Court File No. D617/01

THE ONTARIO COURT OF JUSTICE

IN THE MATTER OF the *Children's Law Reform Act*,
R.S.O. 1990, c.C. 12 as amended,

AND IN THE MATTER OF the *Family Law Act*,
R.S.O. 1990, c.F.3.

BETWEEN:

MOTHER

(Applicant)

- and –

FATHER

(Respondent)

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P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE J.P. NEVINS
on Friday, November 2nd, 2001 at Toronto, Ontario

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Appearances:

Mr. S. BENMOR	Solicitor for the Applicant
Mr. S. KHOT	Solicitor for the Respondent

Friday, Novemeber 2nd , 2001

REASONS FOR JUDGMENT

NEVINS, J: (ORALLY)

THE COURT: I have placed this case on the list, this morning to give reasons, on a motion, to change an existing custody and access order.

The case is what might be commonly referred to as a 'mobility case', because it is the request of the Applicant that she move with the child to another jurisdiction.

The case was argued on the 20th of August 2001 and both father and mother were represented by Counsel. Counsel had agreed that the facts would be put in before me by way of Affidavit; and, the case argued on those Affidavits and on the law that was submitted to me.

I appreciate both Counsels doing that and the job that was done by both Counsels in preparing very complete material. It was of great assistance and I think the clients should be most please with the way their cases were handled. I don't think anyone can argue that they were not properly represented.

I should also say at the outset, in reviewing the history of the case, that I had indicated that I would put this over for about a month for reasons. It is now more than two months since the case was argued. I regret that I was not able to give the reasons earlier, and I

apologize to the parties for any inconvenience and anxiety this might have caused them.

The delay was partly for other reasons. But I have no hesitation in saying that a great part of the delay was my difficulty in coming to a decision on this case. I found it very troublesome and I sincerely hope that the decision I have come to is in the best interest of the child.

For the most part, the facts in the case are not in serious dispute. As I have said, they have been put before me by way of Affidavits. Where there is any dispute in the facts I did not find it to be relevant in coming to my decision at all.

For instance there was a considerable amount of disagreement surrounding the details of the marriage and the details of the separation; and, exactly what happened on what day. But, as I say, I did not find them to be determinative in any way of the decision that I am being asked to come to. And, for that reason and because of the fact that the evidence was all put before me by way of untested Affidavit evidence there is no need for me, and I do not feel that I would be able to come to any findings of fact in those areas in which there is a dispute. It simply is an unimportant part of the case where there is a disagreement in the facts. It is not relevant.

The general history and chronology of the life that these two parties have had together is set out in the Applicant's affidavit. And, while there are some of those minor discrepancies, that for the most part is an accurate representation.

Very briefly the situation is this. It was an arranged marriage between these parties. Back in December 1995 the Applicant and the Respondent were married in England. At that time the Applicant's parents and her family had been residing in England for some time. She was, at the time, a resident of Canada, whether she had obtained her landed status before that or shortly after the marriage I don't recall from the material. But, that is not important. The fact is, she was a resident in Canada, they got married in England. The Respondent had traveled to England for the marriage. That was in accordance with Islamic law.

They stayed in England for a short time-two or three weeks after the marriage. And then they moved back to Ontario where the Applicant had been living prior to the marriage.

Regardless of what description of the facts given by which party, I think it is common ground that almost right from the outset there were some difficulties in this marriage that eventually led to a separation fairly soon after they were married.

The father alleges that he discovered or he believed that the Applicant was having some form of a romantic relationship with

another person. The Applicant alleges that the Respondent was a very violent, controlling and domineering person. Regardless of the reason they did separate about five or six months after they were married in the summer of 1996.

Two or three months after the separation in the fall of 1996 the Applicant traveled back to England to visit her family. At the time she was pregnant and while she was in England two things occurred. First of all an Islamic divorce was obtained and then in June of 1997 the child was born: The child who is the subject matter of this proceeding.

After the child's birth in June of 1997, the mother, with the child, stayed in England for another few months and in the fall, November of 1997, she returned to Canada. By that time the child, was about five months of age.

