenting time D. is also cared for by E., if she is available, and other members of C.D.'s family.

Section 37(2)(e): the child's need for stability, given the child's age and stage of development;

[271] Like any young person, D. will benefit from reasonable stability in her life - provided that stability is conducive to her development. As a result of R.L.'s relocation, D.'s home life is going to change wherever she resides. However, D. is now of an age that she can withstand changes to her routine, she may even welcome them. Over the years, D.'s mother has changed residences on a number of occasions. C.D. also repartnered, and now lives in a new home with G.M., and intermittently with his children

when they are present. According to C.D. and G.M., D. has adapted well to these change of circumstances.

[272] The inherently destabilizing aspect of changing communities in D.'s case will be significantly mitigated by the fact that she will still be close to the very important people in her life, which includes her father, step-mother, grandmother, and best friend T. On the other hand, should D. remain in Prince George, the destabilizing impact of the change to her parenting time regime will be lessened by the fact that D. will continue to live with her mother, her half-sister, and her step-family, and many of her routines and activities will remain unchanged.

[273] Sadly, in recent years R.L. and C.D.'s co-parenting relationship has descended into acrimony and discord. Both parents described the other to FJC McCuaig as dishonest. R.L. says prior to C.D.'s relationship with G.M., he considered C.D. a very good mother – very kind-hearted – trustworthy. He was never concerned about D. in C.D.'s care. Now R.L.'s relationship with C.D. is almost non-existent. He no longer feels that he knows her.

[274] C.D. regards R.L. as manipulative and dishonest - someone who heaps verbal abuse upon others in order get his way. C.D. characterizes their historical collaborative relationship as a façade maintained by her vulnerability and R.L.'s coercive control over her. This deterioration in R.L. and C.D.'s parenting relationship alone is profoundly destabilizing to D.'s sense of security and well-being.

[275] Although D. has told FJC McCuaig that, "Neither parent says anything bad about the other," D. appears to have been ensnared in her parents' conflict. C.D. says that she has caught D. filming her and texting videos to R.L. and C.L. under aliases. Consequently, C.D. took away D.'s cell phone for a spell. R.L. points to the fact D. has to assign aliases to his and C.L.'s phone numbers proves D. feels obligated to hide the fact that she sometimes contacts them while during her parenting time with C.D.

[276] Even if R.L. was not relocating, I am not convinced the parties are able to assume a healthy co-parenting regime given their current dysfunctional relationship.

Further, I am not convinced that if D. does feel she needs to choose one parent over the other, this is solely attributable to the issue of relocation. In recent years, C.D. has excised the L. family from her life and E.'s life. D. now only sees E. when having parenting time with her mother. It seems that incrementally D. has become isolated from her father when in her mother's care, and *vice versa*.

Section 37(2)(f): the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise [his or her] responsibilities;

[277] Both parents are relatively healthy, gainfully employed, pro-social, adequately housed, happily repartnered. Moreover, they clearly love D. and care about her happiness and wellbeing. Over the course of this trial, I heard a lot about R.L.'s views of C.D.'s shortcomings and *vice versa*. I conclude from this evidence neither R.L. nor C.D. is a perfect parent. Fortunately, perfection is not a standard the court demands of parents. Nothing I heard in this trial persuades me that either parent is an unsuitable caregiver for D.

[278] The one parental responsibility that is lacking is R.L.'s and C.D.'s willingness to encourage, foster and facilitate a positive relationship with the other parent.

Section 37(2)(g): the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

[279] Section 1 of the *Family Law Act* defines family violence as follows:

> "family violence" includes, with or without an intent to harm a family member,
>
> (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
>
> (b) sexual abuse of a family member,
>
> (c) attempts to physically or sexually abuse a family member,
>
> (d) psychological or emotional abuse of a family member, including
>
> (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,

> (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
>
> (iii) stalking or following of the family member, and
>
> (iv) intentional damage to property, and
>
> (e) in the case of a child, direct or indirect exposure to family violence;

[280] Family violence is a critical factor that I must consider when determining D.'s best interests since family violence has grave implications on the development of a child. For this reason, the courts intensely scrutinizes allegations of family violence. In *Barendregt*, the Supreme Court recognized (at para. 144) that family violence allegations are "notoriously difficult to prove." Family violence often takes place behind closed doors and may lack corroborating evidence.

[281] Where family violence is alleged, the court must consider the following factors enumerated in s. 38 of the *Family Law Act*:

> (a) the nature and seriousness of the family violence;
>
> (b) how recently the family violence occurred;
>
> (c) the frequency of the family violence;
>
> (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
>
> (e) whether the family violence was directed toward the child;
>
> (f) whether the child was exposed to family violence that was not directed toward the child;
>
> (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
>
> (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
>
> (i) any other relevant matter.

