# Court of King's Bench of Alberta

**Citation: QM v RM, 2025 ABKB 704**

**Date:** 20251202
**Docket:** FL01-37134
**Registry:** Calgary



Between:

**QM**

Applicant

- and -

**RM**

Respondent

## Restriction on Publication

**Identification Ban** – See the *Family Law Act*, section 100.

By Court Order, no person shall publish or broadcast information that may identify the Child involved in this proceeding.

**NOTE:** Identifying information has been removed from this judgment to comply with the ban so that it may be published.

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**Reasons for Decision**
**of the**
**Honourable Justice M.A. Marion**

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## I. Introduction

[1] This decision involves parenting and related relief respecting a 6 year old boy (**Child**) with Autism Spectrum Disorder (**ASD**) following an eight day oral hearing (**Hearing**).

[2] In these reasons, I address:

(a) an application (**Application**) by the Child's father, QM (**Father**), to relocate the Child with him to Vancouver (**Relocation**). The Child's mother, RM (**Mother**), opposes the application;

(b) decision-making and parenting for the Child; and

(c) costs (including previous arbitration and court cost awards and reapportionment of fees for an assessment under Alberta Court of King's Bench Family Practice Note 8 – Child Custody/Parenting Evaluation (**PN8**)).

[3] For the reasons set out below, the Father is granted permission to relocate the Child to Vancouver, the Father is granted sole decision-making, the Mother is granted significant parenting time, the parties are ordered to share the PN8 expert costs on the terms set out below, and my costs determination is deferred pending further submissions of the parties.

## II. Procedural Background

[4] The parties began a relationship in September 2014, married in January 2016, and had the Child, via surrogate, in British Columbia in 2019. In late 2019, the Mother relocated with the Child to Calgary and the Father followed in October 2020. The parties were divorced in 2021.

[5] In 2022, the Child was diagnosed with ASD. The parties consented to a PN8 order (**PN8 Order**) to appoint a parenting expert, Dr. Terence S. Singh, Ph.D, ABPP (**Expert**), and an interim without prejudice parenting order, which continued the Mother's primary parenting and gave the Father overnight weekend parenting time.

[6] In 2023, the parties engaged in mediation and then parenting coordination/arbitration with Rhoda Dobler, KC (**Arbitrator**), which resulted in several arbitration awards, and then court orders, the effect of which was to alter parenting from the Mother having primary care to, eventually, the Father having primary care of the Child. In August 2023, the Mother was arrested and charged for breaching a court order and abducting the Child when she took him to British Columbia. The Mother's parenting time then became supervised. In October 2023, Justice Kuntz was appointed case management justice (**CMJ**).

[7] In 2024, supervised parenting continued, and the Mother's charges were resolved by way of a peace bond. In July, the CMJ granted a restraining order (**Restraining Order**) against the Mother and refused to vary parenting. In September, the Expert delivered his PN8 assessment (**PN8 Report**) which recommended that the Father have primary parenting and the Mother have unsupervised parenting on one weekday evening and overnight parenting every second weekend. The Mother disagreed with the PN8 Report's recommendations. After the PN8 Report, the Father confirmed his intention to relocate the Child to Vancouver. In November, the CMJ (among other things) granted an order (**Oral Hearing Order)** and the parties agreed to a consent interim parenting order providing the Mother with parenting time every Sunday (**November 2024 Order**).

[8] The Hearing was scheduled before me, commencing on June 3, 2025 for five days. The Mother unsuccessfully applied for an adjournment. However, the Hearing could not be completed, in part because the Expert's PN8 Report was then outdated and had not contemplated the Father's proposed Relocation.

[9] Accordingly, at the Hearing, I directed, among other things: the Hearing would continue from September 2, 2025 to September 5, 2025; the Expert was to complete an update PN8 assessment (**PN8 Update**); the Mother would have an opportunity to file rebuttal reports[1]; and the Father would have an opportunity to file a late third-party affidavit.

[10] On June 25, 2025, the CMJ and I received a letter from the Mother's counsel seeking to withdraw. That day, we also received a letter from the Mother raising several concerns and requesting urgent relief relating to the Child's schooling in the fall in the event that the Relocation is not permitted. The Mother also raised concerns about, among other things, the impact of the Restraining Order.

[11] Under rule 4.14(2) of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*), I scheduled an emergency attendance before me on June 30, 2025. The Mother did not attend. I issued an Endorsement in which I declined to permit the Mother's counsel to withdraw, confirmed it was the Mother's choice whether she continued with her counsel, reiterated the Hearing would continue in September 2025 on a peremptory basis, and reminded the parties of their obligation to cooperate with the Expert. I did not grant any further relief as requested by the Mother.

[12] On July 14, 2025, the Expert sought the Court's direction because he was of the view that he could not complete the PN8 Update as directed given the Mother's limited availability and failure to execute the Expert's new retainer agreement. The Mother wrote to the Court again seeking urgent relief, including immediate information sharing, assessing the Expert's process, appointing a new expert to complete the PN8 update, and implementing a proposed shared parenting summer schedule. I confirmed my earlier direction for the completion of the PN8 Update and that the Hearing would continue in September as scheduled. I did not grant the urgent relief requested by the Mother. On July 15, 2025, the Father requested I place parameters around communications with the Expert, which I declined to do.

[1] Although given permission to do so, the Mother did not file any rebuttal reports in respect of the PN8 Report or the PN8 Update.

[13] The Hearing continued September 2-4, 2025. The parties both sought to provide written final submissions, which were provided in September 2025.

## III. Evidence

### A. Record

[14] The Hearing record is colossal. It includes:

(a) the Father's eleven affidavits;[2]

(b) the Mother's ten affidavits[3], including one I permitted the Mother to file late;[4]

(c) the affidavit of the father (**KA**) of the Child's younger half-sister born to KA and the Mother in 2020 (**CA**), sworn on May 15, 2025 (filed May 26, 2025);

(d) the affidavit of Constable Samantha Lowe (**Lowe**) sworn on May 12, 2025 (filed May 26, 2025);

(e) the affidavit of Courtney Crouteau (**Croteau**) sworn on May 16, 2025 (filed May 20, 2025);

(f) the affidavit of the Mother's friend (**AV**) sworn on March 31, 2025 (filed April 2, 2025);

(g) the affidavit of Erin Bond (**Bond**) of Behaviour Therapy and Learning Centre (**BTLC**) sworn on August 18, 2025;

(h) transcripts of court attendances on April 11, 2022, June 5, 2023 and June 7, 2023;

(i) transcript of the April 10, 2025 questioning of the Father on various affidavits pursuant to rule 6.7, together with exhibits and undertaking responses;

(j) transcript of the April 11, 2025 questioning of the Mother on various affidavits pursuant to rule 6.7, together with exhibits and undertaking responses. The Father's objection to the Mother's undertaking responses is addressed further below;

(k) oral testimony of the Father, the Mother, Lowe, KA, Croteau, AV, Bond and the Expert; and

[2] Father's affidavits dated May 5, 2022, May 11, 2022, May 13, 2022, March 13, 2023 (filed March 16, 2023), May 17, 2023 (filed May 18, 2023), October 20, 2023, June 18, 2024 (filed June 20, 2024), July 2 2024, December 20, 2024 (filed January 7, 2025), March 14, 2025 (filed March 20, 2025), and May 23, 2025 (filed May 26, 2025).
[3] Mother's affidavits dated May 4, 2022, May 11, 2022, May 13, 2022, May 8, 2023, June 5, 2023, October 4, 2023, October 25, 2023, June 24, 2024 (filed June 25, 2024), January 31, 2025 (filed February 3, 2025) and May 28, 2025 (filed July 9, 2025).
[4] Mother's affidavit sworn May 28, 2025 (filed July 9, 2025). The parties agreed that Exhibits D and F thereof would be removed before filing.

(l) over 60 additional exhibits (including binders and bundles of emails and texts, encompassing several hundred pages) that were entered at the Hearing. This included a joint book of agreed exhibits that the parties agreed were admissible as some proof of the truth of their contents.

## B. Evidentiary Issues and Objections

### 1. Affidavits

[15] At the outset of the Hearing, the Father applied to strike portions of the affidavits of Croteau, AV, and the Mother's former housekeeper (**KM**). I disregarded or gave little weight to certain paragraphs of those affidavits based on a ruling I made at the Hearing.

[16] Ultimately, KM did not testify at the Hearing and her affidavit was not part of the record.

[17] Some of the affidavits relied on by the parties include letters, texts, or emails from third parties which were hearsay. Hearsay is any out-of-court statement offered as proof of the truth of its contents, and is presumptively inadmissible: ***Korniyenko v Ottenbreit et al***, 2025 ABKB 602 at para 17, citing ***R v Baldree***, 2013 SCC 35 at para 36. I have not relied on hearsay statements of third parties as proof of the truth of their contents unless they were otherwise proven, were included in the agreed exhibits, were agreed to be some proof of the truth of their contents, or were admissible for that purpose under exceptions to the hearsay rule (for example, as business records (***Korniyenko*** at paras 21-24; ***ATCO Energy Solutions Ltd v Energy Dynamics Ltd***, 2024 ABKB 162 at para 177, citing ***Rooney v GSL Chevrolet Cadillac***, 2022 ABKB 813 at paras 28-30; ***Ares v Venner***, 1970 CanLII 5, [1970] SCR 608; ***R v Monkhouse***, 1987 ABCA 227 at para 23; ***R v Ta***, 2010 ABCA 145 at para 9); or under the principled exception to hearsay (***R v Charles***, 2024 SCC 29 at paras 43-47; ***R v Bradshaw***, 2017 SCC 35 at para 1; ***R v Denovan***, 2024 ABCA 246 at para 24; ***R v Cardinal***, 2025 ABCA 128 at para 4)). For example, in this case I found some police occurrence reports, supervisor reports and psychologist reports/letters to be admissible (if necessary) as business records or under the principled exception to hearsay, and addressed their use as a matter of weight.

### 2. Settlement Discussions

[18] Some affidavits or evidence also addressed the parties' without prejudice settlement communications. I did not consider those communications unless both parties agreed, because settlement communications are privileged. Settlement privilege can only be waived by both parties, and it is improper to tender settlement communications to a court without consent of the other party: ***Bellatrix Exploration Ltd v Penn West Petroleum Ltd***, 2013 ABCA 10 at para 26; ***Williams v Williams***, 2020 ABCA 15 at para 22; ***IB v LR***, 2024 ABKB 648 at para 32.

### 3. The Expert's Evidence, Including the PN8 Report and PN8 Update

[19] In her final submissions, the Mother asserts that the Expert's evidence should be excluded and not admitted. She raises numerous concerns about the Expert, his expertise, his reports, and his opinions, the details of which are discussed in more detail elsewhere in these Reasons.

[20] I have not excluded the Expert's PN8 Report, PN8 Update or his testimony, as proposed by the Mother, for several reasons.

[21] First, both parties consented to the PN8 Report when the PN8 Order was granted in April 2022. Further, when we discussed this matter in the first phase of the Hearing, both parties also ultimately agreed to the PN8 Update being completed. While this is not determinative of admissibility, it is relevant and reflects an agreement between the parties to have the Expert's reports filed before and considered by the Court.

[22] Second, when the Expert was presented to testify at the Hearing, neither party objected to the PN8 Report and the PN8 Update being admitted.

[23] Third, the Expert is an independent court expert, appointed under rule 6.40, and his expert reports are "admissible in evidence": rule 6.41(3)(c): ***JWS v CJS aka CJH***, 2019 ABCA 153 at para 27.[5] The parenting expert is compellable to give *viva voce* evidence and may be cross-examined by both parties: PN8 at para 39. Reports and letters of professionals appointed by the Court are both necessary and reliable, and may be central to the task of determining the best interests of children: ***DC v NBC***, 2024 ABKB 444 at para 40; ***JLZ v CMZ***, 2021 ABCA 200 at para 27; ***AJU v GSU***, 2015 ABQB 6 at para 133.

[24] Fourth, and in any event, I was satisfied at the time of Hearing (and now), that the Expert's evidence was properly admissible under the principles set out in ***R v Mohan***, 1994 CanLII 80 and ***White Burgess Langille Inman v Abbott and Haliburton Co***, 2015 SCC 23. As noted in ***SK v DG***, 2022 ABQB 425 at paras 99-101:

> [99] Expert witnesses have a duty to the court to give fair, objective, and non-partisan opinion evidence. They must be aware of this duty and be able and willing to carry it out: ***White Burgess*** ... at para 2.
>
> [100] Parenting experts must meet the criteria set out in ***R v Mohan*** [...] at paras 17-21, for expert opinion evidence to be admissible: (1) relevance; (2) necessity in assisting the trier of fact; (3) absence of an exclusionary rule; and (4) a properly qualified expert.
>
> [101] The purpose of expert evidence is to assist the trier of fact by providing special knowledge that the ordinary person would not know. Its purpose is not to substitute the expert for the trier of fact: ***R v J-LJ***, 2000 SCC 51 at para 56. Courts must not allow expert opinions to usurp their role in determining the best interests of the child.

[25] See also ***AE v TE***, 2017 ABQB 449 at paras 106-108.

[5] The Expert's reports were not verified by affidavit as required by rule 6.41(3)(a), however, neither party objected on that basis given that the Expert adopted the PN8 Report and PN8 Update as his work. Further, he was available for questioning and was questioned by both parties.

[26] I found at the Hearing, and continue to find, that the Expert's evidence was relevant, necessary, there was an absence of an exclusionary rule, and the Expert was properly qualified. With respect to being properly qualified, I inquired of the Expert, and was satisfied, that he was willing and had the capacity to fulfil his duty to the Court to provide independent and unbiased evidence. In her rebuttal argument, the Mother acknowledged the Expert's expertise.[6] Further, the overall cost-benefit analysis of the Expert's evidence supported admission of his evidence: ***White Burgess*** at para 34.

[27] For these reasons, the Mother's concerns about the Expert's evidence are noted, but are properly addressed as a matter of weight (as addressed later in these Reasons), not admissibility.

### 4. Late-Provided Documents and *Browne v Dunne*

[28] The Father raised concerns over documents (or issues or positions) relied on by the Mother at the Hearing, which were not provided or raised until after the Father had completed his testimony. The Father raises prejudice, and the rule in ***Browne v Dunn***, 1893 CanLII 65 (FOREP), 6 R 67 (UKHL). He asserts that he was not able to address the late-filed records or issues in his testimony and they were not put to him.

[29] I accept counsel's submission that the parties agreed that exhibits would be exchanged for the second phase of the Hearing by August 29, 2025. Parties should generally be bound by the procedural agreements they reach through their counsel. Further, trial by ambush is to be avoided: ***Smith v Smith***, 2016 ABCA 376 at para 42. This is why rule 5.16 prohibits a party from relying on a record at trial not previously disclosed in accordance with the *Rules* unless the Court exercises its discretion to permit it. This usually requires a party to establish a reason for the failure to disclose the document, among other factors, including whether the other party would suffer prejudice if the use of the record is permitted, whether excluding the record would prevent the determination of the issue on the merits and whether justice requires the record to be admitted: ***ATCO*** at paras 47-49.