The parties did not resume cohabitation upon her return to Canada; but, divorce proceedings were commenced and a Canadian divorce was obtained in August 1998. The proceedings were commenced earlier, of course, but the divorce decree was obtained in August 1998.

Now, in the course of the divorce proceedings, for whatever reason, the issues of custody, access and child support were not dealt with although the evidence is that they were raised and discussed, maybe in the course of those divorce proceedings. But, certainly

there was no order from the Divorce Court dealing with those issues.

And so, almost at the same time that the divorce decree was granted the Applicant, mother, commenced an application in Provincial Court in Ontario for custody of the child and for child support. That was in August of 1998. And, just to jump ahead a bit, it was as a result of those proceedings that the existing custody and access order was made; and, it is the resulting custody and access order that I am being asked to vary in this application.

In any event, the Provincial Court proceedings were started in early fall of 1998. Initially the Respondent, father, denied paternity of the child. There was an order granting leave for paternity tests, and, by the end of the year 1998, the results of the tests were obtained and it was confirmed that the Respondent was the father of the child.

The case was back in court in the very early part of 1999. There was, on consent, an order granting the Applicant final and sole custody of the child. There was an order for supervised access to the child by the Respondent because up to that point the Respondent has either not seen the child at all or had had very little to do with the child.

Again, I don’t feel that the exact details of what happened as far as access is concerned, up to that point, is overly important. I think the significant point is that if there had been contact between the father

and the child, up to the beginning of 1999, it was, at best, infrequent and irregular and certainly not structured in any way. Anyway there was an order for supervised access and an order for child support.

The supervised access order was an interim order; the case came back to Court in another couple of months, in the early spring of 1999; and, the supervised access order was made final – again on consent, as was the child support order.

It is really from that point on that things began to get even worse than they had been. In May 1999, the Applicant with the child, who is now almost two years old, returns to visit her family in England. That is a fairly short visit. She comes back after a certain period of time. The matter is brought back into court in September, 1999 and the access order is varied to what I may call, “loosen it up,” or to expand it a bit, so that the supervision is not nearly as restrictive. The access order now provides that there will be certain periods during which the Respondent could have, I guess what you would call, “semi supervised access.” But in general terms, the supervisory aspect was loosened up a bit. But, it sill was comprised mainly of a weekly visit of a period of somewhere between two to four hours. So that is in the early fall of 1999.

Then a month later, in October of 1999, the mother again returns to visit with her family in England and takes the child with her. The

problem from this point on is that the mother stayed in England and did not return and the effect of that, of course was, that the father's weekly access was frustrated.

There is evidence, although parts of this are contradicted, that the Applicant communicated her intention to stay in England for an indefinite period of time because her mother, in England, was seriously ill and she felt she needed to be there.

What happens between November of 1999 when she says she communicated her intention to remain in England for a period and April of 2000 when the father, Respondent, brings the matter back to Provincial Court in Brampton, is a little bit confusing in my mind. I think it is fair to conclude, again for the purposes of this application, that there was a form of communication between the families, either the Applicant's relatives and the Respondent or the Respondent and the Applicant directly. But, in any event there was some kind of communication the result of which was that the Applicant's message through to the Respondent was that she was going to remain in England for an indefinite period of time; and, that therefore his access would be nonexistent while she was in England.

So the father in April of 2000 brings the matter back into Family Court in Brampton, because of this situation, and he obtained an order finding the Applicant in contempt of the previous supervised

access order. That proceeding, in itself, stretched over two or three months and in August of 2000 the Provincial Court in Brampton had a formal hearing under the Hague Convention provisions and made a finding that the Applicant, being in contempt, was in violation of the provisions of the Hague Convention and directed that the mother return with the child to Canada.

In due course that order is sent over to a reciprocating court in England; the mother launched an appeal against that order in Britain and by the end of the year 2000, the result was that her Appeal in England was dismissed and therefore the direction or the order of the Canadian court ordering her to return to Canada with the child was in full force and in effect.

So, in the first part of January, 2001, she returned with the child to Canada and this proceeding was commenced to vary the access so that she could return to live in England with the authority of a court order that would permit her to do so.

That is a general history of the relationship, at least the parts of it that I consider to be important.