[282] C.D. alleges she is a longstanding victim of family violence at the hands of R.L., which he denies. She describes the violence as physical, verbal, emotional, psychological, and financial.

[283] C.D. claims the physical violence started before D. was born. She alleges that in 2010 she and R.L. first lived together for five or six months in his house on [omitted for publication] Street in Prince George, BC, after his roommate moved out. C.D. claims that she left the fledgling relationship as a result of an incident of family violence she describes as follows:

> The physical violence was during [the relationship]. The first time occurred when we lived on the [omitted for publication] house. That was why I moved out at that time, because we went to the strike zone, and me and some of the girls were talking and he didn't like to conversation and so he told me we were leaving. He kicked me out at PGSS, left me there, and so then I had my friend R. and her spouse, S., pick me up and they drove me to the house and Mr. L. wasn't there, so I went in and I got myself ready for bed and I was hoping to just go to bed. He came home and beat me up. I don't know how to -- he threw me against the stove, he choked me. I was covered in bruises. He smashed my phone and then he kicked me out on the front porch and locked me out of the house in my nightgown. I had to go across the street to call the police to have them let me back in so that I could get my car keys and I went to my parents' house for the night.

[284] C.D. never explained E.'s whereabouts at the time of this assault.

[285] C.D. did not adduce any corroborating evidence, such as eye witness testimony from R. or S. or the neighbours or the investigating officers. She did not provide the court with any police incident reports or records from the Ministry of Child and Family Development ("MCFD"), if E. was present, or medical records. C.D. admits that R.L. was never arrested or charged with any offence arising from this incident. The only prior mention of this altercation is C.D.'s statement to FJC Erica McCuaig in the s. 222 Report, which is a recent out-of-court prior consistent statement, and presumptively inadmissible.

[286] When cross-examined about C.D.'s allegation of family violence as described above, R.L. responded, "I don't remember this at all. This is all news to me." However, R.L. went on to say in cross-examination, "I think there was a couple times that both of us were physical, yeah, a couple times, a couple instances."

[287] C.D. testified she lived with R.L. at [omitted for publication] on [omitted for publication] in 2012. C.D. says that when she was seven or eight months pregnant with D., and E. was around [omitted for publication] years old, R.L. shoved her after an argument. As D. was born [omitted for publication], I assume this incident is alleged to have occurred in [omitted for publication]. C.D. testified, “I believe I shoved him back, but he was right in my face and he would scream and tell me how I wish I could just hit you, I wish I could just smash your face.”

[288] C.D. described another incident she says occurred at the [omitted for publication] residence in late [omitted for publication]. She says R.L. “jumped on my lap and threw water in my face and again screamed that he wished he could hurt me.” When asked in cross-examination about this allegation, R.L. responded that it was “very untrue.”

[289] C.D. claimed that after both of these incidents she says occurred in [omitted for publication] at the [omitted for publication] residence, she made a police complaint. Nevertheless, R.L. was never arrested or charged with any offence. C.D. adduced no corroborating evidence from the police or MCFD with respect to this alleged assault.

[290] When asked if D. had ever witnessed any family violence, C.D. recounted an incident she says occurred in R.L.’s parents’ home in [omitted for publication] in [omitted for publication], prior to her separation from R.L. D. was an [omitted for publication]. C.D. claims that she and R.L. were arguing. She says he took and smashed her phone, then drove from [omitted for publication] to Prince George with D. C.D. followed him in her car. In cross-examination Ms. Pavao confronted A.L. with the proposition that she observe a physical altercation between R.L. and C.D. in her living room wherein R.L. smashed C.D.’s phone, threw C.D. into the living room, put D. in his truck, and drove back to Prince George overnight. A.L. denied having witnessed any such altercation in her home. When she testified (after A.L.), C.D. claimed that she and R.L. were arguing outside of the house when C.D. was trying to get access to D., and “then obviously when he packed her up to leave the house, he was in a very heightened state, screaming and yelling.” C.D. says that she did not call the police, but the incident was witnessed by R.L.’s mother and father. Ms. Pavao never confronted R.L. with C.D.’s

allegation in cross-examination. Ms. Sarkaria suggested to C.D. that she and R.L. were separated at the time, and R.L. had D. in his care for his parenting time.

[291] On [omitted for publication], R.L. and C.D. filed reciprocating applications and affidavits referencing an altercation that occurred at the [omitted for publication] residence on [omitted for publication] (CEIS #1–7). R.L. testified to this incident at trial. He claimed that C.D. came to his home during his parenting time, broke into his house, and damaged his vehicle. The matter was reported to the police who attended the residence. C.D. alleges the police escorted R.L. from the home and MCFD "was contacted for an investigation on account of R.L.'s conduct." R.L. says the attending officer wanted to remove C.D. from his home. As D. was present, R.L. thought it best if he removed himself and went to a friend's house. R.L. declined to "press charges".