[30] The rule in ***Browne v Dunn*** requires counsel to give notice to witnesses when the cross-examiner intends to challenge a part of the witness' evidence and to give the witness the opportunity to answer the challenge: ***R v Cormier***, 2023 ABKB 543 at para 18, citing ***R v SCDY***, 2020 ABCA 134 at para 70; ***R v Neilson***, 2019 ABCA 403 at para 41; ***R v Lyttle***, 2004 SCC 5 at para 64. It applies in family law, where basic fairness dictates that, when a party plans to contradict, impeach or malign a witness with later evidence in its own case, it must first put that evidence to the witness: ***SSG v SKG***, 2022 ABQB 130 at para 162, citing ***Lyttle*** at paras 64-65, ***R v Werkman***, 2007 ABCA 130 at para 7; ***AE*** at para 241.

[31] Where there is a breach of the rule in ***Browne v Dunne***, the Court has broad discretion. There is no fixed consequence and there are numerous potential remedies for its breach: ***SSG*** at para 171, citing ***R v Poole***, 2015 BCCA 464 at paras 43-44; ***Cormier*** at paras 20-21; ***R v Khan***, 2025 ABKB 357 at para 51. The Court will consider a number of factors, including the seriousness and context of the breach, the timing of the objection, the position of the offending party, whether

[6] Mother's Response to Written Closing Submissions of [the Father] filed September 22, 2025.

recalling a witness is requested or possible, and whether the relevance of the failure to cross-examine can be properly explained to or considered by the trier of fact: ***SSG*** at para 171.

[32] I find the Father's objections or concerns do not warrant the Court's intervention as proposed.

[33] First, the Father was concerned that the Mother did not put to him that he was recording their exchanges before she gave evidence about that. The issue of the Father filming the parties' exchanges was raised by the Mother in cross-examination during the first phase of the Hearing. Further, it was referenced in emails and texts that were in evidence either by agreement or without objection. Finally, as reflected in the PN8 Report (the admission of which was supported by the Father), the Father told the Expert "I intend to continue using a video camera as protection from verbal harassment and false allegations of abuse".[7] The issue of the Father filming exchanges was not a surprise and was never denied by the Father. The Father could have sought leave to address it in his evidence in the second phase of the Hearing if he felt it required his further explanation.

[34] Second, the late-provided email (trial exhibit 36) merely shows that the Mother was in discussions with Third Academy about the possibility of the Child attending there in the event the Relocation was not approved. The Father was not included in these emails and it is immaterial if he received them. It is hard to imagine what he could say about these emails. The Father knew that the Mother's position had been that Third Academy was a potentially suitable educational program for the Child if he remained in Calgary. Further, Third Academy was raised with Bond before the Father testified in the second phase of the Hearing. There was no prejudice in allowing the Mother to provide that updated information.

## 5. Mother's Undertaking Responses

[35] The Father takes issue with some of the Mother's undertaking responses. In addition to the Mother not providing meaningful answers to some undertakings, the Father objects to the Mother's attempt to put "self-serving and unsworn evidence" in through her undertaking answers. He also raises concerns about the Mother including a redacted copy of correspondence from her psychologist because it contains hearsay.

[36] The Mother's undertakings arose out of questioning under rule 6.7. I addressed the status of documents provided with undertaking responses, and whether they form part of the transcript that must be filed, in ***McDonald v Sproule Management GP Limited***, 2023 ABKB 587, at paras 33-42. As per paras 41-42 (emphasis added):

> [41] Accordingly, I find that, unless otherwise agreed or ordered by the court, undertaking answers form part of the transcript to a questioning on an affidavit pursuant to rule 6.7 and should be filed with the transcript. **Records produced as part of the undertaking answers should be filed as part of the transcript where they form an integral part of a substantive factual answer to the question asked, but do not need to be filed where they are only produced in response to an undertaking request to produce records**. This latter exclusion avoids filing of potentially large bundles of records produced in response to a procedural

[7] PN8 Report at para 42.

> undertaking request to do something, namely producing documents, as opposed to a substantive undertaking request to answer a factual question. If the questioning party wishes to have such procedurally produced records part of the evidentiary record, they should conduct a follow-up questioning on the undertaking answers and associated records.
>
> [42] Concern has been expressed about the practice that undertaking answers are often produced with the assistance of third parties, or counsel, and that parties may use the undertaking answer as a trojan horse to include additional information or to couch the answer in strategically crafted language. Those concerns can be addressed by applying to have the superfluous, inappropriate or non-responsive undertaking answer struck from the record, by arguing that the non-responsive or irrelevant portions of the answer should be given little or no weight, or by questioning on them. Parties are encouraged to discuss and reach agreement on the contents of the transcript to be filed pursuant to rule 6.7 wherever possible.



[37] I have reviewed the records provided by the Mother in her undertaking responses. For the most part, they were responsive to questions asking for documentation. The Father did not formally apply to have superfluous records struck. Accordingly, I have considered them as part of the Mother's questioning transcript. There is no prejudice to these records being included in the record before me. The Father could have questioned on them (either before the trial (as per rule 5.30(2)) or at the Hearing). Further, it was open to the Father to argue they should be given little weight because they were redacted without explanation, they contain hearsay, or their contents were not otherwise proven.

### 6. Correspondence and Legal Submissions

[38] As noted above, the parties wrote to the Court in between the first and second phases of the Hearing. The Mother also wrote to the Court after the Hearing but before my decision. Some of the correspondence included certain factual assertions which I have not considered as evidence (unless otherwise proven at the Hearing). There was no application before me to re-open the Hearing to hear more evidence.

[39] Further, both parties made factual assertions in their written briefs and concise letters. I have not considered those assertions unless they are supported by evidence. Briefs are not evidence: ***ASB (Re)***, 2025 ABKB 614 at para 18. Parties cannot use their final submissions as a back door to adduce further evidence without the consent of the other party.

## C. The Evidence of the Parties

[40] The Father and Mother's evidence form the bulk of the Hearing evidence. Their evidence often does not align. In assessing their evidence, I have considered the principles set out in ***Savoie v Lambert***, 2024 ABKB 422 at paras 14-18 and ***TC v KA***, 2024 ABKB 761 at para 38.

[41] I have considered the parties' credibility in both the sense of "credibility" (sincerity or willingness to speak the truth as the witness believes it to be) and "reliability" (accuracy of an honest witness' evidence): ***R v Delmas***, 2020 ABCA 152 at para 25, citing ***R v Morrisey***, 1995 CanLII 3498 (ON CA); ***Serinus Energy PLC v SysGen Solutions Group Ltd***, 2023 ABKB 625 at

para 68. Assessing credibility is not a science and it can be difficult to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile various versions of events: ***Cron v Libby***, 2024 ABCA 25 at para 11, citing ***FH v McDougall***, 2008 SCC 53 at para 72.

[42] When assessing credibility, the whole tapestry of the evidence is weighed, both in scope and nature, based on an objective assessment, and having regard to numerous factors: ***Greco v Calgary (City)***, 2025 ABKB 629 at paras 21-23; ***Vestby v Galloway***, 2020 ABQB 361 at para 57; ***Brar v Brar***, 2017 ABQB 792 at paras 11-16.

[43] One factor is observed demeanour, which might include responsiveness, fairness, and objectivity versus evasiveness, exaggeration and partisanship: ***Serinus*** at para 68; ***557466 Alberta Ltd v McPherson***, 2022 ABQB 23 at para 112. However, courts of appeal have cautioned against over-reliance on demeanour because it may have limited value: ***R v Giroux***, 2017 ABCA 270 at para 7; ***R v Rhayel***, 2015 ONCA 377 at para 85.

[44] Other non-exclusive and overlapping factors in assessing credibility include (a) the plausibility of the evidence; (b) independent supporting or contradicting evidence; (c) the external consistency of the evidence; (d) the internal consistency of the evidence; and (e) the balance of the evidence: ***Serinus*** at para 69; ***Vestby*** at para 57.

[45] As set out in ***Brar***, the Court may also consider, at para 11:

- Opportunity and ability to observe the circumstances in question
- Certainty of memory
- Motive to lie
- External suggestions that may alter memory
- Evasiveness and Inability to concede clear facts
- Making concessions not favourable to their position (balance)
- Demeanor
- Inconsistencies and contradictions
- Corroboration
- Character
- Bias
- Inherent improbability and implausibility

[46] See also the helpful list of considerations set out in ***JMM v CRM***, 2025 ONSC 3067 at para 11.

[47] Some factors will be more probative than others depending on the circumstances of the case and the specific witnesses: ***Brar*** at para 11. Although any factor can become important, "inconsistencies between what a person said on one occasion and what they said on another are extremely important gauges of credibility and reliability": ***Brar*** at para 11. Having said that, inconsistencies on minor matters or matters of detail may not generally affect credibility: ***JM v PT***, 2024 ABKB 349 at para 26.

[48] A court is entitled to accept one party's evidence over another party: ***Greco*** at para 23; ***VMB v KRB***, 2014 ABCA 334 at para 6. The court may accept all, some or none of a witness' evidence: ***R v JHS***, 2008 SCC 30 at para 10; ***R v Belcourt***, 2019 ABCA 227 at para 7. Assessing credibility requires an objective assessment and weighing of all the evidence.

### 1. The Father's Evidence

[49] The Father presented as a calm witness but was clearly exhausted and frustrated by the court process. He had some difficulty with minor details and timelines, particularly in the second phase of the Hearing. For the most part, I found that he honestly attempted to present the truth. However, his evidence was also, at times:

(a) inconsistent: for example, in describing the parties' date of separation, the reason for separation, and the parenting time regime after he relocated to Calgary. He was also inconsistent in his evidence about when the Mother began restricting his parenting time, whether he ever instigated police wellness checks on the Mother, and about when he was partly laid off from one of his consulting positions;

(b) evasive: for example, in his refusal to clearly acknowledge that he was sufficiently comfortable with the Mother's parenting to allow his daughter (**IM)** to live with the Mother prior to his relocation to Calgary; and in failing to directly answer questions about the instability that the Relocation would cause to the Child;

(c) implausible: for example, the Father's asserted interpretation and understanding of the effect of the Restraining Order on what information he should be providing the Mother. The Father implausibly and unreasonably attempted to rely on the Restraining Order or other court orders to justify his failure to provide the Mother with information about the Child;

(d) unbalanced: the Father at times infused hearsay information over which he had no first-hand knowledge, or his own interpretation of the Mother's conduct, when it reflected poorly on the Mother. He sometimes went out of his way to demonstrate the Mother in a negative light. He exaggerated when the Mother began restricting his parenting time, that the Mother conditioned his parenting time on him buying her groceries, and his lack of knowledge about the Mother's plans in August 2023 prior to her second arrest. He downplayed the strength of the Mother's relationship with the Child. At times, he understated the Child's behavioural challenges following the change of parenting in 2023 and overstated the Child's improvements

while in his primary care. He rarely acknowledged matters that were not helpful to his position – an example of this was his attempt to rationalize the fact he simply forgot about and missed the Child's appointment with Dr. Smyth in summer 2025, (by stating that there was nothing further Dr. Smyth could do to help).

[50] Overall, despite these challenges, I found much of the Father's evidence credible and reliable. In most instances, I preferred his evidence over the Mother's evidence where they conflicted because the Mother's credibility challenges were significantly more problematic.

### 2. The Mother's Evidence

[51] The Mother's evidence was highly problematic. At times, she honestly attempted to provide accurate information. Sometimes, she did that based on an honest belief of the truth that was simply not consistent with the balance of the evidence (including the written record), which made some of her evidence unreliable. At times, she frankly acknowledged matters that were not helpful to her case. However, at other times, her evidence was simply just not credible. For example, at times, the Mother's evidence (and her historical dealings with third parties) was inconsistent (both internally and with the balance of external evidence), conclusory and accusatory (often without supporting evidence or first-hand knowledge), evasive, careless or reckless with respect to the truth, exaggerated, implausible and unbalanced.

[52] Some non-exhaustive examples:

(a) the Mother swore that the Father had no reciprocal communications with her since the change of parenting in 2023. She exaggerated the Father's lack of communication and failure to provide her information;

(b) the Mother was inconsistent and exaggerated in describing the Father-instigated police involvement in 2023, prior to her arrest;

(c) the Mother's evidence that the Father was disinterested in and largely uninvolved with the Child, was given at times when that was clearly untrue or exaggerated;

(d) the Mother was evasive and inconsistent in her evidence about the reasons and intentions related to her move to Canmore in 2023;

(e) the Mother selectively refused to admit matters that were obvious, or were later proven to be accurate with documentary proof. For example, she refused to admit sending texts or emails which did not reflect well on her, or when pressed, stated that she did not recall them. As another example, she did not remember threatening the Father that she would have IM returned to her Mother. She denied screaming at police on August 6, 2023, when it was obvious from the video in evidence that she did so in front of her children;

(f) the Mother admitted to making untrue, careless or exaggerated statements in the past. She acknowledged that she had inappropriately inferred to the Arbitrator that the Father was an accused child sexual abuse offender following one of the

Arbitrator's awards. The Mother admitted that she advised the Expert in 2023 that she was "now living in a homeless shelter" when this was not true;

(g) the Mother asserted that the Father had refused to consent to supervised access following her arrest, which was not true or was exaggerated;

(h) the Mother told Justice Price in June 2023, and in her correspondence with the Expert, that the Father was engaging in child abuse which was untrue and exaggerated even based on the concerns articulated. She also swore that the Father had engaged in a deliberate pattern of emotional abuse toward the Child;

(i) in correspondence to the Expert, the Mother asserted that she was worried about her and the Child's safety when in the presence of the Father, or that the Father would retaliate against the Child, when there was no evidence of any physical violence in the relationship or respecting the Child, and when she had previously emailed the Father confirming that she had never been in an abusive relationship;

(j) the Mother asserted that the Father had told Bond not to communicate with her, which was based only on her incorrect speculation;

(k) the Mother denied breaching the Restraining Order, which was untrue and implausible based on the written record; and

(l) the Mother often refused to reasonably acknowledge her role in events, instead blaming the Father, his counsel, the Arbitrator, or arbitration awards or court orders (which she never appealed or applied to set aside, and some of which she had consented to).

[53] On many matters, I found the Mother's evidence unreliable or not credible. I generally (but not always) preferred the Father's evidence, or the evidence of other witnesses, over the Mother's evidence when it conflicted. However, there were aspects of the Mother's evidence that I did accept.