As, I believe would be obvious from an examination of that history, the issue is, of course, whether or not she should be permitted to change her residence and the residence of the child to reside out of this country in the United Kingdom so that any access by the

Respondent would be significantly different than what the existing access is.

In her motion to vary, the Applicant proposes a form of access. Without going into the details of that, the plan or the proposal that she puts forward is this: That she be permitted to reside with the child in England; that the Respondent, father, of course would have access to the child in England, if he should choose to come over there. But, aside from that, he would be entitled to have access to the child in Canada for certain periods of time. The access plan that is being proposed by the Applicant, in general terms, suggest certain fixed periods of time—at present because of the child's age, two or three times a year—for an extended number of days. But, as the child grows older and is able to either travel alone or at least travel more frequently from England to Canada the access in Canada would be increased. That is the general plan.

Part of that proposal or suggestion by the Applicant as well is that any existing order for child support be rescinded and that in instead of paying child support to her he would be responsible for most of the costs of transporting back to Canada for access. That is the trade-off that is being offered.

As I reviewed the case, I, of course, had to consider the case law to which I was referred. And, Counsel, particularly the Applicant's

Counsel, has given me, what I believe to be an exhaustive collection of the existing case law on this different issue.

I think, as a general comment, it would not be inappropriate for me to say that the law in this area has always been, in my opinion, at best, rather vague and uncertain; and, on top of that, has, in my perception changed its focus, considerably back and forth over the last ten to fifteen years. And, I certainly would not be presumptuous enough to say that in any critical sense. It is a most difficult issue.

I think other courts that have considered this have done their utmost to try and come up with some standards that the lower courts can use for their assistance. But those criteria and those standards seem to have, as I said, changed from time to time.

It is my belief and it is my opinion that the current state of the law is most accurately reflecting in Gordon and Goertz, which is a Supreme Court of Canada decision, that is about five years old- from 1996.

Just to speak about the law, in general terms, if I may at the moment, I might at this point, just insert in my reasons this following comment: I would have greatly appreciate the luxury of another significant period of time to organize my thoughts more for this case to do written reasons and to be able to canvass in detail the facts and the law as they have been presented to me.

I have not been able to do that, to date. And, I felt, very strongly, that these parties, and this child needed a decision on this case as soon as possible. I want it clearly understood though, for the purposes of these reasons, that while I would have liked more time to organize my thoughts better, I have no hesitation at all in stating the decision that I have come to.

If I had more time I would have, perhaps, polished these reasons more and they might have been a bit more organized, but I don't mean by that to suggest in any sense that I believe I would have changed my mind.

The reason I say that is that my summary of the law, at the moment, might be fairly cursory. But, I can assure the parties that I have read all the materials that have been given to me. I have read a great part of the material several times. I have certainly read all the case law. I have been through the affidavits and supporting materials several times and so, I don't want it to be taken as if I have neglected something or forgotten about either a part of the facts or part of the law if I don't specifically refer to it.

Anyway, the general state of the law, as I understand it at present is this: The custodial parent does not necessarily have an unfettered unrestricted right to change her residence to wherever she wants and whenever she wants. However, her right to do so, namely her right to change her residence and that of the child, is

what I would term as a “paramount right”, that should only be restricted or impaired by the court under what I would consider to be rather extreme situations.

In particular, I don’t feel that the opinion and the decision of Madam Justice Abella, in the *MacGyer* decision in 1995 is necessarily the state of the law right now.

As I interpret Madam Justice Abella’s reasoning in that case, she seems to suggest that having been given custody, it is the absolute and unfettered right of the custodial parent to choose her residence and the child’s residence and that is what comes with having sole custody.

I don’t think that is the state of the law, now. But, I think *Gordon and Goertz* make it very clear to us that while it may not be an absolute or unconditional right to choose and change her residence, it is a right that, while subject to review, should only be interfered with under fairly extreme circumstances. And, that as a general rule, having been given sole custody of a child, the custodial parent’s right to choose the place of residence should not be restricted, just because access by the non-custodial parent maybe more inconvenient or awkward or more expensive.