[292] Once again the court was provided with no police or MCFD records. In fact, the s. 211 Report indicates the last incident involving C.D. and R.L. occurred on [omitted for publication]. FJC McCuaig states (at p. 4):

> The Ministry of Children and Family Development (MCFD) report there has been no recent involvement with the family. On [omitted for publication], the RCMP dealt with a domestic dispute. No charges were filed and MCFD sent a letter and closed their file.

[293] In her July 21, 2013 Affidavit, C.D. does not mention the [omitted for publication] incident or the [omitted for publication] incidents she described at trial.

[294] The parties reciprocating applications filed on June 20 and 21, 2013, came before the Provincial Court on June 27, 2013 and June 26, 2013. The parties entered into a consent order after a settlement conference before Judge Blaskovits on July 26, 2013, and again before Judge Galbraith on October 1, 2013. These orders remained in place until Judge Brecknell's September 6, 2019 Order. All orders were made by consent; all endorsed the parties' shared parenting arrangement, none included any protective conditions for C.D. or D.

[295] In cross-examination, R.L. was confronted with the suggestion that it was "quite common" for him to be aggressive with C.D., which involved him physically, emotionally

and verbally abusing her. Specifically, C.D. alleged that on various occasions R.L. shoved her, charged at her, screamed at her, yelled at her, threatened her, insulted her, and swore at her. She says he caused her to be sleep deprived. She alleges it was through this threatening and abusive conduct that R.L. was able to manipulate and control her. C.D. asserts that it was as a result of this ongoing family violence that she gave into whatever R.L. wanted because she was "scared to stand up for herself and scared to engage in any conflict." R.L. denied all these allegations, dismissing them as "100 percent false".

[296] C.D. also asserts she has been subjected to family violence in the form of coercion and threats involving property, and acts that impacted upon her financial autonomy. Specifically C.D. alleges that while they were together, R.L. forced her to pay all of the house bills "while he bought himself a new truck and put new stereo systems in it and played hockey and did everything," and she would run out of gas because she had no money to put gas in her tank.

[297] In her direct examination, C.D. was asked if there was any physical violence after D. was born and after she had separated from R.L. C.D. responded:

> Not physical violence, no. Verbal and just his aggressive acts towards Mr. M. . . . Just, like, the verbal violence or abuse I would say, just the way he talks to me, the control tactics that he used to manipulate and make me kind of do what he wanted. But there was no actual physical violence that I can recall after the separation.

[298] C.D. also asserts that R.L. was responsible for violence against his other intimate partners. She asserts after they separated, R.L. was engaged to **"**M.", "who he threw down the stairs in front of her daughter, and he was arrested and put on probation." C.D. does not suggest she was present or an eye witness to this alleged incident. R.L. was not confronted with this allegation in his cross-examination. In any event, I have not been provided with any documentation showing R.L. has any criminal record whatsoever.

[299] C.D. has asserted that C.L. too was a victim of family violence at the hands of R.L. Specifically, C.D. alleged that C.L. had C.D. pick up D. because the RCMP

attended at the L. residence after R.L. choked C.L. and held her to the floor. C.L. testified this was “completely incorrect.” R.L. did not admit the incident. The Court has not received any police reports or MCFD records or other independent evidence to corroborate C.D.’s allegations.

[300] C.D. asserts that E. is now and was always been scared of R.L. I pause to note that it is curious given her perception of E.’s fear of R.L. that on April 26, 2024, C.D. had E. attend court as her support person at this trial. In any event, when asked in cross-examination why she left E. in R.L.’s care for many years, C.D. responded:

> A: I couldn’t. I’m a different person today than I was back then. I was very vulnerable. He was very controlling . . . I could go back and be the mother I am the last five years with the strength I have and not be a victim to him, I would have made a lot of different choices. But unfortunately, I couldn’t. And so, was it ideal? Did it make me sick? Did I wish I could do better for her, that I could afford other options?
>
> Q: So your testimony is that you were forced to leave E. in an unsafe environment, and you had that for a number of years?
>
> A: I don’t feel that he was unsafe to the children. Does he act in a manner around them or does he have his arguments that are dealing with other people? I’ve never once said that I felt that he was going to harm D. or harm my daughter. Was he abusive towards me and other women in his life, and does he have a temper and does he have outbursts? I don’t believe that he would ever physically hurt either of the girls.

[301] R.L. and C.L. separated from January 2018 to the end of March 2018. During this three-month hiatus C.D. and R.L. travelled together to Paris, France and Iceland, a two and one-half week trip that was supposed to be R.L. and C.L.’s honeymoon.