## D. Evidence of Other Fact Witnesses

### 1. Lowe

[54] Constable Lowe is a peace officer with the Tsuut'ina Nation Police Service (**TNPS**). She testified about her attendance at the Mother's residence on August 6, 2023. I found her evidence to be both reliable and credible, and I preferred it to the Mother's evidence about those events where they conflicted. My findings related to those events are found elsewhere in these Reasons.

### 2. KA

[55] KA is the Mother's ex-boyfriend. They met in January 2020 after the Mother relocated to Calgary. They resided together with the Child at times in 2020 and 2021, and then they split up. They had CA together in January 2021.

[56] KA provided evidence about his co-parenting experience with the Mother, his observations of her parenting of the Child, their use and dealings with the sale of their home in Bragg Creek, and the Mother's charges for abduction in August 2023.

[57] KA gave evidence about the Mother's requests that he swear affidavits in support of her that he believed were not true; he refused to do so. First, he said that the Mother asked him to provide an affidavit that she had not kidnapped the Child and CA in 2023. Second, he said that the Mother asked him to swear an affidavit that the Father was a pedophile and the Child required the Mother's protection. Third, he said that the Mother asked him to swear an affidavit that he lied to the Expert when interviewed, because he was mad.

[58] KA also gave evidence that the Mother had taken photos of the PN8 Report and texted them to him (which would be a breach of the PN8 Order). Copies of the texts and photos were appended to his affidavit. The Mother denied sending the texts and asserted that KA fabricated the screenshots or that the Father sent them to KA.

[59] KA presented his evidence in a fair and balanced way. He frankly acknowledged the limits of his knowledge and did not attempt to exaggerate or unnecessarily characterize any person negatively. I am aware of the ongoing co-parenting relationship between him and the Mother, which has itself been conflictual and chaotic at times, and the possibility that KA may have a motive to fabricate or exaggerate matters. KA indicated in communications with the Father that he wanted to help the Father, but was concerned that he was going out on a limb and that it could create problems for him. I accept KA's evidence that he was charged with uttering death threats, assault, and assault with a weapon in respect of the Mother (however, those charges were dropped or dismissed without a trial).

[60] On balance, I prefer KA's evidence to the evidence of the Mother where it conflicted. Based on all of the Mother's conduct as evidenced in this trial, I believe KA's evidence about the Mother.

[61] I find that while the Mother and KA had their ups and downs, there were no major issues with respect to the Mother's parenting of the Child while they were together, other than the Mother's taking of the children to British Columbia in August 2023 without their fathers' consent. Other disagreements between them about the Mother's parenting ability (for example, the cleanliness of her home and the use of screentime) are minor and immaterial to my determination.

[62] I find that the Mother did ask KA to swear affidavits in support of her position against the Father, including that she asked KA to swear an affidavit that made serious allegations against the Father.

[63] I find that the Mother breached the PN8 Order by taking photographs of the PN8 Report and texting them to KA in March 2025. Her denial of doing so and her unsupported assertion of fabrication against KA negatively affected her credibility. KA's evidence was more plausible and was supported by documentary evidence.

[64] Other findings related to KA's evidence are embedded elsewhere in these Reasons.

### 3. AV

[65] AV has known the Mother since 2010. She gave evidence about the Mother's character, the Mother's relationship with the Father, the Father's character, the Child's early development and parenting after he was born, her concerns about the Father's parenting, her observations about the Child's "regression" since the change in care in 2023, and her opinion about the Mother's parenting capabilities. I ruled that several aspects of her affidavit were inadmissible, and they were given no weight.

[66] AV's meaningful observations of the Child and the parties are dated – she had seen the Child only once (in January 2025) in the previous two years. She had only seen the Father once (in 2021) since he moved to Calgary in 2020, which was a brief interaction at a birthday party drop off. She had no recent observations of the Father's parenting, yet, in her survey to the Expert, she brazenly stated that he "should not have been a father to either of his two children". AV's evidence provided an unbalanced and exaggerated view of the parties and the Child, praising the Mother and harshly criticizing the Father. I gave AV's evidence some weight relating to the early aspects of the parties' relationship and parenting when AV had more direct observations of them, but otherwise gave it little weight.

### 4. Croteau

[67] Croteau was an early childhood educator and director at Little Forest Dwellers Early Learning Centre (**LFD**) from October 2020 to July 2022. LFD is an outdoor play-based childcare and preschool program. The Child attended LFD from about September 2021 until March 2023.

[68] Croteau's evidence explained LFD, her observations of the Child's development, the Mother's parenting approach, and the Child-Mother bond. She also purported to give her professional assessment of the Mother's parenting abilities. At the outset of the Hearing, I found that some aspects of Croteau's affidavit were admissible, some were inadmissible (for example, providing evidence of what the Mother told her about her parenting outside of Croteau's observation), and deferred my assessment of some matters pending her cross-examination.

[69] In cross-examination, Croteau's evidence was balanced, professional and reliable. She frankly acknowledged the limits of her observations. Her evidence was helpful to provide some context and insight into the parents' mutual love for the Child, and the Child's behaviour and development and experience at LFD, for the period September 2021 to July 2022. However, given its dated nature, and the many intervening events since she was involved with the family, her evidence was of limited overall use.

### 5. Bond

[70] Bond is the executive director and a certified teacher at the BTLC, which the Child has been attending in the weekday afternoons during the school year since September 2024. She has a Bachelor of Education and formerly worked with a program called Autism Partnership (**AP**) from 1997 to 2022. She has extensive experience with ASD, working with autistic children, and employing an "Applied Behaviour Analysis" (**ABA**) approach. She has been the executive director of BTLC since 2004.

[71] Bond provided evidence of her involvement with the Child at BTLC, her observations of the Child's behaviours and progress during the school year, and her insights about other educational programs in Calgary and their potential availability for the Child. The Mother argues Bond's evidence should be given little weight.

[72] In May 2025, shortly before the Hearing, the Mother contacted Bond and sought Bond's input about next steps for the Child, including future educational support opportunities in Calgary. Bond responded that she was prevented by court order from directly responding to the Mother's inquiry. Bond continued to communicate with the Father, and spoke to the Father's proposed educational provider in Vancouver (**PALS**) at his request. Bond's approach and evidence caused the Mother concern. She asserts that Bond's communication avoidance "undermines [Bond's] claim of neutrality and suggests reliance on [the Father's] direction rather than an objective interpretation of the order". She asserts that Bond demonstrated bias and a lack of transparency, and her evidence should be given limited weight.

[73] Bond's refusal to engage with the Mother was based on the November 2024 Order (a consent order)[8], which provided (emphasis added):

> 4. [...]
>
> The [Father] shall be **solely responsible** for scheduling and any and all of [the Child's] appointments, obtaining support or assistance for [the Child], registering [the Child] **for school**, activities, **and any other programs**, and shall be **responsible for all communications** with, transportation to and from, and facilitating [the Child's] participation in same.
>
> 6. The [Father] shall be **solely responsible for all communication with any and all third party organizations and individuals involved in [the Child's] life** including for his **education, support**, and healthcare, and [the Father] shall ensure the [Mother] is kept abreast of such information via Our Family Wizard.

[74] Bond's conclusion that this order prevented her from communicating with the Mother was objectively reasonable. The order clearly contemplates that the Father would be solely responsible for communicating with educational providers, and the Father was then in turn obligated to keep the Mother abreast of that information. However, the order might also reasonably have been interpreted to only allocate *responsibility* for third-party communications to the Father, *as between the Mother and the Father*, not as a prohibition from third parties communicating with and providing information to the Mother.

[75] In any event, even if the order prohibited Bond from communicating with the Mother, there was nothing preventing Bond from providing the information the Mother requested to the Father for him to pass on to the Mother. Her failure to do so, and her testimony at the Hearing, reflects that Bond's predisposition was to support the Father's Relocation application rather than to neutrally provide both parents information about possible program options in both cities. She appears to have relied on the November 2024 Order as a reason not to assist the Mother's search

[8] Filed December 10, 2024.

for information about Calgary options. In the circumstances, I have given limited weight to Bond's evidence about the educational options in Vancouver and Calgary.

[76] Other than this concern, I found Bond's evidence about her observations of the Child while at BTLC to be balanced, professional, credible, reliable and helpful.

### E. The Arbitration Awards

[77] The Arbitrator made several awards, the details of which are discussed elsewhere in these Reasons. Neither party objected to these awards being admitted as part of the Hearing's evidentiary record.

[78] However, in her final submissions, the Mother argues that the Arbitrator's awards, or portions thereof, from March and April 2023 (**March 2023 Award** and **April 2023 Award** respectively, or together **Awards**) should be set aside. She cites numerous procedural fairness and natural justice concerns.

[79] The Mother's position is misguided. First, the awards are not binding on my final determination of the issues engaged at the Hearing, so there is no need to set them aside. The March 2023 Award was interim and without prejudice. The April 2023 Award was based on the record before the Arbitrator in March 2023 and did not include the Father's proposed Relocation; it is overtaken by a material change in circumstances which warrants a fresh review of the Child's best interests now. Second, the Mother never filed an appeal or application to set these awards aside. Third, in October 2023, the Mother filed an application to *enforce* the parenting regime in the April 2023 Award, so it is dubious for her now to complain about its procedural fairness.

[80] While the Arbitrator's awards are not legally binding on the Court on this Application, their existence forms an important part of the factual context to this matter. The March 2023 Award and the April 2023 Award were arbitration awards that were binding on the parties unless set aside or appealed: *Arbitration Act*, RSA 2000, c A-43, section 37; ***Flock Estate v Flock***, 2019 ABCA 194 at para 25.

[81] Ultimately, these Awards were decided at a different time, based on a different record and different circumstances. I am not bound by the Arbitrator's credibility or other findings about the best interests of the Child. I have considered those issues afresh based on the record before me. There is no basis or need to set aside the Awards.

### F. Fact Findings and Some Related Legal Findings

[82] As noted above, there is a massive record in this matter. To ground my decision, I set out some further fact findings below, together with some related legal findings, prior to engaging in the legal analysis required to decide the issues engaged at the Hearing.

#### 1. The Child and the Mother's Relocation to Calgary

[83] The parties met in Vancouver and started a relationship in 2014. At that time, the Father already had IM (born in 2011) from a previous marriage. The parties married in January 2016 and eventually relocated to Victoria. The Child was born in March 2019, via surrogate.

[84] From March 2019 to December 2019, both parties were involved in parenting the Child, but the Mother was the primary parent.

[85] The parties' relationship deteriorated following the Child's birth. The Father was involved in litigation involving IM's mother, which strained their relationship. The Father began sleeping in a different room.

[86] The Father worked for a gold exploration company and was responsible for its investor side. The parties discussed the possibility of moving to Calgary, where the Father could potentially work remotely given that several of the company's investors were based there. Part of the reason they discussed moving was to get away from the Father's conflict with IM's mother. The Father commenced proceedings to relocate with IM to Calgary, however, the Father would not relocate until that was resolved. In the meantime, the Mother travelled to Calgary with IM and the Child to scope out homes.

[87] In December 2019, the parties travelled to Mexico. The relationship could not be salvaged. Upon their return from vacation, the Mother informed the Father that she was moving to Calgary to further her permanent make-up business and take further classes. They both anticipated that the Father would follow once IM's parenting litigation was resolved. The accelerated timing of the Mother's move to Calgary surprised the Father, and he had suspicions she had a new boyfriend. He reluctantly drove the Mother and Child to Calgary in late December 2019.

### 2. The Mother's New Relationship, the Separation Agreement and the Father's Relocation to Calgary

[88] The Mother and Child rented a home in the Altadore area of Calgary. She had met KA online in late 2019 and met him in January 2020. They began dating and, by April 2020, the Mother was pregnant with CA. They moved in together, first at the Mother's rental in Altadore and then in another rental in Bonavista.

[89] The Mother drove the Child to visit the Father in Victoria in March 2020. In April 2020, the Father visited the Child in Calgary and learned about the Mother's pregnancy. In May 2020, he commenced divorce proceedings.

[90] From June to August 2020, the parties discussed the terms of an agreement addressing support, property and parenting (**Separation Agreement**), only portions of which were in evidence before me. The Father was represented by legal counsel; the Mother was not. The parties executed the Separation Agreement in August. The Mother had no independent legal advice; KA witnessed her signature. It appears that the Separation Agreement contemplated the Mother would waive her claim to spousal support, the Mother would receive over at least $700,000 in family assets, the Father would pay ongoing child support based on the *Federal Child Support Guidelines*, SOR/97-175, the parties would have joint decision-making, the Child would reside with the Mother, and the Father would have parenting time as agreed between the parties. There were also provisions governing when the parties sought to travel with the Child inside or outside Canada.

[91] The Mother asserts that she was "forced" to sign the Separation Agreement. She characterizes it as part of the Father's attempt to control her, that it was coerced by threat to cut off support, and that she had no legal advice and did not understand her rights.

[92] I find it is not necessary or appropriate for me, for the purposes of issues I must decide, to decide whether the Separation Agreement is a binding domestic contract. Neither party has asked me to make such a determination. Further, the Separation Agreement was executed by both parties in British Columbia, and it contemplates that it is governed by British Columbia law and that the Supreme Court of British Columbia has exclusive jurisdiction. A determination of whether the Separation Agreement is binding would require consideration of the *Family Law Act*, SBC 2011, c 25, including in particular sections 93 and 164 thereof, together with the guidance of the Supreme Court of Canada in ***Anderson v Anderson***, 2023 SCC 13.

[93] Regardless of whether the Separation Agreement was binding, the Mother received value of in the range of $800,000+ from the Father in August 2020. She used that for her day-to-day expenses and to purchase a home in Bragg Creek, among other things.

[94] In mid-September 2020, the Father was awarded primary care of IM. He relocated IM to Calgary immediately so she could start school, and he followed on October 1, 2020. In that interim period, IM (and two pets) stayed with the Mother, KA and the Child at their home in the Bonavista area in Calgary.

[95] The parties' evidence about how long IM lived with the Mother in Calgary conflicted. The Mother's evidence was that it was until December 2020, while the Father got set up in his new home in Calgary. The Father says it was only for a few weeks until he arrived in Calgary. I find the truth is likely somewhere in between, and find that the Mother continued to help the Father with IM in fall 2020 while he was getting settled in Calgary. It is not necessary for me to pinpoint the time with precision because it is not material and, in my view, both parties exaggerated their evidence on this point.

[96] Prior to the Father's relocation to Calgary, as noted above, the Father only saw the Child two or three times. Part of this was due to COVID, but there were no restrictions on his parenting time imposed by the Mother. I accept the Mother's evidence that the Father was not particularly involved or engaged with the Child during this period. The Mother was the Child's primary caregiver.

### 3. Early Co-Parenting in Calgary

[97] In October 2020, the Mother purchased a home in Bragg Creek and she and KA moved there with the Child. Although the Father did not expressly consent to this move, he was aware of the move beforehand, did not object, and assisted the Mother in considering different housing options.