And, at the risk of oversimplifying things, I think that is what a combination of all the cases brings us to, today. Again, the wishes and the choices made by the custodial parent should be given great

consideration. And, unless the Respondent, the non-custodial parent, can show some valid reason for restricting the right of the custodial parent to choose the residence, then the custodial parent's choices should be respected and authorized by a court.

Now, applying that to this case, I perceive there to be four aspect or components of the case that cause me the most trouble and that I think deserve some mention.

Not in any particular order of importance, I think the items that I have to consider, if that is a true statement of what I think the law is at present, are these. First of all, there is the question of the mother's conduct, especially since roughly the fall of 1999; and, I am referring of course to the fact that she returned to England. Her conduct clearly 'flew in the face' of an outstanding order that she agreed to in Canada and she remained there violating that order and frustrating the Respondent's access.

The Respondent argues, through Counsel, that this conduct was part of a pattern of conduct exhibited by the Applicant, not only throughout the case but throughout their marriage; and, that her conduct was directed solely towards frustrating the Respondent's relationship with the child and his access to the child, and that she did intentionally. She has been found to be in contempt of court therefore, if I can fairly summarize the Respondent's argument, he says, "The Applicant does not come to court with 'clean hands'.

She has shown a considerable amount of bad faith because of her conduct. And, that's the kind of extreme situation," or circumstance "in which a court should not respect her wish to change residence." I find that a very strong argument and an argument and a situation that did trouble me a great deal. There is no question about it: The Applicant acted entirely inappropriately in doings things the way she did. However, it is my opinion, and I believe the cases support this, if not in their ratios at least in some of the obiter that is in the cases, that the conduct of, in this case the custodial parent or really the conduct of either of the parents in cases like this, is not really relevant unless the conduct can be shown to go directly to one of the parties ability to care for the child, or if it shows a history from which a court could conclude that the care of the child might be affected because of that person's conduct. To put it simply, I don't find that to be the case here.

Now, I said towards the beginning of my reasons, that I do not think it is necessary and it is not determinative that I make any finding of fact. And what I am referring to in particular is any findings of fact about whether he did assault her on such and such a day and whether her description of the marriage is as she says it was.

I note, with great interest, that while the Respondent in affidavit material denies, in general terms, everything the Applicant says in her affidavit—a practice which by the way, I find to be not very

helpful at all—he does not go into the specifics of her allegations of the violence and the assaultive behaviour which she described during the marriage. And I put a fair bit of weight on that.

Regardless of how accurate her description of the violence in the marriage is, there is no question in my mind that there was a very uncomfortable relationship between these people right from almost the day they were married. There is no question in my mind that, whether it was real or simply perceived by her, she felt a real fear and anxiety because of the Respondent's behaviour. And, that while in hindsight her conduct in moving to England, in frustrating the access order and not telling him that she was doing that and refusing to come back, may all seem to have been ill advisable and illegal, I do not think from the evidence and arguments that I have before me that I could interpret it as being in 'bad faith'. And, I certainly do not think that I can interpret it as the kind of conduct which would, by itself, justify the court simply rejecting her request to change residence and requiring her to remain here.

So, that whole topic of the Applicant's conduct is a factor to be considered. I have considered it in my mind, at great lengths, with all the evidence that have been given to me; and, as I say, while it was ill advised and inappropriate, I do not think it amounts to 'bad faith' that would lead to the result that the Respondent requests.

Another argument or another aspect of the case that the Respondent raised is this: “At the time we were married,” the Respondent would say – “we were married in England because of an arrangement between the families. But the Applicant was a resident of Canada. She had chosen to become a resident of Canada. She had chosen to apply for her landed immigrant status here in Canada. And in fact, “says the Respondent, “if you would look back at the papers she filed in the original Provincial Court proceedings, in which the question of custody and access was being considered, she says, ‘Canada is my country. Canada is where I intend to stay and I have chosen it to be my country.’ ” And based on that, the Respondent argues that her present request to move to England to severely curtail his access to the child is nothing more than another example of her conscious attempt to frustrate or deny his access completely and to impair his relationship with his child.

After having spent a great deal of time ruminating about that part of the case, in my opinion, it becomes a ‘red herring’.