[302] C.L. attributes her brief separation from R.L. to the excessive amount of time C.D. spent with her husband. She testified:

> C. had no boundaries when it came to R.L. She pretty much had him on speed dial and pretty much used R.L. as her right-hand man, and if she needed anything done, she would go to R.L. If she needed, you know, information on a consolidation loan, she would call R.L. If she needed something done to her vehicle, she would call R.L. There was no limit at which she would stop and do something for herself. She always relied on R.L. for everything.

[303] C.D. testified that shortly before she went to Paris with him, R.L. got in an altercation with his son, K., who was living with him at the time. I gather that K. would have been [omitted for publication] years old in 2018. C.D. claims that R.L. hit K., causing him to be hospitalized for a week in Prince George. C.D. never suggests that she personally observed this incident, but claims to have taken K. to the hospital. She says this is when R.L. convinced her to go with him to Paris, so A.L. came to Prince George to care for K. in their absence.

[304] C.D.'s claim R.L. assaulted K. was yet another allegation of family violence never put to R.L. in cross-examination. Ms. Pavao did confront A.L. with the suggestion that she was in Prince George looking after K. because "K. was hospitalized after Mr. L. hit him." A.L. testified, "that never happened". A.L. said the reason she came to Prince George was to care for K. while R.L. and C.D. went to Paris during R.L.'s brief separation from his wife.

[305] Frankly, I find it utterly implausible that R.L. hit his teenage son causing him to be hospitalized for a week without any legal repercussions whatsoever or intervention by the RCMP or MCFD or even K.'s mother, J.A.

[306] More recently, C.D. has alleged that R.L. confronted G.M. in a hostile and aggressive manner on two occasions, albeit not in D.'s presence. C.D. alleges that R.L. confronted G.M. at D.'s dance recital at Vanier Hall, which occurred on R.L.'s parenting time in May/June 2023. She said she witnessed R.L. screaming and yelling at G.M., saying, "You don't even love my daughter. Why are you here?"

[307] C.D. alleges that R.L. and C.L. proceeded to scream and swear and yell at her and G.M. as they walked out of Vanier Hall. C.D. says she requested the relevant video footage from Vanier Hall, "but they needed it to be through the RCMP with charges pressed." C.D. was represented by legal counsel at the time. I am not aware of any application before this Court for third party disclosure from School District 57 for the video footage from Vanier Hall C.D. asserts will confirm her version of events.

[308] R.L. acknowledges that he spoke to G.M. when they were alone outside Vanier Hall. R.L. claims he went up to G.M. and "said you have done nothing but disrespect me as a father and I said you've done nothing but disrespect my daughter, and I said anytime you want, go for it." R.L. claims after saying this he simply walked away.

[309] Ms. Pavao did not confront C.L. in cross-examination with C.D.'s allegations about her participation in the alleged incident.

[310] I do not believe that R.L. and C.L. were screaming and yelling and swearing at C.D. and G.M. as they walked out of Vanier Hall. I do conclude, based on his own admissions, that R.L.'s behaviour towards G.M. at D.'s dance recital was provocative and juvenile.

[311] C.D. cites a second incident that occurred at an Individual Education Plan ("IEP") meeting at [omitted for publication]. G.M. accompanied C.D. to that event as well. R.L. and C.L. were also present; D. was not. C.D. claims that when G.M. walked by R.L., he slid his chair back and hit G.M. into the wall. R.L.'s response to the accusation in cross-examination was, "What? No, never. Not even once. Not even close."

[312] Ms. Pavao confronted R.L. with the suggestion that he became so enraged that G.M. had attended the IEP meeting with C.D. that he began screaming at him, telling him "he should not be there and that he does not love D." R.L. responded, "Nope, that's false. This is all news to me." G.M. testified that R.L. hit him with a chair at the IEP meeting, but said nothing about R.L. screaming at him and telling him he should not be there and that he does not love D.

[313] J.S. attended the IEP meetings at [omitted for publication]. She was asked in cross-examination if she had witnessed any inappropriate behaviour. J.S. testified that she never observed either R.L. or C.D. engaging in inappropriate behaviour during an IEP meeting.

[314] Ms. Pavao did not cross-examine C.L. on C.D.'s allegations that R.L. screamed and yelled at G.M. and hit him with a chair at the IEP meeting.

[315] I believe that J.S. would have noticed or heard of any violent or disruptive incident that occurred at an IEP meeting. I am satisfied that if there was any incident between R.L. and G.M., it has been highly embellished.

[316] C.D. complains of what she describes as R.L.'s outbursts in court at various times while she was testifying. C.D. claims "Mr. L. abruptly stood up and screamed and called me a liar and yelled at me while I was on the stand and then stormed out of the room." G.M. alleges that in the courthouse for this trial R.L. insulted him, swore at him, glared at him, stared at him, called him a liar, and stormed out of the courtroom "swearing and screaming". G.M. says he video-recorded one of these incidents wherein R.L. called him a "fuckin douche". This recording was entered into evidence as Exhibit 17. In her cross-examination C.D. characterized the video-recorded encounter as depicting R.L. "screaming and yelling".