[98] Starting by at least October 2020, the Father began paying child support in the amount of approximately $4,800 per month. The parties informally agreed on the Father's parenting time, which was infrequent and, for the first few months, was a few hours on weekends without overnights. The Father felt unable to increase his parenting time because IM was struggling with the transition to Calgary. The Mother continued to be the Child's primary parent and was responsible for most of the Child's appointments.

[99] In late 2020, the Mother observed the Child's development was stalling or regressing. The Father was initially dismissive of her concerns.

[100] In January 2021, CA was born, and the Mother's Bragg Creek household became a family of four. The parties scheduled a pediatrician appointment for the Child. The Child started attending Brightpath daycare, but the Mother pulled him out in April 2021 because he was not developing.

[101] In July 2021, the Mother and KA split up. The Mother remained in her Bragg Creek home with the Child and CA. The Mother looked to the Father for some emotional and logistical support for the Child during this transition. She asserted KA was abusive (a matter on which I make no finding), and confirmed to the Father that she had never been in an abusive relationship before that (other than with her parents).

[102] Up until July 2021, the parties were somewhat collaborative in their parenting. There were negotiations about child support following the finalization of the Father's 2020 income. The parties registered the Child in speech therapy and had open and productive communications about the Father's parenting time. The Mother wanted the Father to take on more parenting time, and he was ready to do so. Initially, the Mother wanted the Child's speech and development back on track before increasing the Father's parenting time. Ultimately, they informally agreed to the Father starting to have overnight parenting on weekends from Friday to Sunday.

[103] By August 2021, there were already signs of significant strain in the co-parenting relationship. The Child's development continued to be delayed and the Mother felt that the overnight parenting was too much too fast. She began unilaterally dictating and providing conditions on when the Father could have parenting time. The Father became frustrated. The Mother wanted the Father to be more involved in speech therapy. She felt that he was not communicating enough about the Child, was bullying her with lawyers, and alienating her from IM. She raised the idea of parenting coordination. She threatened to report the Father to IM's Mother for non-compliance with his parenting obligations, and then carried out that threat, calling the Father the "worst version of himself". The Mother's communications with the Father were increasingly aggressive and accusatory. She suggested he only wanted more parenting time for financial reasons.

[104] In September 2021, the Child was enrolled at LFD outside Calgary. From September 2021 to December 2021, the parties reasonably co-parented with the Father having some weekend overnight parenting time. The Mother remained the primary parent, but the Father's engagement and involvement was increasing.

[105] In December 2021, the parties discussed increasing the Father's parenting time to three overnights from Thursday to Sunday, however, for various reasons, this new schedule was not regularly followed.

[106] A divorce judgment (not in evidence before me) was granted in British Columbia sometime in 2021.

### 4. Father's Parenting in Early 2022

[107] In late 2021, the Mother travelled with the Child for a vacation to Florida. Their return flight was delayed due to COVID, and the Father paid $4,800 for their new flights. Upon their return, the Father's parenting time was not exercised due to COVID self-isolation, which frustrated the Mother because she felt the Father was being too cautious. Around the same time, the Mother

was involved in parenting litigation with KA over CA. The Father and his then nanny (**LN**) at times assisted with the Child at the Mother's request.

[108] In January 2022, the Father's employer was bought out and his role ended. He transitioned to consulting work, with two companies – another gold company and a startup lithium company. The Mother was working on connecting LFD with the speech therapist and was encouraging the Father to become more directly involved in the Child's speech therapy.

[109] In February 2022, the Father was unable to exercise parenting time for an extended period due to IM, and then because the Father contracted COVID. The Mother noticed the Child was being bullied at LFD. When the Father was ready to recommence regular parenting time, the Mother suggested they wait a few more weeks until the Child began speaking.

### 5. Termination of the Father's Nanny, the ASD Diagnosis and Start of the Court Process

[110] In March 2022, LN quit as nanny. There is a dispute between the parties about what happened. I accept the Mother's evidence that LN was caught stealing pills from her and the Mother gave her a second chance. The Mother asserts that, subsequently, on March 6, 2022, LN broke numerous appliances at her home, stole information from her computer, and started an online campaign against the Mother and her Bragg Creek business. The Mother brought concerns about LN to the Father and became extremely frustrated by the Father's failure to address the concerns and continuing to expose the Child to LN. The Mother referred to LN as a "narcissistic drug addict". The Father asserted the allegations were baseless. On balance, on the record before me, and given the personal photos that were used in the online social media postings, I find it is likely LN damaged some of the Mother's property and was the source of the online social media campaign against the Mother. However, I do not accept all of the Mother's allegations and characterizations against LN[9], and make no findings one way or the other (including in respect of whether LN was a drug addict). I find that it was the Mother's allegations against LN that caused LN to quit working for the parties.

[111] The LN incident caused the parties' co-parenting relationship to further deteriorate. The Mother's communications became vitriolic, spiteful, demeaning and accusatory. In March 2022 alone, she stated that the Father was "endangering" the Child and her, treated her like a "doormat", was a "shit parent", an "asshole", and a "fucking monster".

[112] On March 18, 2022, the Child received his ASD diagnosis. The Mother applied for Family Support for Children with Disabilities (**FSCD**) funding, started gathering resources about autism, and explored daycares in Bragg Creek and other educational options.

[113] Later in March 2022, the Mother demanded the Father propose a parenting schedule that he could commit to, but then later that same day told him: "Honestly, just fuck you. I'm done." Then, a few days later she invited the Father to come visit the Child. I specifically reject the

[9] In addition to a "narcissistic drug addict", in March/April 2022, the Mother described LN as a "junkie", "unhinged psycho", and "cocaine addict". Later in 2022 she characterized her as a "nutty meth addict" and "psycho meth addict".

Father's evidence that the Mother made this visit conditional upon the Father buying her groceries; however, she did ask if he could pick up groceries.

[114] In late March 2022, the Father's lawyer started the family docket court process. He proposed the parties enter a consent parenting order providing the Father parenting time from Thursday at 3 p.m. to Sunday at 3 p.m. On March 31, 2022, the Father's lawyer advised the Mother that it was the Father's position that he had been overpaying child support. In the days that followed, the Mother advised she would respond with a plan when "my hatred towards you subsides". She accused the Father of being cruel, unwilling to co-parent, being responsible for IM's suicidal ideations, and that "there is something deeply wrong with you".

### 6. The Consent PN8 Order and 2022 Parenting Order

[115] In early April, the Father pleaded with the Mother to focus on returning to a regular parenting schedule. The Mother told him that he was not acting with the Child's best interests at heart, to stop harassing her, and she was consulting with legal counsel. She gave the Father some parenting time when the Child's paternal grandparents were in Calgary visiting, but did not give the Father parenting time for IM's birthday as requested.

[116] On April 11, 2022, the parties were in family docket court. Justice Grosse adjourned the attendance briefly to see if the parties could reach an agreement. They could not.

[117] On April 13, 2022, the parties agreed to, and Justice Grosse ordered, the consent PN8 Order. Unfortunately, the order was not entered until November 2022. The PN8 Order appointed the Expert to conduct a PN8 evaluation, directed the parties to apply for case management for the purpose of setting the matter down for trial, directed the Father to pay 100% of the PN8 costs in the interim, prohibited the parties from bringing further applications until the PN8 evaluation was completed, and set out what documentation the Expert would be provided and could request.

[118] In addition to the PN8 Order, Justice Grosse directed the Father's application for interim parenting and the Mother's cross-application for play therapy to family chambers. The parties negotiated. They filed numerous affidavits.

[119] On April 15, 2022, the Mother advised the Child's speech language therapist that the Mother was moving the Child to speech therapy in Cochrane. The Father was not consulted and, when he found out the Child was not attending speech therapy, this caused concern.

[120] In May 2022, the Mother and KA agreed to a consent interim without prejudice parent for CA, which provided KA with weekend parenting time.

[121] On May 19, 2022, the parties agreed to a consent order directing that the Child would attend play therapy. Justice Kubik also adjourned the Father's interim parenting time application and directed the parties to a half-day mediation on interim parenting time.

[122] The parties attended mediation with the Arbitrator, reached an agreement for interim parenting time, and agreed to retain the Arbitrator as parenting coordinator/arbitrator. On June 29, 2022, the parties consented to the terms of an interim without prejudice parenting order (**2022 Parenting Order**). The 2022 Parenting Order provided step-up parenting time and, commencing

in June 2022, that the Father would have weekly parenting time from Friday at 3 p.m. to Sunday at 3 p.m. It also provided that the Father would be responsible for all pick-ups and drop-offs – from LFD on instructional days and at the Mother's Bragg Creek home otherwise.

### 7. A Brief Period of Relative Calm

[123] There is limited evidence about the period from June to November 2022. The Child continued to attend LFD. The Mother was exploring adaptive skating for the Child. The Mother began having financial difficulties, and she sold some of the shares she received from the Father in 2020. In November, the parties communicated about getting the Arbitrator's retainer finalized. No material steps were taken to advance the PN8 evaluation.

[124] This appears to have been a brief period of relative calm before the storm.

### 8. The Mother's Communications Deteriorate

[125] In late 2022, the Mother became very agitated with the Father's approach to parenting and support. Her written communications with the Father became even more inflammatory, insulting, accusatorial, and demeaning. The Mother blamed the Father for the Child's delays, and accused him of "perpetuating his own generational trauma", preventing the Child's recovery for his financial gain and, "destroying all of our lives with your deceit". She called the Father "pathetic", "the problem", the "biggest loser on the face of the earth", "not a man", a "pansy loser", lazy, cruel, "fucking idiot", "tool", asshole, "toxic" and "fucking loser". She threatened him with disclosing information she had saved from his computer, going public with his behaviour, and causing IM to be taken away from him. She told him he was going to "burn in eternity".

[126] The Father also adduced several messages which he says were sent by the Mother to his parents. The Mother denied sending them. I am not satisfied, on the balance of probabilities, that the Mother authored or sent these messages and I gave them no weight.

### 9. The Mother's Move to Canmore and the 2023 Awards

[127] In 2023, the Mother's financial situation continued to deteriorate. She had fallen behind in her mortgage payments on the Bragg Creek home. The utilities were disconnected, pipes burst, and significant repairs were required.

[128] By mid February 2023, the Mother had temporarily moved (with KA's assistance) to a rental in Canmore. She sold her vehicle.

[129] As a result of the Mother's situation, she could no longer easily facilitate exchanges of the Child at her home in Bragg Creek or at LFD, or the Child's attendance at LFD. On February 10, 2023, the Mother simply informed the Father that he would have to start picking up the Child in Canmore. This was not consistent with the 2022 Parenting Order.

[130] The Child's attendance at LFD began to drop. This put at risk the continued assistance of an educational assistant with whom the Child had an important and strong bond, and put the Child's Program Unit Funding (**PUF**) for LFD, in jeopardy. I accept the Father's evidence about the Child's reduced attendance at LFD.

[131] The Mother also continued with her unhelpful communications. She accused the Father of, among other things, destroying her business, being inherently selfish, only motivated by money, and a "pig who preys on younger women" with a "deep seeded hatred for all mothers".

[132] Effective February 16, 2023, the parties entered into a Parenting Coordination Agreement (**PC Agreement)**, which appointed the Arbitrator as parenting coordinator/arbitrator for 12 months, with jurisdiction over parenting, child support, spousal support, disclosure and any issues related to the Separation Agreement affecting support. The parties had independent legal advice.

[133] While the Mother may have intended to move to Canmore temporarily at first, over time that changed and before the end of February, the Mother started exploring preschool options in Canmore.

[134] On February 24, 2023, the parties had their first meeting with the Arbitrator. The Arbitrator issued two awards. First, she granted an award reflecting the parties' agreement that she speak directly with LFD about the Child's continued attendance there. Next, she ordered (among other things): the existing parenting time schedule would continue until the PN8 evaluation was complete; the Mother was to sign the necessary forms to commence the PN8 evaluation; the Child would continue at LFD until further written agreement of the parties or further award; the Father was to provide financial disclosure; and the Father agreed to continue to pay child support in March 2023 so that support matters might be further reviewed or addressed at their next session.

[135] By February 26, 2023, both parties had executed the Expert's retainer agreement for the PN8 evaluation.

[136] On February 28, 2023, LFD decided to terminate the Child's enrolment "immediately due to constant harassment and personal attacks". There is a dispute about why LFD did this. I find that it was the Mother's conduct toward LFD. The Child's contact with Maximize Early Childhood Services, Laurie Lavoie (**Lavoie**), began immediately looking for programming options for the Child in Canmore, Redwood Meadows and Cochrane. By March 1, 2023, the Father convinced LFD to keep the Child's spot open at LFD, but LFD confirmed that the Mother would not be permitted to attend at their program.

[137] In early March, both parties then sought emergency relief from the Arbitrator. In her correspondence to the Arbitrator, the Mother referred to the Father as a "controlling abusive asshole".

[138] A hearing was scheduled for March 9, 2023, despite the Mother's request for an adjournment. On the morning of March 9, the Mother advised that she could not attend because her children were sick. The Arbitrator made a Zoom link available, but the Mother did not attend, and the Arbitrator made the March 2023 Award.[10] It provided the Father with decision-making with respect to LFD, and materially changed the parties' parenting time to provide the Father with parenting time from Sunday to Friday (so he could ensure the Child's attendance at LFD). The Mother's parenting time was from Friday to Sunday, with all exchanges to take place at the

[10] No application to set aside or appeal the March 2023 Award was ever filed.

Mother's Bragg Creek home. The March 2023 Award provided that the parties' applications could be brought back on two days notice and would be expedited.

[139] When the Mother received the March 2023 Award, she responded to the Arbitrator by referring to the award as an absurdity and gratuitously noted that the Father had been accused three times of being a child sexual abuse offender.

[140] Following the March 2023 Award, the Mother sought the assistance of the Expert, who declined to intervene. Lavoie paused the Child's therapy. The Mother began including the Arbitrator and the Expert in her correspondence more frequently. The Mother failed to acknowledge that she would follow the March 2023 Award's parenting time. On March 12, 2023, the Mother failed to facilitate the exchange of the Child to the Father. She told the Father that he was not welcome on her property and asked the Father to stop harassing her.

[141] In response, the Father sought emergency court assistance to enforce the March 2023 Award. On March 24, 2023, after receiving a letter from the Mother's counsel, and despite attempts by the Arbitrator to allow the Child to remain at LFD, LFD again terminated the Child from its program. LFD advised the Arbitrator that it was unwilling to allow the Child to continue due to the Mother's erratic and hostile behaviour.

[142] On March 24, 2023, the parties agreed to the terms of a consent interim without prejudice parenting and child support order (**March 2023 Order**)[11] which enforced the March 2023 Award.

[143] In early April 2023, the Father presented the Child in only a diaper at the parenting exchange. This happened more than once due to ongoing issues with the Child's preference not to wear clothes. The Mother reported the Father to Children's Services, but there is no indication they intervened.