It is a very attractive argument when I first heard it. But, the fact of the matter in my opinion is this: This was an arranged marriage between these people. And I would not pretend, by any stretch of the imagination to comment upon the accepted cultures or practices or other faiths or nationalities. But, by its very nature, this

marriage had a high degree of risk to it, in my humble opinion. And I have no hesitation in believing that at the time they were married and maybe for a good period of time after they were married and they were separated, it was the Applicant's intention to stay in Canada, to make Canada her home.

The problem is, the universe simply did not unfold as it should for these two parties. Things changed. The marriage, regardless of why it happened, was a disaster. There were police involved. There were criminal charges laid. There were separations and this is all within the space of five or six months after they are married.

So, looking at it from that perspective, the fact is that the Applicant is now saying in so many words, "That's what I intended my life to be like two years, three years ago. It simply isn't that way now. I want to be back with my family. I want to be back where they all are, back in England where the child can be raised in a comfortable setting surrounding by her relatives and her extended family members. And, I didn't think things were going to work out this way."

As I say, I don't' think she says it in those words. I know she doesn't say it in those words in her affidavit, but that is what I perceive the situation to be. And, I think the fact that she has chosen to have landed-immigrant status in this country before the

marriage and up until now is not a factor to be considered in the decision.

The next aspect of it that I had to consider and I felt was worth mentioning in the Reasons is this: The importance or the weight to be given to the Applicant's wishes-namely her wish that she wants to change her residence and return with the child to live in England surrounding by her family that has been there for years and with the support of the family to raise this child.

I believe in the course of summarizing what I think is the case law I have completed my comments on this part of the case.

While I do not think her, in this case, the Applicant's wishes are determinative, that she does not, in my opinion, have an absolute right to choose wherever she wants to live, the significant aspect of it for me is this: Having been given sole custody on several occasions, both in the form of interim orders and then a final custody order and having been given sole custody with the consent of the Respondent, her wishes and her request to live in this other jurisdiction for the reasons she has given should be given very great weight.

It is her evidence or her position that she wishes to return to England because the marriage and her relationship with the Respondent in Canada was disastrous; that it has been nothing but a source of anxiety for her and the child. She is afraid of him. She,

if I am not mistaken, is afraid to the extent that she has given instructions not to tell the Respondent where her resident address is. That may have changed, but I believe that was the situation for some period of time.

It is also her evidence that, whether it is because of her anxiety or for separate reasons, the child demonstrates a degree of anxiety being in the presence of the Respondent.

It is her evidence that the access has not gone well, that the child has continuously demonstrated a reluctance to be in the presence of and certainly in the care of the Respondent and a great reluctance to leave her care. And, because of that she feels that the appropriate place for her to be with the child, to raise this child, is back in the United Kingdom where her family, as I say, is there—quite a large extended family—where they are well settled and where she not only has the comfort of her family around her, for her sake, but the child has the comfort of the family and has the opportunity to come to know and experience the extended family as she grows up.

Those are the Applicant’s wishes and I think they should be given considerable weight.

The final aspect of the case that I think deserves mentioning and that I, understandably, had considerable trouble with is the effect of

the change of residence and the impairment or the degree to which a change of residence would impair the access by the Respondent. I do not know if a lot more can be said about this aside from what I have already said by reference to the course of the rest of my reasons.

First of all, I think if one looks back at some of the other cases, and in particular *Gordon and Goertz*, just to compare the facts and see how closely this case is to the other cases, it's my opinion that the access that exists at present is far more tenuous and less stable and frequent than the access was, certainly in the Gordon Case; and, yet the Court and all the levels of Court in that case permitted the custodial parent to move to another jurisdiction.

So, if one is just comparing the facts, I think there are other cases that would justify a change of residence based on the kind of access there has been at present in the case.

But, more importantly than that, there is no question that if the Applicant is to move to England, weekly access, of course, is not possible and the access much less frequent than it has been up to now.

But the difficulties in maintaining contact between the Respondent and the child are not and would not be, in my opinion, insurmountable. And, while they might be inconvenient, I do not

think they are entirely unreasonable, if one looks at the overall picture.