[317] In closing submissions, Ms. Sarkaria states:

> The video was made by Mr. M. in the absence of Ms. D. Ms. D. testified about it and grossly exaggerated what took place as if she was present during the incident. The fact that both would characterize Mr. L.'s behaviour as "screaming, swearing and yelling" is testament to exaggerations and mischaracterizations in their respective evidence.

[318] I agree with Ms. Sarkaria. I listened to and watched this recording. It does not come close to depicting what C.D. and G.M. allege.

[319] I acknowledge that occasionally R.L. displayed upset at certain aspects of C.D.'s testimony to which he took offence. I would not characterize it as yelling or screaming. The sheriffs never suggested to me that R.L. was engaging in this type of disruptive behaviour in the foyer. I saw R.L. leave the courtroom, once at my insistence, but I would not characterize it as him "storming" out of the courtroom.

[320] C.D. characterizes R.L.'s behaviour in court at trial as disruptive and an attempt to intimidate her or G.M. while they were testifying. I note that shortly after C.D. commenced her testimony, R.L. went and sat at the back of the gallery in Courtroom 101, our largest courtroom. Thus, throughout the Respondent's case, R.L. was a

significant distance from the docket. At various times in C.D.'s testimony R.L. got up and left the courtroom. Sometimes I noticed him leaving and sometimes I simply noted his absence. Occasionally, R.L. muttered something to his companion. There were a few occasions when C.D. pointed out to me that R.L. had muttered something, which neither I nor Ms. Sarkaria nor the sheriff heard. People in the courtroom gallery often come and go and sometimes talk or whisper quietly with another observer. Typically, this does not bring the proceedings to a halt. I agree that R.L.'s conduct was not always innocuous and sometimes warranted a "shush". I would not describe it as an angry outburst or a volatile act of aggression. I certainly do not believe that C.D. or G.M. were intimidated or cowed by R.L.'s occasional display of pique. It goes without saying that D. was not present in court during any of these proceedings.

[321] There is no doubt that R.L. needs to learn to exercise restraint in emotionally charged situations. Still, I find that C.D. has exaggerated R.L.'s misconduct. It concerns me that C.D. never misses an opportunity to cast R.L. in the worst possible light. Moreover, I was left with the impression that at times C.D. and/or G.M. were attempting to provoke a rise from R.L. By way of example,

a. When he testified, "I love D. . . . I'm with D. just as much as he's with D. . . ." G.M. must have known from his previous encounters with R.L. at D.'s dance recital and IEP meetings this comment would infuriate R.L.; and
b. C.D. testified she took the photographs of D. in the hospital that were entered as Exhibit 16 at trial. I am persuaded by the evidence that at the time those photographs were taken, C.D. was in fact in Mexico. I do not believe she took the photographs and I do not believe she was simply mistaken. To the extent she made this comment simply to antagonize R.L., she succeeded.

[322] In this case I am asked to make findings of family violence based on C.D.'s allegations that R.L. fiercely contests. R.L. denies having perpetrated any acts of family violence against C.D., however she may characterize them. R.L. denies perpetrating any acts of family violence against any other family member to the extent he was even cross-examined on these accusations.

[323] With respect to C.D.'s allegations of physical violence, I have not received any corroborative evidence such as police reports, MCFD reports, medical reports, photographs, video surveillance footage, or independent eye witness statements. C.D. asserts the police were called on numerous occasions, yet adduces no evidence of a police investigation. I have no evidence to indicate R.L. was arrested or charged or convicted of any crime. Most of C.D.'s allegations concern incidents that occurred before D. was born or shortly thereafter. Some of the alleged incidents were not corroborated by eye witnesses present at the time, including C.L., A.L., or J.S.

[324] With respect to financial abuse, C.D. and R.L. separated on January 15, 2013, when D. was [omitted for publication] old. Thereafter, they kept their financial affairs separate. C.D. was always financially independent of R.L. She had a professional job, her own business interests, and assets. C.D. and R.L. had three parenting-time orders, all of which were made by consent after mediation or a settlement conference before a judge or a family justice worker. She is now seeking child support retroactive to the date of separation. This application is scheduled for trial on November 18, 19, and 22, 2024.

[325] C.D.'s allegations of emotional abuse, psychological abuse, verbal abuse, coercion, manipulation, bullying, are contradicted by A.L. and C.L. who were often present during the years prior to C.D.'s falling out with R.L. in 2019. R.L. testified, ". . . this has been four and a half years of hell for me and my wife, and the amount of things that Ms. D. and Mr. M. have done to us. . ." It is not entirely clear to me why R.L. is so incensed by G.M.'s presence, but I gather it is more than attitudinal and involves financial issues I have yet to hear about.