[144] Eventually, the applications before the Arbitrator were rescheduled and heard in late March. Both parties participated with counsel. On April 12, 2023, the Arbitrator issued the April 2023 Award[12]. The April 2023 Award denied the Mother's proposed relocation of the Child with her to Canmore and provided the Father with parenting time from Sunday to Thursday and the Mother parenting time from Thursday to Sunday (giving the Mother one more day of parenting time than in the March 2023 Award/March 2023 Order). The Arbitrator refused to give either party sole decision-making and provided directions for the parties to gather new educational placement options given that LFD was no longer an option.

### 10. Further Co-Parenting Deterioration Following the 2023 Awards

[145] On April 12, 2023, the Mother wrote to the Law Society expressing concerns about the Arbitrator. She also advised the Father that she had rented out her Bragg Creek property, and her new residential address was in Canmore. The Mother's effective relocation of the Child's residence to Canmore, while he was in her care, was not consistent with the April 2023 Award.

[11] The March 2023 Order was never appealed.
[12] No application to set aside or appeal the April 2023 Award was ever filed.

The Father refused to consistently drive to Canmore for the exchanges and the parties did not follow the parenting time set out in the April 2023 Award.

[146] During this period, the Father canvassed available educational placement options, and eventually obtained a placement for the Child at Alpine Montessori school. In doing so, the Father failed to meaningfully consult with the Mother, and did not seek her consent. In doing so, he also acted inconsistent with the April 2023 Award.

[147] Around this time, the Father decided to stop paying the Mother child support, on the basis that it was his position he had overpaid child support. He based this in part, upon his position that the Separation Agreement was binding and the Mother had waived entitlement to spousal support. The issue of whether the Separation Agreement affected his support obligations had already been flagged, was within the Arbitrator's jurisdiction, and a process had been put into place for determination of spousal support.

[148] The Father's decision to stop paying child support during this high-conflict context, particularly given the facts surrounding the execution of the Separation Agreement, was questionable and was not likely in the Child's best interests because it cut off a material source of income to the Mother. This regrettable decision was also a flashpoint for further discord between the parties and increasingly desperate attempts by the Mother to seek relief.

[149] In May through July 2023:

(a) the Mother sought urgent relief from the Court, but was denied on the basis that she was bound by the PC Agreement;

(b) the Mother sought to engage the Child Support Resolution Service, but was denied on the basis the Father would not agree given the PC Agreement;

(c) the Mother threatened to obtain an emergency protection order (**EPO**) against the Father if he didn't pay support;

(d) the Mother started a GoFundMe page to raise money, which included photographs of the Child and IM (without the Father's consent);

(e) the Mother sought support relief from the Arbitrator. However, the Mother's increasingly aggressive, inappropriate and accusatorial communications involving the Arbitrator (including that she was further involving the Law Society and the police), and a claim for monetary relief against the Arbitrator through the Alberta Lawyers Indemnity Association, caused the Arbitrator to resign on June 26, 2023;

(f) the Mother continued not to follow the April 2023 Award with respect to having the Child in Canmore, and the Child's parenting time and exchanges. The Mother demanded the Father to stay away from her residence and cease harassing her;

(g) the Mother stopped facilitating the Child's regular attendance at Alpine Montessori;

(h) the Mother asked Lavoie to exclude the Father from their communications, and advised Lavoie that "Children and Family Services are now involved to investigate what is going on behind closed doors";

(i) the parties' communications continued to be dysfunctional. The Mother continued to insult and threaten the Father. She increasingly characterized the Father's conduct as abusive and financially controlling; and

(j) the Mother continued to write to or copy the Expert on communications in which she made serious allegations against the Father. As noted earlier, on May 25, 2023, she told the Expert that she was "homeless and we are now having to stay in a women's shelter to flee this abusive situation", when she was neither homeless nor living in a women's shelter.



[150] The Father again sought urgent relief to enforce his parenting time. On June 5, 2023, in urgent chambers, Justice Price was only prepared to enforce the March 2023 Award (not the later April 2023 Award), with a police enforcement clause, and granted an order doing so (**June 2023 Order**).[13]

[151] The legal effect of the June 2023 Order was to vary the April 2023 Award, which in turn had the effect of reducing the Mother's weekly parenting time by one day (from Thursday to Sunday, to Friday to Sunday). The Mother incorrectly believed the June 2023 Order was a mistake or that the Father's counsel had intentionally orchestrated the enforcement of the wrong award. This caused her to make untrue allegations that the Father was withholding the Child if he did not make the Child available to her on Thursday instead of Friday. I find the Father took advantage of the situation by failing to take immediate steps to support the enforcement the April 2023 Award following the June 2023 Order, to ensure the Mother received the additional parenting day as intended by the Arbitrator. The disconnect between the June 2023 Order and the April 2023 Award further inflamed matters.

[152] Following the June 2023 Order, and the inclusion of the police enforcement clause, unfortunately both parties began engaging the police more frequently, which further escalated the tension. The June 2023 Order was unnecessarily served on the Mother by the RCMP even though the order permitted service by email. On June 9, 2023, the Father was escorted by two RCMP cruisers to pick up the Child. The Father made at least one wellness check on the Mother, but I reject the Mother's evidence that the Father made many wellness checks against her. For her part, I find that the Mother made several requests for police wellness checks when the Child was in the Father's care, alleging neglect which was never pursued by police or substantiated at the Hearing.

### 11. Further Escalation and the Mother's Arrests

[153] In July 2023, tensions around parenting time and support continued to escalate. The Mother advised the Father that she was "removing you from our lives henceforth", and that he would go to jail for his crimes. She called him a "pedophile disgusting freak".

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[13] Justice Price advised the parties that if they wished to enforce the April 2023 Award, they would need to proceed through the ordinary family processes, not urgent chambers. No such application was ever brought.

[154] On July 7, 2023, without prior notice, the Mother advised the Father that she intended to have the Child for four weeks' vacation commencing either July 24 or July 31. The Father correctly advised her that there were no court orders or arbitration awards for extended summer parenting time or vacations, and that they needed to agree. He did not agree to the Child being away from his schedule for more than one week at a time and asked the Mother for details about her proposal so they could reach agreement. The Mother unreasonably stated that the Father's response was "beyond inappropriate" and involved "coercive and abusive restrictions".

[155] On July 12, 2023, and even though the Arbitrator had resigned two weeks earlier, the Mother wrote to the Arbitrator an extremely outrageous and inappropriate email the contents of which are not repeated here.

[156] In mid July 2023, both parties wrote lengthy emails to the Expert airing their grievances and positions.

[157] At some point, in the context of proceedings between the Mother and KA, the Mother's Bragg Creek home was ordered to be sold. The closing was scheduled for July, but appears to have been delayed. In anticipation of the sale, the Mother arranged to house sit at a house in Bragg Creek and she signed a lease to rent a property in downtown Calgary commencing September 1, 2023. In late July, the Expert queried whether the Mother had a stable residence. The Mother requested a delay in the PN8 evaluation so she could "get things back to where they were before".

[158] On August 6, 2023, the Mother failed to make the Child available for exchange in Bragg Creek where she was housesitting. The Father contacted the TNPS and they attended at the home. I accept Lowe's evidence about this event (including the video). The Mother was uncooperative, agitated, and aggressive with law enforcement. Her conduct was inappropriate in front of the Child and CA. The Mother claimed to the police that she was permitted by order to travel with the Child at that time (she wasn't), but failed to produce the order. The Mother was arrested, charged for failing to comply with the June 2023 Order, and later released.

[159] On August 10, 2023, the Father advised the Expert that the Child had been accepted to the PaceKids program commencing in September. The Father had not meaningfully consulted with the Mother or sought her consent to enrolling the Child at PaceKids. The Mother did not consent. Despite the Father's assertion otherwise, the Father's approach was not consistent with the combined effect of the June 2023 Order and the April 2023 Award. The June 2023 Order only varied the April 2023 Award as necessary to give effect to the June 2023 Order. The June 2023 Order only provided the Father sole-decision making and communication responsibility with respect to LFD and other matters, not for enrolling the Child in new educational programs. The April 2023 Award continued to apply for new educational placements, and the Father was only entitled to gather information and the parties were to "provide that information ... for further determination" if they were unable to agree.

[160] In response to the Father's advice about PaceKids, the Mother advised she was applying for an EPO.[14] The Mother sent the Expert numerous emails between the parties and asked the Father not to contact her further.

[14] To my knowledge, the Mother did not apply for an EPO.

[161] During her parenting time on the weekend of August 12, 2023, the Mother travelled with the Child and CA to White Rock, British Columbia to visit her parents. When the Father attended to pick up the Child on August 13, 2023, the house was empty, and the Mother's phone was disconnected. The Father suspected that the Mother had attempted to relocate to British Columbia without his consent. He contacted the police, a nationwide warrant was issued, and she was arrested. On August 14, 2023, the Mother was charged with child abduction. She was detained and transported back to Calgary in shackles.

[162] There is significant evidence about this event. I have given weight to the evidence of the parties, and their relevant documentation, not what they may have told the Expert or the police, or what they were told by third parties about what happened. The Mother vehemently denies an intention to abduct the Child or CA. On this point, I believe the Mother and find that the Mother had no actual intention to relocate the Children at this time. This is obvious from the lease she had signed for the downtown Calgary rental commencing in September. However, she was financially strapped, feeling destroyed and helpless, exhausted, stressed, overwhelmed, and she needed a break. So, she went to visit her parents and hoped to get the Father's consent after-the-fact.

[163] I accept that the Mother believed there would be little harm in doing that. She was wrong. The Mother was well aware that the Father had requested details about her travel and his consent, which she had not provided or obtained. The Father's earlier offer of giving her vacation time the week of August 14 was not clearly accepted and was insufficient to constitute consent without the travel details. The Mother's attempt to rely on the Separation Agreement travel provisions (which she had not complied with), or the parties' past travel practices, and not a new court order, was unreasonable and disingenuous in the circumstances.

[164] For the Father's part, he was reasonably concerned when the Mother was absent for the exchange on August 13, 2023. However, given the nature of their actual communications about travel, and his earlier offer of a week of vacation parenting time that week, the Father was precipitous in immediately contacting the police for assistance. A reasonable co-parent would have explored other explanations, including a possible misunderstanding of positions, before contacting the police. Although the Mother's cell phone may have been disconnected, there was no indication that her email was not functioning. She was emailing with the police on August 14, 2023. The Father's asserted degree of his lack of knowledge of the Mother's intentions was not credible.

## 12. Post Arrest: the CMJ and Supervised Parenting

[165] In September 2023, the Child started at PaceKids and remained there until June 2024. I accept the Father's evidence that the Child did not thrive there, for various reasons. The Father did not communicate with the Mother about these struggles. In fact, the Father's communication with the Mother was limited and almost robotic during this period. He sacrificed meaningful co-parenting and consultation with the Mother to avoid further confrontation. Ironically, his approach only fuelled further conflict.

[166] In September 2023, the Mother moved to her downtown townhome rental. She had no parenting time with the Child for a lengthy period because the terms of her release for her abduction charge limited her access to the Child to be arranged through a court-approved third

party. When the Father pointed this out to the Mother on September 15, 2023 as she was demanding parenting time, the Mother threatened criminal charges against him.

[167] In early October 2023, the Mother sought urgent relief from the Court for police enforcement of her parenting time in the April 2023 Award and to direct completion of the PN8 evaluation. Later that month, the Mother settled property matters with KA and received approximately $180,000 from the sale of her Bragg Creek home.

[168] In the context of her urgent request for enforcement of the April 2023 Award, the Mother expressed regret over her choice of language with certain individuals during the prior year. She acknowledged that she allowed stress and emotion of events to cloud her better judgment. She asserted that through therapy, she is able to recognize such communication as unconstructive and inappropriate. I find that, while at times the Mother's subsequent communications were improved, the Mother also frequently continued to communicate in an unconstructive and inappropriate manner, leading up to and during the Hearing process. Some non-exhaustive examples are included elsewhere in these Reasons.

[169] On October 20, 2023, the Expert wrote to Justice Grosse (who by then had long been appointed to the Court of Appeal) seeking the Court's direction due to the Mother's instability of residence and the criminal charges, which were potential limitations on the PN8 evaluation.

[170] On October 26, 2023, Justice Kuntz was appointed CMJ.

[171] On November 3, 2023, Justice Malik ordered (**November 2023 Order**) that the Mother was entitled to professionally supervised parenting time for 5 hours on Wednesdays and 9.5 hours on Saturdays, and reconfirmed other terms of the June 2023 Order. The November 2023 Order directed the parties to reach out to the CMJ to address the PN8 evaluation and the Expert's request for directions. The Mother started exercising some supervised parenting time in mid-November 2023.

[172] On December 1, 2023, CMJ Kuntz directed counsel to contact the Expert to ascertain the status of the PN8 evaluation and what was needed for its completion. On January 2, 2024, CMJ Kuntz varied the November 2023 Order to provide that the Mother did not need professional supervision when she and the Child were meeting with the Expert.

[173] In December 2023, the Father lost his consulting job with the gold company.

### 13. Continuation of the PN8 Evaluation, Sporadic Supervised Parenting and the Restraining Order

[174] In January 2024, the Expert recommenced the PN8 evaluation in earnest.

[175] On February 15, 2024, CMJ Kuntz dismissed the Mother's application to enrol the Child in play therapy and to vary the existing court-ordered parenting terms. At this attendance, it appears the parties agreed to the terms of a mutual no contact order but the Mother later refused to consent before an order was put into place.

[176] In early 2024, the Mother's practice of emailing the Expert directly intensified. She used her communications with him as a platform to advocate for her position and make serious allegations against the Father, which sometimes resulted in the Father also communicating with the Expert in response. As one extreme example, on February 25, 2024, the Mother wrote to the Expert and the Father (emphasis in original): "**I'm asking you guys to wake the fuck up**. The person you're dealing with **is in fact the devil himself**.... Aligning with [the Father] is aligning with the devil himself." At the Hearing, the Mother apologized for this communication, stating that "I wasn't myself".

[177] As another example, on March 3, 2024, the Mother excluded the Father from a communication made to the Expert, suggesting she feared the Father would retaliate against the Child and IM. Her emails to the Expert also included a veiled threat: "I'll make sure this gets before every single member of society, every single media source, every single platform. So keep that in mind with your every action moving forward...". She had earlier warned the Expert that his mandate was to protect the Child and put his interests at the forefront.

[178] In early March 2024, the professional supervising agency that the Mother was using to exercise her supervised parenting time refused to provide further services because it felt the Mother was trying to force a narrative in their reports and that the Mother then made accusations against the supervisor. While it is not clear from the emails and texts that the Mother was attempting to force a narrative, I find the Mother's conduct with the supervising agency caused it to quit.