The fact of the matter, despite the terrible events that have happened in our world over the last couple of months, air travel is a fact of life. It is not uncommon for us to see cases in a large province like Ontario in which a non-custodial parent has to travel as much time in a car to exercise access as a lot of people would have to travel in an airplane to exercise access.

So, while there is no doubt that it would be difficult and inconvenient, the access hasn't been of the extent that I think it would be a serious change for the child. I think given the proposal that is being made by the Applicant I do not think it would be an unreasonable financial hardship on the Respondent.

And, based on the materials that have been supplied to me which, by the way, went it without any objection, I think I am entitled to come to the conclusion that there is at least a body of thought out there that the frequency of access is not necessarily as important as the quality of access. And, if the custodial parent is able to more effectively deal with the care of the child on a day to day basis and therefore provide the child a more stable and nurturing environment the frequency of the access is simply not as important as one might think. And, I think that fairly summarizes what some of the articles,

which I have been referred to, say. So, once again, the fact that the access might be impaired I do not think that is determinative either.

I suspect it is obvious from my reasons, up to this point, that it is my intention to give the Applicant permission to change her residence so that she can reside with the child in the United Kingdom and I intend to vary the existing Family Court order, accordingly.

I should say, one final thing and I apologize for jumping around like this in the reasons. But, it is a factor of the case and it is important to me. In my mind, I cannot over emphasize the importance of the fact that the Applicant has by Court order been given sole custody of this child. That has never been contested.

Now, in the materials before me for this particular proceeding the Respondent claims in the alternative, and I am sorry I do not have it in front of me at the moment, but he says, in so many words, that if he cannot have access to the child, similar to what he already has-access to the child in this country-unsupervised and weekly, then he wants to claim custody of the child. He wants to claim sole custody of the child.

There have been no facts tendered by him to support that. There is no plan presented by him. And, I have tried to read his materials a couple of times to make sure I am not missing it. It was not argued in the course of the case. I do not consider there to be a serious

claim being presented for custody by the Respondent, at all. And, I have no information that there ever has been.

So, having said that, the fact that one of the parents has the sole custody of the child carries tremendous weight, in my opinion. And, unless the request to change residence is something that is so bizarre and so extreme that it would effectively terminate access to the non-custodial parent, for reasons of ‘bad faith’ then I think the custodial parent should be given the right to choose an environment that she feels, and which I believe, based on the evidence, would more effectively further the proper development and growth of this child.

All of which, I think is a roundabout way of saying, I think this move with the child to the United Kingdom, while it might have some affect on the access by the Respondent, would most certainly by in the best interest of this child. It would provide this child with a caregiver who is more secure, more stable and more relaxed. And that, in my opinion, justifies the order that I plan to make.

So, there will be an order – just a minute, I have to find the last order. Mr. Benmor, the last access order is at Tab G, September 13, 1999. Is it not? The other orders dealt with the contempt and other things.

MR. BENMOR: You are correct, Your Honour.

THE COURT: Okay. What I am about to say is not necessarily part of the reasons. But, I think I should mention it, just in case there is a misunderstanding. I put this case on for the Reasons today on very short notice to both sides.

The Respondent is not here, nor is his Counsel, but when they do read these reasons, I want them to be assured that I read nothing into that. It was my intention to put this on for Oral Reasons as soon as I came to the decision. And, they not appearing today has, -- in case it could be misinterpreted – absolutely no bearing on the end result of the case.

In the earlier final custody order- Mr. Benmor, I am going to ask your assistance- is there in any of the earlier orders a provision that she shall not reside outside of such and such a place?

MR. BENMOR: My recollection is that there was never a non-removal order or a mobility restriction other the ultimate orders, the contempt and paternal order.

THE COURT: Okay. All right. For the oral Reasons given, the access order on the 15th of September 1999 is varied.

MR. BENMOR: If I may just point out that the order of August 22, 2000, Exhibit I does, have a non-removal provision. That would have been the subsequent—no that would be the Hague order, Exhibit I, August 22, 2000 by the Honourable Justice Dunn paragraph 2.

THE COURT: Yes. I thought I had read it somewhere here.

MR. BENMOR: In the notice of motion, you will find that we have asked that all those orders either be varied or cancelled.