[326] When asked to describe R.L.'s relationship with C.D., C.L. said:

> Up until that time [2019], they got along great. They helped each other out. They had great communication. They were able to make, you know, decisions for D. and -- by talking and coming to agreeing. They got along well and overly well, if you ask me. They both were there to support each other and work together and make decisions for the sake of D. in a civil manner.
>
> . . .

> If it was E.'s birthday, they would – R.L. and D. and C. and E. would take the girls out for lunch. They'd go to an Earl's. Things like holidays, Easter, R.L. would wake up early in the morning and go over to C.'s house, and they would plant Easter eggs for the girls to have, you know, an Easter egg hunt.

[327] A.L. believed that R.L. and C.D. were together as a couple intermittently for a number of years after they separated. When asked to describe her observations of C.D. and R.L.'s relationship, A.L. responded:

> A: Their relationship post separation? Oh, okay. They actually had a pretty good relationship. After the initial first few months, they tried to do things together. They collaborated. They talked about what D. should be doing and what she was in. They got along, in fact probably he spent too much time with C. instead of with C.L.
>
> Q: Did you see them fight?
>
> A: The odd argument, but no, I didn't see any fights.
>
> Q: The odd argument that you did see, did you see anything to be concerned about?
>
> A: No.
>
> Q: Was there any pushing and shoving during arguments that took place in your presence?
>
> A: No.
>
> Q: Did Ms. D. ever complain to you about Mr. L.?
>
> A: No. No.

[328] A.L.'s and C.L.'s evidence indicates that they too had an amicable relationship with C.D. prior to 2019.

[329] R.L. and C.D.'s ability to cooperate in D.'s best interest is corroborated by the fact that for more than six years they co-parented with orders they mediated in settlement conferences before a judge or with the assistance of a family justice worker.

[330] In her s. 211 Report, FJC McCuaig states:

> R. and C. are the parents of D. They describe a positive co-parenting relationship for a number of years post-separation. The parties describe their current co-parenting dynamic as acrimonious.

[331] In the first relocation hearing in the fall of 2020, Judge Mengering states in her Reasons for Judgment:

> I accept that both parents are equally involved in D.'s life and that D. is equally bonded both to her mother and father, both of whom list her as the shining star in their lives. Their love for her is palpable.
>
> D. appears to be thriving when she is with her father and stepmother; and with her mother and Mr. [M.]. The current parenting time regime works well for the parties and, most importantly, for D.

[332] There is no mention in Judge Mengering's Reasons for Judgment of the family violence that C.D. claims to have endured at the hands of R.L. There is no indication that R.L. and C.D. had serious ongoing communication issues with each other.

[333] Significantly, there are no allegations of R.L. threatening to harm D. C.D. does not believe that R.L. would ever physically hurt D. or E. As to D.'s comment about her dad becoming mad or stressed or sad, I do not consider a parent who occasionally manifests these emotions as committing an act of family violence any more than a parent who is occasionally rude.

[334] In her closing submissions, Ms. Pavao asserts that "the type of documentation and video evidence that Mr. L. submits ought to have been tendered is not evidence that is in the control of Ms. D. Ms. D. does not have control over RCMP records, over security video footage of Vanier Hall, or records from any other institution." Application for disclosure of third party records are routine in this Court and in family law proceedings. C.D. has the ability to apply to court for disclosure of relevant documents, be they in the possession and control of the RCMP or MCFD, or School District 57. C.D. made no such application. Her only application for third party records was with respect to financial disclosure from C.L.

[335] Ms. Pavao submits, "that to require every victim of abuse to report all instances of family violence to document and report such family violence is contrary to established principles of the nature of abuse and family violence and reasons that have been accepted by the court for non-reporting." I agree. C.D. does not have to report the abuse, but she has to prove it. In any event, C.D. says she did report the incidents to

the police who in turn reported it to MCFD when either E. or D. or both were present. If what C.D. says is true, I am confident the police and MCFD have records of these reports. After all, MCFD was able to advise FJC McCuaig of an incident the RCMP investigated on July 3, 2012.

[336] Parliament, the courts, and society have recognized for some time that intimate partner violence is a serious crime. Section 718.2(a)(ii) of the *Criminal Code* was enacted in 1996, which directs judges to consider an intimate relationship between the offender and the victim as an aggravating factor in sentencing. To accuse someone of a serious crime is grave. I am left with the impression that C.D. has essentially adopted a scorched earth approach to discrediting R.L. through repeated allegations of family violence in its various forms. C.D. submits her intent was to convey to the court that her relationship with R.L. "was dysfunctional and was not the great relationship that Mr. L. in his evidence described it to be." In my view, C.D.'s allegations went far beyond that modest objective.