[179] After this, the Mother did not have parenting time with the Child for several months. On March 11, 2024, the Mother told the Expert that she was not comfortable receiving the Child until the PN8 evaluation was complete. Later in March, she expressed to the Expert that she was worried about her and the Child's safety in the Father's presence.

[180] In May 2024, the Mother entered into a peace bond and her criminal charges were not pursued further. The parties disagree on what this meant. I agree with the Mother that the criminal charges were effectively dropped and replaced with the terms of the peace bond in accordance with common criminal law practice. There was no finding or admission of guilt against or by the Mother: ***R v Crawford***, 2025 ABCA 280 at para 16.

[181] The terms of the peace bond required, among other things, that the Mother engage in counselling as directed and abide by court parenting orders. After this, the Mother invited the Father to negotiate an agreement for her parenting time, but he refused.

[182] Commencing in May 2024, the Father arranged for in-home ABA support with AP. The Father did not meaningfully or appropriately consult with the Mother about this before proceeding.

[183] The Mother wanted to use the Sherriff King program for her supervised parenting. The Father was initially skeptical about the Mother's request for using Sherriff King for her supervised parenting, believing it to be a ploy of some kind, and delayed his registration with the program. This delayed the Mother's parenting time.

[184] In June 2024, both parties sought relief from CMJ Kuntz. By this time the Mother had relocated close to where the Father and Child resided. On July 4, 2024, CMJ Kuntz granted the Restraining Order against the Mother, which provided in its preamble that the Mother's "actions

show a pattern of concerning behaviour toward" the Father and "the professionals involved in [the Child's] life". The Restraining Order restricted the Mother's ability to communicate with the Father (other than for the purposes of facilitating the Mother's supervised parenting), the Father's counsel (except for limited purposes) and the Expert.

[185] CMJ Kuntz dismissed the Mother's application to vary parenting time, confirmed her right to supervised parenting through the Sherriff King program, and ordered the Mother to reimburse the Father $12,197.72 for her share of the Arbitrator's fees (which she had not done by the time of the Hearing).

## 14. The PN8 Report, the Proposed Relocation and the November 2024 Orders

[186] In September 2024, the Child continued with in-home support with AP, and was enrolled in afternoon support at BTLC. BTLC used an ABA approach, and had 1:1 support in a very small class size (2-3 other children). This routine continued until the first phase of the Hearing. I accept Bond's evidence about the Child's development during this timeframe. While he continued to have challenges, significant progress was made with respect to the Child's screaming and communication skills. By this time, the Child was not removing his clothing like he had been previously. His potty training remained inconsistent.

[187] On September 20, 2024, the Expert released the PN8 Report. At a high level, it recommended that the Father have sole decision-making with the expectation that he would solicit the Mother's input for significant matters, the Child would reside primarily at the Father's home, and that the Mother would have unsupervised parenting time Wednesdays from 4 pm to 7 pm and every other weekend from Friday at 4pm to Sunday at noon. This recommendation assumed the Mother committed to active ongoing mental health professional support.

[188] The Father accepted the PN8 Report recommendations and wanted the Mother to also accept it. She did not do so, and in fact did not review the PN8 Report for several months after it was issued, in part because she did not have legal counsel. Unfortunately, at this time, the Father was focussed on his litigation strategy instead of the Child's interim best interests. He was not prepared to simply immediately agree to the PN8 Report's recommended unsupervised parenting time unless the Mother agreed to fully incorporate the PN8 Report's recommendations into an order, for fear that he would be held to it. He also advised the Sherriff King program that supervised parenting was no longer required, which disrupted the Mother's ability to access supervised parenting. In the aggregate, I find that the Father used the Mother's parenting time as a bargaining chip to try to leverage her agreement with the PN8 Report recommendations, rather than focussing on the Child's relationship with the Mother pending a final determination of parenting.

[189] During this time, the Father was exploring potential employment opportunities because his consulting work for the lithium company had now been reduced. It is likely he had already started discussions with his current employer prior to the PN8 Report, but felt he could not accept a job requiring relocation until the PN8 Report was issued.

[190] On October 12, 2024, the Father was officially offered a job as president with a different gold development company, starting effective October 15, 2024. The offer contemplated that the

Father would relocate to Vancouver within 12 months. The Father started in this role on October 17, 2024.

[191] On November 12, 2024, the parties were again before CMJ Kuntz. The Father confirmed his intention to relocate to Vancouver and it was clear the parties were not in agreement about that or parenting moving forward. CMJ Kuntz granted the Oral Hearing Order, the November 2024 Order and an order (**Disclosure Order**) requiring the parties to exchange and file financial disclosure.

[192] The November 2024 Order granted the Father sole decision-making, and primary parenting of the Child, but he was required to seek the Mother's input before making any major decisions affecting the Child. As noted above, the Father was also granted responsibility for communications with all third parties and individuals involved in the Child's life for education, support and healthcare, and the obligation to keep the Mother abreast of such information. The order confirmed the parties' communications were to take place over Our Family Wizard (**OFW**) and be compliant with the restrictions in the Restraining Order. The Mother was granted unsupervised parenting time every Sunday from 9 a.m. to 5 p.m. with exchanges at a police station. There was a police enforcement clause.

### 15. The Lead Up to the Hearing

[193] Following the November 2024 Order, the Mother resumed unsupervised parenting time. The Father gave the Mother information about the Child's routine. The parties agreed to amend the exchange location to be at the Father's residence. They often agreed to minor amendments to the pick-up and drop-off time, often at the Mother's request. They did not consistently use OFW. The Father usually refused the Mother's requests to further increase the Mother's parenting time (other than over Christmas), including her request to follow the interim parenting outlined in the April 2023 Award. The Father often resorted to perfunctorily terse directions for the Mother to follow the court orders and limit communications to pick up and drop off or emergencies.

[194] In November 2024, the Mother started at a casino as a server and continued in that role until February 2025.

[195] In December 2024, the Child was accepted for enrollment in grade 1 at Greater Heights Learning Academy in Coquitlam, British Columbia, for the 2025-2026 school year. The Father did not consult with the Mother about this, which was not in compliance with the November 2024 Order or the earlier April 2023 Award (which continued to apply to some decisions as noted above).

[196] On December 12, 2024, the Father completed a Notice of Relocation Form under the *Divorce Act*, RSC 1985, c 3 (2nd Sup) and filed his formal Relocation application on January 7, 2025.

[197] From January 2025 until the Hearing, the parties generally continued with the parenting set out in the November 2024 Order, with frequent amendments. The Mother frequently requested further information from the Father, which he usually did not provide. She requested an updated psychological assessment, to which the Father did not agree.

[198] During this period, and at the first phase of the Hearing, the Mother expressed her frustration that the Child's development was regressing or continued to regress, which she believed was caused by the change to the Father being the primary parent. She continued to seek information about the Child which was often not provided. She raised concerns that the Father was filming their exchanges.

[199] In March 2025, as noted above, the Mother breached the PN8 Order. She reviewed the PN8 Report at her lawyer's office, took photos of it, and texted them to KA, calling KA a liar.

[200] In April 2025, as noted above, the Father engaged Bond's assistance to speak with PALS in Vancouver about the possibility of placing the Child there. Later, he enrolled the Child in PALS to commence in September 2025. The Father did not consult with the Mother about PALS and, in doing so, again failed to comply with the November 2024 Order. As noted, in May 2025, Bond refused to assist the Mother in exploring the possibilities for the Child's placement in Calgary. The Mother also contacted AP but they did not provide her meaningful input either.

[201] In spring 2025, the Mother started working as a program services coordinator at the Banff Centre for Arts and Creativity. By the time of the Hearing, she was in an events and marketing role.

### G. The Hearing

[202] As noted above, the first phase of the Hearing proceeded from June 3-9, 2025. I directed it to continue in September 2025 so that, among other things, the Expert could update the PN8 Report.

[203] In the intervening summer period, the Child attended summer camps. The parties agreed to some additional parenting time for the Mother, including to facilitate the PN8 Update, but not all requested additional parenting time was agreeable. The Father attended at the Mother's residence despite the Restraining Order. The Restraining Order expired and was not renewed. At the end of August, the Father reverted back to the parenting time in the November 2024 Order due to the resumption of the Child's school routine at BTLC. The Mother changed to a job in Calgary working for a restaurant group, attended online marketing courses, and moved to a new house in Crescent Heights. The Father forgot about an appointment with Dr. Smyth, then unreasonably tried to rationalize his mistake as being unimportant. Although there was some improvement in their communications, the parties again squabbled or miscommunicated over pick-up and drop-off times, accommodating AP at the Mother's home, and whether the Mother should have some extended summer parenting time. The Father's reporting of information about the Child improved but continued to be selective in what he told the Mother about the Child.

[204] The Expert worked on the PN8 Update. There were numerous communications between the parties and the Expert during this period, some of which were requested by the Expert and others that were not. On August 9, 2025, after noting the Child's behaviour over a particular weekend, the Mother made demands, threats, accusations and directives to the Expert (emphasis in original):

> ... you need to acknowledge your part in this and you need to take steps NOW to rectify this situation. The evaluation focus must immediately redirect to supporting

> [the Child's] actual needs rather than pursuing misguided narratives that actively harm his best interests. [...]
>
> I demand that all professional decisions and recommendations prioritize [the Child's] therapeutic needs and developmental progress above all considerations. Any continued failure to maintain appropriate professional standards will result in formal complaints being filed with all relevant professional bodies, oversight organizations, and the court regarding professional misconduct.
>
> You will provide immediate written confirmation that you are taking direct action to address these failures and coordinate appropriately with all parties involved in [the Child's] care. Your response is required within 24 hours.

[205] The Mother provided further directives to the Expert on August 12, 2025.

[206] On August 16, 2025, the Expert completed the PN8 Update. It recommended that the Child be permitted to relocate with the Father to Vancouver and made recommendations for the Mother's parenting time, parental communications and decision-making, and mental health support for the Mother.

[207] The Hearing continued from September 2 to 4, 2025 and I reserved my decision. On September 26, 2025, the Mother wrote to me and CMJ Kuntz seeking urgent relief related to the Child's educational placement, Bond's testimony, the Expert, and other matters. The Father's counsel responded. CMJ Kuntz declined to consider the Mother's application pending my decision following the Hearing. I found that the Mother's request was partly in the nature of making further submissions and was partly in the nature of seeking an interim variation of parenting pending my decision. I advised the parties it was not appropriate to make interim changes pending my decision.

[208] Further, the parties' correspondence was not evidence, and no application was made to re-open the Hearing to obtain further evidence. I have not considered any facts described in this correspondence as evidence in reaching my decision (unless otherwise proven). However, I treated components of this correspondence as supplemental written argument and considered it in that context.

### H. The Parenting Expert's Evidence

[209] The PN8 Report and PN8 Update's recommendations were briefly summarized above. I carefully reviewed the reports, but do not recite these reports or the Expert's evidence in detail in these Reasons. I reference some of the Expert's evidence later in these Reasons when assessing the best interest factors.

[210] In this section, I assess the weight to be given to the Expert's evidence in light of several matters raised by the parties or the evidence.

[211] The Mother challenges the Expert's evidence in numerous ways. She argues that the Expert's reports are procedurally flawed, substantively deficient, systematically biased, unreliable, and risk harm to the Child if followed. She argues that the Expert's evidence should be rejected in

its entirety. Alternatively, she argues that the Expert's evidence contains "several findings that can be leveraged to argue for [the Mother's] increased role and against relocation".

[212] In contrast, the Father argues that the Expert's recommendations should be given considerable weight, as they are supported by the evidence heard and filed at the Hearing, and that the Expert's evidence was provided in a straightforward and balanced manner.

[213] It is helpful to highlight some key factors in assessing the evidence of parenting experts under PN8 evaluations, when they are admitted.

[214] Like any expert report, PN8 evaluations are subject to potential evidentiary problems. For example, as noted above, PN8 evaluations can become outdated quickly and of limited assistance to the Court: ***JWS*** at para 32; ***White v White***, 2022 ABQB 322 at para 95; ***DC v NC***, 2021 ABQB 1015 at para 221.

[215] Further, if parenting experts are provided too much detailed information from or about the parties and their dispute, the expert may be put in the position of assessing credibility which is not their role: ***AJU*** at para 175. This is why it has been recommended that parenting experts are not provided the detailed evidence of the parties: ***AJU*** at para 175. This is also partly why PN8 provides, at para 20, that "Counsel and the parties shall not communicate unilaterally with the Parenting Expert except at the direction of the Parenting Expert", and provides, at para 22, that only filed Court applications and court orders (not affidavits or sworn statements), and professional reports and Court orders, shall be provided to the parenting expert unless ordered by the Court. This is why the template PN8 order (and the PN8 Order in this case) provides these limitations.

[216] Parenting experts should not be put in the awkward position of effectively presiding over a pseudo trial process, involving detailed sworn or unsworn evidence or information of the parties engaging character and credibility issues. Parties should not dump massive amounts of information on parenting experts, should not unilaterally involve the expert in their day-to-day parenting lives, seek parenting or other advice from parenting experts, or provide unsolicited advocacy of their respective litigation positions to the expert. Parties that do these things will undoubtedly increase the costs of the process while at the same time risk undermining its very utility to the parties and the court.

[217] Admitting an expert's opinion does not prove the underlying facts relied on by the expert: ***AJU*** at para 177. The facts upon which the opinion is based must be found to exist before weight can be given to the opinion: ***AE*** at para 109; ***SK*** at para 102. If factual underpinnings or assumptions relied on by the expert are unproven or inaccurate, the court should properly give the opinion less weight: ***SK*** at para 102; ***AJU*** at para 136. This applies to hearsay information, the reliance upon which may affect the weight the report can be given: ***JWS*** at para 28, citing ***R v Lavallee***, 1990 CanLII 95 (SCC) and ***R v Abbey***, 1982 CanLII 25 (SCC).

[218] The parenting expert's role is to assist the Court by providing objective evidence. If they fail to do that, or their evidence illustrates bias, their evaluations and opinions may be given little or no weight: ***AM v DM***, 2025 ABKB 377 at paras 28-29; ***SK*** at para 149; ***AE*** at para 175, citing ***White Burgess***. Bias may be made out if the expert prejudged, was partial to one side, failed to take into account all of the evidence and reasonably available inferences, used different standards

to assess the parties, or relied on irrelevant grounds to decide against one party: ***AE*** at para 175. Bias may be conscious or unconscious: ***AE*** at para 176. It is not made out just because an expert does not mention every bit of information or argument that may have supported the position of the party unhappy with the result: ***AE*** at para 173.

[219] Finally, and in any event, the Court must not provide too much reliance on an expert's opinion or delegate the determination of the child's best interests to the expert. That is the job of the Court. The expert's recommendations may be accepted or rejected, in whole or in part: ***AJU*** at paras 176-177; ***SK*** at para 103; ***LAU v IBU***, 2016 ABQB 74 at para 187; ***RKC v GSA***, 2012 ABQB 614 at paras 212-214.