THE COURT: I am making this order in such a way that it causes little administrative upset as possible. Mr. Benmor, for my sake and for the Respondent's, when they receive this, what is your client's intention about moving to the other jurisdiction?

MR. BENMOR: Are you asking for a timeframe?

THE COURT: Yes. I want to suspend the child support order, effective when she goes. Now, if you are telling me she is going immediately then I would just suspend it now.

MR. BENMOR: May I confer with her for a moment.

THE COURT: Yes, please.

MR. BENMOR: She indicates that she is going to be making flight arrangements as soon as possible and will be leaving shortly thereafter.

THE COURT: This being the beginning of November?

MR. BENMOR: She indicates that she is prepared to have Your Honour…

THE COURT: Is it fair to say January 1?

MR. BENMOR: The 1st of November.

THE COURT: Just be a bit careful about that. The endorsement is going to read "The Applicant shall continue to have full and sole

custody of the child and may take up residence with the child outside of Canada. In the event she does the Applicant to provide the Respondent with thirty days written notice through Counsel. So, I do not want her just disappearing tomorrow. The Respondent should be given an opportunity to consider whether he wants to appeal my decision.

Now, the child support…

MR. BENMOR: I am voicing an issue that my client has raised, but we leave it in Your Honour's hands. Ramadan is in two weeks.

THE COURT: Yes, I am aware of that.

MR. BENMOR: That's the holiest holiday of the year for the Moslem faith. She would prefer to be home with her family for Ramadan and even if Your Honour had not granted her the permission to relocate she would have asked for permission to simply go and visit with her family for Ramadan.

THE COURT: Well, just hang on. As I understand it, the Respondent is also of the Moslem faith. And, I am assuming that it is an important holiday for him as well. I have just made an order that says, he might not see his child a lot over the next ten years. First things first. If there is going to be any consideration given over the next month- I guess what I am trying to say in the vernacular, I think this fellow should be 'cut a little bit of slack.'

MR. BENMOR: Thank you, Your Honour.

THE COURT: I think that would be really throwing ‘salt in the wound,’ too. Anyway, the child support order of March 31st, 1999, which I take it to be the last final one, is terminated as of November 1, 2001.

So the endorsement is, “For oral Reasons given, the access order of the 13th of September 1999 and the 22nd of August 2000 are varied.”

Applicant shall continue to have full and sole custody of the child and may take up residence with the child outside of Canada. In the event she does, the Applicant to provide the Respondent with thirty days written notice, through Counsel. Upon her leaving this jurisdiction to reside with the child elsewhere access by the Respondent shall be as requested in the Applicant’s notice of motion, paragraphs 1B through 1K.

If there is going to be an order made, like the order that I have just given, I think that proposal for access is most reasonable, in the circumstances and I perceive it to be certainly in the child’s best interests.

And then the child support order of March 31st, 1999 is terminated as of November 1, 2001.

MR. BENMOR: Regarding that order, I may not have heard you, but that non-removal order of August 22nd, 2000, was there comment to that effect.

THE COURT: Yes. Order of August 22, 2000 varied.

MR. BENMOR: Varied and replaced by your current order or…

THE COURT: YES.

MR. BENMOR: Very good. And, I presume Your Honour is satisfied that the other orders which were interim do not really need to be commented on?

THE COURT: I do not think so. No.

MR. BENMOR: Very well.

THE COURT: Again, for purposes of the transcript, if there is any problem like that settling the order, I would encourage you and other Counsel to either have a telephone conference call with me or a quick 14B Motion or something.

The intention of this order is that any outstanding access orders that are inconsistent with it are varied or terminated so that she be permitted to move. And if I have missed one term in some order and you need that corrected then, as I say, you and the Counsel on the other side can contact me to settle the order. Thank you very much.

MR. BENMOR: Thank you, Your Honour.

THIS IS TO CERTIFY THAT THE FOREGOING

IS A TRUE AND ACCURATE TRANSCRIPTION FROM THE RECORD MADE BY SOUND RECORDINGS APPARATUS, TO THE BEST OF MY SKILL AND ABILITY

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Harriett Bynoe, Court Reporter