[337] C.D. bears the civil burden of proving on a balance of probabilities that she was a victim of family violence, be it physical, financial, emotional, or psychological. I am not satisfied she has done so. While keeping in mind that family violence is notoriously difficult to prove and often lacks corroborating evidence, when I consider and weigh all the evidence before me, I am not satisfied that family violence in any of its forms is a significant factor to consider when determining D.'s best interests.

Section 37(2)(i): the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

[338] C. and R.L. both assert the other is dishonest and not focused on D.'s best interests. It is unfortunate this family law litigation has polarized D.'s otherwise competent and loving parents.

[339] By her own choice, C.D. does not communicate with R.L. unless she has to, and even then, only by email. Nevertheless, they do communicate in a fashion. I am hopeful tensions will abate when they no longer share equal parenting time with D. or live in the

same community. It is not C.D. who R.L. appears to take issue with as much as her new partner, G.M. I do not see any reason why in the future R.L. and G.M. cannot avoid each other's company.

[340] I would be astonished if after sitting through this trial that R.L. does not receive C.D.'s message loud and clear that she does not want to have any relationship with him or communication with him beyond what is necessary to parent D. I am somewhat comforted by D.'s assurance to FJC McCuaig, that neither parent speaks badly about the other in D.'s presence. Hopefully, they will be able continue this level of restraint and reach a *détente* for D.'s sake.

[341] There have been a number of issues that have arisen over the years that have fuelled R.L. and C.D.'s conflict. In addition to those incidents I have already referenced above, I also heard:

a. R.L. testify that when she was [omitted for publication] old, D. was admitted into the hospital for two and one-half weeks with a respiratory infection. R.L. says that he and his son, K., stayed with D. while C.D. went to Mexico. C.D. claims she stayed for a portion of D.'s hospitalization but left for Mexico at R.L.'s urging and the doctor's assurance her presence was unnecessary;

b. C.D. and G.M. arranged for a trip to Thailand over the 2019 school spring break. R.L. says C.D. advised him a week before they left, that she would be gone for the entire spring school break. This meant, R.L. had to try and arrange child care for D. during what was C.D.'s parenting time. When C.D. returned and learned that R.L. had used her "Aunt S." to babysit, she became very angry, as she "wasn't in a relationship with [Aunt S.] at that time anymore." C.D. began yelling at Mr. L. in front of D., calling him a piece of shit for using "Aunt S." as a child care provider;

c. Each parent claims the other unduly restricts D.'s telephone access to the parent who is absent. R.L. believes that C.D. has prohibited D. from using her cellular phone to call him or C.L. It is because of this restriction that D. has saved R.L.'s and C.L.'s phone numbers under aliases. C.D. claims that on one Halloween, R.L. refused to allow her to wish D. "Happy Halloween" on his parenting time. R.L. claims that it was D. who did not want to divert her attention from her Halloween festivities to take a call from her mother;

d. In March 2020 school spring break, at the onset of the COVID-19 pandemic, C.D., G.M., D. and E. went to Mexico. They chose to

> continue with their trip notwithstanding D.'s compromised immune system. All the travellers were forced to quarantine for 14 days on their return. R.L. testified that as a result of this incident, he and C.L. had to cancel their plans and stay home with D.;
>
> e. After the travellers were quarantined upon their return from Mexico in 2020, C.D. contacted C.L.'s employer (Northern Health), about the fact that D. was quarantined in C.L.'s home while C.L. continued to work at [omitted for publication] Long term care centre. Northern Health advised C.D. that C.L. was an essential service worker, and was expected to work unless symptomatic. Nevertheless, it seemed to C.L. that C.D. was attempting to get her into trouble with her employer;
>
> f. R.L. believed C.D. created a fraudulent Airbnb account in an attempt to rent R.L. and C.L.'s Airbnb suite under an alias in contravention of the government COVID-19 restrictions. R.L. believes that C.D. was trying to entrap them into breaching the COVID-19 protocols. Airbnb disclosed to R.L. the fraudulent booking was associated with the email address of [omitted for publication]; and
>
> g. The parties do not agree who ought to be the custodian of D.'s passport, particularly after C.D. took D. to Mexico in the spring of 2020 during the COVID-19 pandemic. C.D. alleges R.L. withheld the passport until the "11th hour" of C.D. going to Mexico with D., which was not put to R.L. in cross-examination.

[342] Few of these incidents factor into my decision on relocation beyond informing my understanding of the sources of friction between the parties.

[343] C.D. is worried of the impact of the relocation on her relationship with D. C.D. states:

> I think I'd lose my daughter. I think that she would be discouraged from keeping in contact with me. I feel like she would not be encouraged to contact or call or tell me about her life. I think she would be scared to go against doing the things that are in her heart and being able to show that she loves her mom, and I think that slowly I would lose her.