[220] I have considered all of the Mother's concerns, but have only expressly addressed her most pertinent concerns below.

### 1. Qualifications / Expertise

[221] The Mother's position about the Expert's lack of qualifications or expertise is inconsistent, unfounded and rejected for several reasons.

[222] First, the Mother consented to the Expert's appointment through legal counsel. I reject any suggestion that she did not have an opportunity to have a say in deciding which expert was appointed. The Mother's related arguments that the Expert's evidence should be given less weight because the Father has engaged in expert shopping, or because the Father has been involved in several such expert processes in the past, are similarly rejected. Second, when the Expert testified, the Mother did not object to admissibility based on a lack of expertise. Further, she acknowledged his expertise in her written submissions. Third, I find that the Expert's experience is, in fact, significant - he testified about his experience working with special needs children and ASD.

### 2. Consideration of Information Provided

[223] The Mother argues that the Expert failed to "incorporate or acknowledge critical documentation and communications provided by [the Mother] between July 18 and August 18, 2025", which she says renders the PN8 Update procedurally flawed.

[224] Numerous emails from the Mother to the Expert during this timeframe were adduced at the Hearing. The Mother has not identified precisely what she asserts the Expert failed to incorporate or acknowledge. As noted above, an expert need not specifically address every issue or communication in a report. The PN8 Update specifically referenced a significant volume of material received but only listed materials received that provided additional information relevant to the PN8 Update. Some of that correspondence was put to the Expert at the Hearing and he acknowledged receiving it.

[225] I am not persuaded that the Expert failed to incorporate or acknowledge critical documentation provided by the Mother between July 18 and August 18, 2025. In fact, the problem with the information provided to the Expert during this period was that it included demands, accusations, threats and directives to the Court's expert which contributed to the challenging nature of the Expert's role in this case. Ironically, it was the Mother's confrontational approach to the

Expert that raised the biggest concern and risk that the Expert would be unable to remain impartial. I have factored this into my assessment of the weight to give the Expert's opinion.

### 3. Consultation with References

[226] The Mother argues that the Expert improperly noted in the PN8 Update that she had not provided information about professional collateral references when she in fact had done so, in particular with respect to her preferred contacts at Calgary-area educational programs. I find that the Expert could have been more proactive and simply contacted Third Academy, Janus Academy and New Heights earlier than he did given the short time available to complete the PN8 Update, which would have given him a more balanced picture of the educational options available. In fact, the Mother implored him to do so in late July. However, based on the evidence before me, the Expert accurately described what the Mother provided him, and when.

[227] The Mother argues that the Expert failed to contact her key references. With respect to the references about educational programs in Calgary, the Expert ran out of time because he waited for more detailed information from the Mother; he did not get responses from Janus Academy, Renfrew or New Heights. As a result, I agree that the Expert's assessment of educational program options was unbalanced. I agree that this aspect of the PN8 Update should be given minimal weight.

[228] With respect to the Mother's personal references, the Expert had already received written collateral references from AV and Croteau. He followed his ordinary practice, which would not normally include interviewing collateral personal references. In any event, the evidence before me and the Expert was that AV and Croteau did not have recent information about the Child's behaviours and were not currently involved in his care, so would not likely have added material information. I note that the Mother argued that the focus should be on "contemporaneous, child-focused evidence, including professional assessments and [the Mother's] demonstrated commitment to [the Child's] care."[15] I am not satisfied the PN8 Update should be given less weight based on the Expert's approach to personal references.

### 4. Parent-Child Observations / Interviews of Parties

[229] The Mother asserts that the Expert prematurely cancelled his final behavioural observation with her and the Child, and conducted more interviews with the Father than her. She implies that the Expert's observations of the Child with the parents was unbalanced.

[230] Over the course of the PN8 evaluation process, the Expert observed the Mother and Child one more time than the Father and Child; they each had one parent-child observed sessions during the PN8 Update process. As for personal interviews during the PN8 Update process, the Expert interviewed the Father three times (5.5 hours total) and the Mother twice (4.5 hours total). The deficiency was due to the Mother's questionable late cancellation of an appointment on June 27, 2025 and does not indicate any bias or lack of balance by the Expert. Further, the Mother significantly augmented the information provided to the Expert in her numerous emails such that the Expert likely had equal or more information from the Mother than the Father.

[15] Response to Written Closing Submissions of the Father filed September 22, 2025 at para 5.

[231] I have no concerns about the Expert's parent-Child observations and parent interviews.

### 5. Representation of Information Received from the Mother

[232] The Mother argues that the Expert misrepresented information she provided him.

[233] The Mother takes issue with a statement in the PN8 Report (para 181) in which the Expert states that emails sent by the Mother "present her being granted sole custody of [the Child] as a foregone conclusion of this intervention". I agree with the Mother that, while her initial parenting plan was for primary parenting with supervised parenting for the Father, her proposal was ultimately for shared parenting[16] which reflects that she did not believe sole custody was a foregone conclusion. I factored this potential discrepancy in the Expert's report in the weight I gave the PN8 Report.

[234] The Mother denies that she told the Expert that she was forced to relocate to British Columbia (with reference to the events of August 12-14, 2023). I am satisfied that the Expert recorded his perception of what the Mother told him, but I find it is unlikely she used the word relocate (which was not directly quoted by the Expert) given the other information the Mother was providing about these events in the August and September 2023 timeframe, and the fact she had entered into a lease to rent a residence in downtown Calgary starting in September 2023. I do not find the Expert's use of the word relocation to be reflective of bias. I placed no weight on the use of the word relocation and, as already noted, I have found that the Mother did not intend to relocate at that time.

### 6. Confidentiality and Discussions with Opposing Counsel

[235] The Mother asserts the Expert had unilateral communications with the Father's counsel prior to the release of the PN8 Report. The Expert did not recall doing that and advised it would be unusual. This allegation has not been proven on the balance of probabilities.

### 7. Reliance on Information from Potentially Biased Sources

[236] The Mother argues the Expert improperly relied on information provided from LN (described as a terminated employee), KA (described as an abusive ex-partner) and her estranged family members.

[237] The Expert interviewed LN and reported in the PN8 Report what she told him. A parenting expert cannot control what people tell them and cannot simply ignore what they are told. At the Hearing, the Expert described this interview as part of getting an overview of the family. The Expert was also aware of and described the Mother's contrary information about LN. The information from or about LN is not referenced as being important or particularly relied on by the Expert. It was reporting on information he obtained, which dated back to 2022. I am not satisfied the Expert's evidence should be given less weight because of his consideration or reporting of that information.

[16] This was noted by the Expert in the PN8 Report at para 46.

[238] The Expert interviewed KA because he shares parenting with CA and could have information about the Mother's co-parenting and it is the Expert's belief that co-parenting skills with another parent may provide helpful information. Again, the Expert reported what he was told by KA. There was nothing wrong with the Expert gathering information from another co-parent. In this instance, the Expert did not report all he was told by the Mother about KA and the reason their relationship ended, including her allegations of abuse. In that sense, the reporting was unbalanced. However, I find that, on the whole, there is insufficient evidence that the Expert's opinion was founded on unproven allegations made by KA. In any event, I found KA's evidence to be more reliable than the Mother's evidence at the Hearing on the topics covered.

[239] With respect to estranged family members, I am not satisfied that the Expert obtained or relied on information from any of the Mother's estranged family members, as alleged.

### 8. Consideration of Educational Programs

[240] The Mother challenges the Expert's consideration of the educational options for the Child in Vancouver and Calgary moving forward.

[241] As noted above, the Expert was only able to have a direct discussion with Third Academy in Calgary, but was unable to gather information by speaking directly with Janus Academy, Renfrew or New Heights. In his PN8 Update, he relied on his review of online materials and information from Bond (whom I have found had a predisposition to support the Father's Relocation and not to assist the Mother in assessing Calgary programming options). On the other hand, the Expert had direct communications with the Father's proposed PALS program in Vancouver, again supported by Bond's opinion.

[242] I find that the Expert's assessment of the proposed educational programs was unbalanced and I have concerns about its reliability, in particular given the lack of direct information about Janus Academy which also employs ABA and appears to be the most comparable to PALS.

[243] In the circumstances, I have given limited-to-no weight to the Expert's opinion about the comparative educational options in Vancouver and Calgary, including in particularly his conclusion that PALS would be "the optimal fit" for the Child.

### 9. Deleting Information about the Mother

[244] The Mother argues that the Expert suppressed evidence by deleting information about the Mother that reflected positively upon her personality traits. The Expert was cross-examined about this at the Hearing, and some documentation about it was provided.[17] I am satisfied that he requested the deletion of inadvertently provided test data sheets as part of his ordinary practice and professional responsibility, not to hide positive information about the Mother.

[17] See, for example, Exhibit 54.

### 10. Father's Breach of Court Orders

[245] The Mother asserts that the Expert ignored the Father's breach of court orders, in particular relating to unilateral parenting time reductions, exclusion from therapeutic and educational decisions, and obstruction of summer programming.

[246] As discussed elsewhere in these Reasons, I am not satisfied that the Father breached court orders "relating to unilateral parenting time reductions". The Mother's assertion is based largely on her incorrect interpretation of how the June 2023 Order affected the April 2023 Award.

[247] With respect to the Father's exclusion of the Mother from decision-making and programming, it is not the role of a PN8 expert to make legal determinations about whether a party has breached court orders. In any event, the Mother provided the Expert significant information about her position in this regard. The Expert acknowledged the Father's approach in the PN8 Update at para 66: "The mother has appropriately expressed concern at being removed from updates", and in his noting of the importance of the Mother staying involved, for the Father to solicit the Mother's input, and the need for guardrails to ensure this happens. I am not satisfied the Expert ignored the Father's conduct as suggested by the Mother.

### 11. Family Violence

[248] The Mother argues that the Expert failed to recognize documented family violence patterns of the Father.

[249] In the PN8 Report, the Expert simply noted that both parties reported experiencing abuse from the other party, and concerning indications that the Mother has sought to involve others to establish a pattern of abuse by the Father (referencing police occurrence reports and the supervised parenting provider's reasons for terminating services). It was clear from the PN8 Report that the Expert recognized there was a dispute about whether there was family violence and did not make any clear findings about family violence in the PN8 Report. At the Hearing, the Expert confirmed his extensive experience and practice in screening for family violence, and I am satisfied he attempted to screen for family violence in this case and his lack of reference to physical violence implies he did not find any evidence of physical violence. This is consistent with my findings.

[250] With respect to non-physical family violence, the Expert expressly noted that his evaluation of the Mother's allegations against the Father for attempting to control and manipulate her were inconclusive and "this concern is highlighted here as an ongoing consideration for the Court".[18] The Expert's failure to reach a conclusion on this point does not mean he ignored allegations of family violence or that his recommendations should be given less weight.

### 12. Autism Support Principles / Attachment Theory

[251] The Mother asserts that the Expert ignored autism support principles and attachment theory. I reject this notion. The Mother was given the opportunity to adduce expert rebuttal reports but did not do so. She is not a qualified expert and is not able to provide the Court with expert opinion evidence. In any event, the Expert was clearly alive to, researched, and summarized autism

[18] PN8 Report at para 191.

support principles. Further, he referenced the Child's attachment to both parties, and the complex development and psychological concerns raised by relocation, including the heightened sensitivity to disruption to routine, environment and relationships that can be caused. The Expert's recommendation that the Father be permitted to relocate the Child to Vancouver does not mean he ignored these factors.

### 13. Test Applied

[252] The Mother asserts that the Expert applied the wrong legal test. A parenting expert is not a court and does not apply legal tests. In any event, the Expert was clearly alive to and cited relevant sections from the *Divorce Act* outlining the framework the Court applies in determining a child's best interests. The Mother's assertion that the Expert engaged in a character assassination of her, or applied a double standard in his treatment of the Father's character is unfounded.

### 14. Financial and Practical Impossibility

[253] The Mother asserts that the Expert failed to conduct an affordability analysis or recommend cost-sharing measures for future parenting upon Relocation. Given the focus of the PN8 Report and the information he had available to him, the Expert quite properly deferred this to the Court. He recommended parenting time for the Mother, and that the Court can consider the financial suitability of the proposed plan and make "reasonable adjustments to avoid undue financial hardship on the part of either parent going forward".

### 15. Conclusion

[254] I am not satisfied that the Expert exhibited bias, or that his opinions were founded upon biased or unreliable information. The Expert's work and opinion was presented in a balanced and professional manner.

[255] The PN8 Report was significantly out of date by the time of the Hearing, in particular with respect to events that post-dated the Expert's work (including the proposed Relocation). However, the PN8 Report nonetheless provided helpful insight in several areas, including the Expert's parent and parent-Child observations. It provided a professional opinion as of September 2024.

[256] The PN8 Update and the Expert's testimony provided more helpful, up-to-date opinions and information, including the Child's ongoing development since he last observed the Child in 2024. I gave that significant weight.

[257] However, a key aspect of the PN8 Update was the Expert's analysis of the availability of potential educational programs in Vancouver and Calgary. When I asked the Expert how important his conclusion about PALS was to his recommendations, he confirmed it was a significant factor. I have found the Expert's assessment, opinion and recommendations relating to the potential education support options in Vancouver and Calgary, and his conclusion that PALS is the "optimal" destination for the Child, to be of limited use. Given the importance of this aspect of his opinion to his overall conclusions, this significantly reduced the weight I gave the Expert's recommendations about educational programming, and overall.

## IV. Issues

[258] The threshold issue in this application is whether the Father should be permitted to relocate the Child to Vancouver. Flowing from that decision, an appropriate order for decision-making and parenting can then be considered: see ***Lemay v Lemay***, 2023 ABKB 303 at paras 10-25; ***Doroteo v Neudorf***, 2024 ABKB 764 at para 74. I find the appropriate process in this case is to consider the Father's proposed Relocation first, and then determine appropriate decision-making and parenting and other matters.

[259] Therefore, the issues addressed in these Reasons are:

(a) Should the Father be permitted to relocate the Child to Vancouver?

(b) What is an appropriate decision-making and parenting order?

(c) What is an appropriate sharing of the PN8 evaluation costs?

(d) What is an appropriate costs award?

## V. Analysis

### A. Should the Father be Permitted to Relocate the Child to Vancouver?

#### 1. Applicable Statutory Regime

[260] Although this matter was filed under a *Family Law Act*, SA 2003, c F-4.5 (*FLA*) action number, the parties agree that the *Divorce Act* applies because the parties were married and divorced and the federal *Divorce Act* is the preferred framework where available: ***Hejzlar v Mitchell-Hejzlar***, 2011 BCCA 230 at para 20.

[261] I find that the *Divorce Ac*t applies to this matter because the application is, in effect, a corollary relief proceeding, or a variation proceeding. Both parties were habitually resident in Alberta when this process was started, and both parties have accepted the Court's jurisdiction under the *Divorce Act*: *Divorce Act*, ss 4-5.