[344] C.D. also believes that D. will lose her relationship with E., G.M., and G.M.'s children. C.D. states:

> . . . wouldn't be allowed to show that side of her life when she's in his house and I think that the only time we would get to have that relationship

> fully would be when she'd come to see us, and I just think that he would get into her head and make her not want to come. I just foresee the lengths of time her coming just shrinking and shrinking and -- to the point where she doesn't see any of us anymore.

[345] However, if D. is not permitted to relocate, C.D. says she can set aside her “spite and upset” and how she feels about R.L. and ensure that D. maintains that relationship the best she can from a distance.

[346] In *J.S. v. A.S.*, 2023 BCSC 2305, Master Robertson reminds the parents, that:

> [16] It is generally accepted that parenting is a right of the child, and that parenting should be promoted by a custodial parent, without that custodial parent making unilateral decisions as to when the other ought to be able to exercise it: *S.D.G. v. D.K.N.*, 2017 BCPC 61, at paras. 143 to 144. This goes hand in hand with the general view that children benefit from a parenting regime with both parents which gives them an opportunity to benefit from a healthy relationship with each: *A.P. v. S.T.,* 2019 BCSC 1780, as cited in *Gill v. Kaur*, 2023 BCSC 178 at para. 38.

[347] In my view, the ill-will R.L. has displayed in this trial against C.D. is far eclipsed by C.D.’s antipathy toward R.L. I say that because R.L. at least had the grace to acknowledge that prior to their falling out in 2019, he held C.D. in high regard as a mother and a person.

[348] Since 2019, C.D. severed E.’s relationship with R.L. and his family. She has blocked R.L. and A.L. on all her social media accounts. A.L. accepted this as notice that C.D. no longer welcomed her presence in D.’s or E.’s life. C.D. now asserts retrospectively that she never had a good relationship with R.L. She states:

> I broke up with him repeatedly. So, the breakdown of our relationship, we never had a good relationship. Our entire time that I have known Mr. L., it has been a toxic, up-and-down, awful relationship. So, no, it was nothing to do with Mr. M. [causing] a breakdown. It was that I finally was becoming a strong enough person and understanding my worth, and that I was better than what he was putting me through.

[349] C.D.’s dire prediction of the deleterious effect of D. relocating on her relationship with D. is not supported by the evidence. R.L. has defended and maintained the equal

parenting schedule since its inception. Although C.D. complaints that R.L. was inflexible in altering the parenting time schedule, there are few if any examples of R.L. wrongfully withholding D. from C.D.'s during her parenting time. In any event, the best interests of a child in respect of a relocation are not necessarily aligned with those of a parent: *D.D.R. v. K.T.R.*, 2019 BCSC 1805, at para. 139, citing *Stav v. Stav,* 2012 BCCA 154, at para. 90, leave to appeal to SCC ref'd, 34833 (6 September 2012).

[350] The evidence of the L.s and the court history suggest that C.D. has "re-envisioned" their relationship to cast R.L. as an arch villain and herself the hapless victim. I cannot say whether her professed beliefs are honestly held or an attempt to leverage her position in these family law proceedings or as retribution for R.L. attempting to take D. away from her. The total disintegration of C.D. and R.L.'s co-parenting relationship appears to confound the L.s. Perhaps it is just wilful blindness on their part. In any case I have serious misgivings that C.D. will overcome her "spite" and facilitate D. enjoying worry free parenting time with R.L. if D. remains in Prince George.

[351] Although it will not be a shared parenting arrangement, I am satisfied that the court can craft a parenting order that will not increase the risk to D.'s or any other person's safety, security or well-being.

Section 37(2)(j): any civil or criminal proceeding relevant to the child's safety, security or well-being.

[352] There are no other civil or criminal proceedings relevant to D.'s safety, security or well-being.

DISPOSITION

[353] I have decided that D. will relocate with R.L. to [omitted for publication]. She has a well-established support system there. In assessing the evidence as a whole, I am concerned that C.D. is inclined toward replacing D.'s "L." family with the M. family. I believe that R.L. is more likely to facilitate D.'s worry free parenting arrangements with C.D. than she with him. C.D.'s hostility towards R.L. is so acute, I do not see her supressing her "spite" for D.'s sake. Moreover, C.D.'s failure to acknowledge D. as an

autonomous thinker is troubling. I say this because C.D.'s response to D.'s concerns that her mother does not listen to or understand her, is to ask the court to give no weight to those views. Hence, I find it in D.'s best interest to reside primarily with her father. Moreover, this is what D. wants.

[354] In light of my decision to allow D. to relocate with R.L. to [omitted for publication], I invite the parties' submissions on the proposed parenting arrangements.

_____

The Honourable Judge J.T. Doulis
Provincial Court of British Columbia