#### 2. Change of Circumstances

[262] A proposed move with children will often require a variation to a final or interim parenting order. The Father's proposed move to Vancouver with the Child is a "relocation", as defined under the *Divorce Act*, because it is "likely to have a significant impact on the child's relationship" with both parents. In those circumstances, the relocation is deemed to constitute a change of circumstances of the child for the purposes of section 17(5) of the *Divorce Act*: *Divorce Act*, s 17(5.2); ***Monahan v Monahan***, 2024 ABKB 454 at para 12.

#### 3. Burden of Proof

[263] Sections 16.93 and 16.94 of the *Divorce Act* address the burden of proof in relocation applications:

> Burden of proof — person who intends to relocate child
>
> 16.93 (1) If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.
>
> Burden of proof — person who objects to relocation
>
> (2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.
>
> Burden of proof — other cases
>
> (3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.
>
> Power of court — interim order
>
> 16.94 A court may decide not to apply subsections 16.93(1) and (2) if the order referred to in those subsections is an interim order.

[264] Notwithstanding the presumptions set out in these sections, the court must always consider primarily the best interests of the children in the particular circumstances of the case: ***Zawawi v Naim,*** 2025 ABCA 386 at para 42 [***Zawawi CA***].

[265] The burdens of proof in sections 16.93(1) and (2) will play an important role where the evidence in the relocation application does not allow a chambers judge to decide whether it is in the best interests of the child to relocate or stay: ***Nurmi v Nurmi***, 2023 ABCA 123 at para 9; ***Doroteo v Neudorf***, 2024 ABKB 764 at para 85.

[266] The Father argues that section 16.93(2) applies and that the Mother has the burden. To determine if section 16.93(2) applies, I must assess whether there is an order or agreement respecting parenting time, whether the parties "substantially complied" with the order or agreement, and, if so, whether the order or agreement provides that the Child spends "the vast majority of their time in the care" of one of the parents: ***TL v RAC***, 2024 ABKB 366 at para 58. If so, the burden of proof is on the parent opposing the relocation to prove the relocation would not be in the best interests of the Child: ***Link v Lenskyj***, 2022 BCCA 341 at para 17.

[267] The Father argues that the elements of section 16.93(2) are met because the court orders since the Mother was arrested provide the Father the vast majority of parenting time and those orders have been substantially complied with.

[268] The Mother argues that section 16.93(2) does not apply because there has not been substantial compliance with court orders. The Mother also argues that the onus should not be applied where the current arrangement is "built on interim or contested measures", that the Court should exercise its discretion under section 16.94, and that neither party should alone bear the onus.

[269] I find that I do not need to resolve whether section 16.93(2) applies in this case. The context of how this matter evolved is important.

[270] The parties originally consented to the PN8 Order in April 2022 when the Mother was the clear primary parent and there was not yet any court order in place. Both parties then acquiesced in months of delay to the start of the PN8 evaluation process. Had the PN8 process proceeded expeditiously, much of what happened in and after 2023 may very likely have played out differently.

[271] In any event, all arbitration awards and court orders after the PN8 Order were interim orders (without prejudice until the April 2023 Award), with a view to the ultimate determination of parenting in a trial with oral evidence following completion of the PN8 evaluation. It was a series of band-aids applied to evolving facts while everyone waited for the PN8 Report and the court date. The rationale set out in ***AB v MM***, 2023 ABKB 377 at paras 17-21 applies here. See also ***TL*** at para 71 and ***Zawawi v Naim***, 2025 ABKB 382 at para 96 [***Zawawi***], aff'd ***Zawawi CA***.

[272] The entire process was then complicated by the Mother's arrest for abduction which, in my view, likely could have been avoided or resolved without police involvement. Following that, the Mother was placed under strict supervised parenting, which the Father did not agree to change following the PN8 Report unless the Mother agreed to his position.

[273] The process was further complicated by the Father's later decision, only after the PN8 Report, to seek Relocation.

[274] In all the circumstances, I agree with the Mother that the parties should be on an equal footing with respect to the onus. I exercise my discretion under section 16.94 of the *Divorce Act* and find that sections 16.93(1) and (2) do not apply. Accordingly, section 16.93(3) of the *Divorce Act* applies and each of the parents has the burden of proving whether the Relocation is in the best interests of the Child. That is, no presumption exists and the Court makes its decision solely based on an assessment of the best interests of the Child in accordance with the factors in the *Divorce Act*: ***AB*** at para 21.

### 4. Legal Framework

[275] The legal framework applicable to relocation applications under the *Divorce Act*, is described in ***Lemay*** at paras 83-90:

> [83] The court has jurisdiction to authorize or prohibit the relocation of the Children: *Divorce Act*, sections 16.1(7), 16.9 and 16.91-16.92.
>
> [84] In [***Gordon v Goertz***, 1996 CanLII 191 (SCC)], the Supreme Court of Canada set out a framework for determining what was in the best interests of the

child in mobility applications. The flexibility of the ***Gordon*** framework allowed the principles to be refined and supplemented and recent amendments to the *Divorce Act* have largely codified many of the ***Gordon*** principles, with some exceptions. The new *Divorce Act* regime reflects the collective judicial experience of applying the ***Gordon*** framework for 25 years: [***Barendregt v Grebliunas***, 2022 SCC 22] at paras 105-110; ***Nurmi*** at paras 6-8.

[85] Section 16(1) of the *Divorce Act* provides that the "court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order". Section 16(2) provides that "when considering the factors referred to in subsection (3) the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being." In the relocation context, ultimately, the sole and crucial question is whether relocation is in the best interests of the child, having regard to the child's physical, emotional and psychological safety, security and well-being: ***Barendregt*** at para 152.

[86] The assessment is "highly contextual", "highly fact-specific" and discretionary; the court shall consider "all factors related to the circumstances of the child": ***Barendregt*** at paras 97 and 152-153. Without limiting the factors the court may consider, it must consider certain expressly legislated factors: *Divorce Act*, sections 16(1)-(4) and (6), and section 16.92; ***Barendregt*** at paras 153-154. And the court must not consider certain things in certain circumstances: sections 16(5) and 16.92(2).

[87] As discussed earlier, under section 16.92(2) of the *Divorce Act*, in deciding whether to authorize the relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the moving parent would relocate without the child or not relocate. In ***Nurmi***, the Alberta Court of Appeal has recently reconfirmed that the purpose of section 16.92(2) is to avoid the "double-bind" recognized long ago in [***Spencer v Spencer***, 2005 ABCA 262] at para 18 (and numerous cases since then):

> In conducting this inquiry, it is problematic to rely on representations by the custodial parent that he or she will not move without the children should the application to relocate be denied. The effect of such an inquiry places the parent seeking to relocate in a classic double bind. If the answer is that the parent is not willing to remain behind with the children, he or she raises the prospect of being regarded as self interested and discounting the children's best interests in favour of his or her own. On the other hand, advising the court that the parent is prepared to forgo the requested move if unsuccessful, undermines the submissions in favour of relocation by suggesting that such a move is not critical to the parent's well-being or to that of the children. If a judge mistakenly relies on a parent's willingness to stay behind "for the sake of the children," the *status*

> *quo* becomes an attractive option for a judge to favour because it avoids the difficult decision the application presents.

[88] To avoid the double bind, courts do not compare the proposed move against a scenario where the parent does not move, but the two alternatives assuming the parent does move. In ***Nurmi***, the Court stated at para 15:

> So, the options are to assume the applicant will relocate and consider whether it is in the best interests of the children to relocate with the applicant or to remain with the respondent. Remaining with the applicant in Canada is not an option for the court to consider.

[89] In [***Scott v MacLean***, 2020 ABCA 173], the Court of Appeal described the analysis this way, at para 15:

> The two choices come down to which situation is better for, or less detrimental to, the well-being of the children: being with Parent A in a new place and without the same amount of contact with Parent B, or being with Parent B in the same place without the same amount of contact with Parent A. Any other analytical construct does not answer the fundamental question being posed; is it in the best interests of the children for them to stay or go in the circumstances. The court is not being asked to take into account a third alternative - whether it is better if no one moves.

[90] Within this relocation framework, the difficulties inherent in determining the best interests of children are "amplified" because "untangling family relationships may have profound consequences, especially when children are involved": ***Barendregt*** at para 97-98. [...]

[276] See also ***Zawawi CA*** at paras 35-36.

[277] I remind the parties that the Court's focus is the best interests of the Child, not the best interests, needs or desires of the parents: ***FAH v MTH***, 2020 ABQB 193 at para 28; ***Ralstin v Hupalo***, 2016 ABQB 47 at para 59; ***Zawawi CA*** at para 19.

[278] The list of best interest factors in the *Divorce Act* "is not a checklist to be tabulated with the highest score winning. Rather it calls for the court to take a holistic look at the child[ren] needs and the people around [them]": ***Zawawi CA*** at para 19.

[279] Below I review the factors set out in sections 16 and 16.92 of the *Divorce Act* as I consider which situation is better for, or less detrimental to, the Child between the two available options – the Child relocating with the Father to Vancouver (with the Mother in Calgary) or remaining with the Mother in Calgary (with the Father in Vancouver).

### 5. History of Childcare (Section 16(3)(d))

[280] In all cases, the history of caregiving will be relevant: ***Barendregt*** at para 123; ***Lemay*** at para 92.

[281] The Mother was the Child's primary caregiver for the first four years of the Child's life, until the March 2023 Award. From March 2019 until December 2019, the Father was involved in shared parenting, but not nearly to the extent as the Mother. From January to September 2020, the Father had minimal involvement with the Child or his care. The Mother, and then KA starting in April 2020, were mainly involved in the Child's care. From September 2020 to July 2021, the Father had somewhat more regular but infrequent parenting time – the Child was cared for primarily by the Mother and KA.

[282] The Father's parenting time increased in July 2021 after the Mother and KA split up, and was set to increase further in December 2021. However, from January to March 2022 the Father had minimal parenting time and then resumed more regular parenting time. Following the 2022 Parenting Order, the Father had increased regular weekend parenting time from Friday to Sunday, but this was subject to the parties' disagreements and changes from time to time. The Mother remained the primary caregiver.

[283] Everything changed with the March 2023 Award, which contemplated that the Father would be the primary caregiver, and the Mother would have two days of weekend parenting time. This was increased to three days (which would have brought the parties into shared parenting) under the April 2023 Award, then reverted back to two days with the June 2023 Order. As a result, from March 2023 to mid-August 2023, the Child's parenting time was in a state of flux and unpredictability due to both parties' positions and approaches. They both had significant parenting time during this period, under significant conflict and stress.

[284] From mid-August 2023 until the Hearing, the Father has been the Child's primary parent. From mid-August 2023 until the November 2024 Order, the Mother was allowed supervised parenting and was often not able to exercise her time. Since the November 2024 Order, the Mother has had more regular parenting time, usually at least one day per week or more as allowed by the Father.

[285] In these unique circumstances, I find both parties have had a significant role in the historical care for the Child. The Mother has had greater care responsibilities for longer, but the Father's time is also significant and more recent.

[286] In the circumstances, I find this factor to slightly favour the Child remaining with the Mother in Calgary.

### 6. Child's Needs (including Stability) Given Their Age and Stage of Development (Section 16(3)(a))

[287] Given the age of the Child, these observations from ***Lemay***, at para 99-100 are apposite:

> [99] The Alberta Court of Appeal has repeatedly emphasized that stability, peace and reliability are crucial at a young age: ***Werry v Kish***, 2023 ABCA 70 at para 6;

> ***Ekeberg v Swan***, 2022 ABCA 52 at 18; see also ***Barnes v Park***, 2001 CanLII 24146 (Ont CA) at para 10. While many cases involve very young children, and the need for stability may become less pronounced as children get older, numerous courts have highlighted the critical importance of stability in children at or near the same age ranges as the Children in this case: ***Ekeberg*** at para 18; ***Klymenko v Klymenko***, 2020 ONSC 5451 at para 22; ***Young v Hanson***, 2019 ONSC 1245 at para 32; ***Low v Robinson***, 2000 ABQB 60 at para 57; ***Tatarin v Tatarin***, 2022 ABQB 306 at para 18; ***Tudor Price v Tudor Price***, 2020 ONSC 145 at para 17; ***McNeely v McNeely***, 1999 CanLII 6770 (NWTSC) at paras 12 and 48; ***KP v SK***, 2021 BCSC 1426 at para 97; ***Ahmad v Ahmad***, 2019 ONSC 6804 at para 98; ***Tovell v Jamieson***, 2017 ONSC 5079 at para 46.
>
> [100] In any relocation, there will be an immediate disruption to stability associated with uprooting life patterns and relationships. Relocation inevitably leads to disruption, profound consequences, and an earthquake to the *status quo*: ***Barendregt*** at paras 97-98; ***KDH*** at para 33. If this was the only stability factor considered, it would always favour the *status quo* and never favour relocation. However, some or all instability and disruption caused by a relocation may be short-lived. Courts must look not only at the immediate instability, but the potential for stability or instability in both scenarios moving forward.

[288] The Child's level 3 ASD diagnosis amplifies the need for stability. As noted by the Expert, relocating the Child raises "complex developmental and psychological concerns" due to heightened sensitivity to changes in routine, environment and relationships which can lead to increased dysregulation and reduction of therapeutic gains.

[289] Stability must be considered holistically, comparing the two available scenarios. Both short-term and long-term stability are important: ***Lemay*** at para 100. The focus for a child with special needs should be long term, considering stability of routine, environment and relationships (personal, family and professional/support).

[290] In either scenario, the Child will lose at least some of the stability of his environment, as he would not remain primarily in the Father's Calgary home. However, he is already familiar with the Mother's home in Calgary.

[291] If the Child relocates to Vancouver, the Father's history of residential and financial stability (other than the enormous financial burden of this litigation) will likely continue. There will be short and long term disruption of the Mother-Child relationship, as well as the Child's current nanny and the support teams at AP and BTLC. There will also be short term disruption to his professional support network due to the transition to PALS, but there will be long term stability because he can stay with PALS for his entire school life. The Father is skilled in arranging for the Child's educational and developmental support and has done an exemplary job in assembling a supportive team of professional educators, care providers, nannies and mentors since he took over primary care in 2023.

[292] The Father also brings remarkable stability through his strict adherence to a structured routine for the Child. If ASD was not involved, his approach might be considered too rigid.

However, for the Child, I find that the Father's structured approach to be a significant benefit to the Child's well-being.

[293] The Mother offers significantly less stability in Calgary. There would be short and long term instability through the disruption to the Father-son relationship. Since 2020, the Mother has moved residences numerous times (at least from Altadore to Bonavista to Bragg Creek to Canmore to Bragg Creek to downtown Calgary to Altadore to Crescent Heights). Her financial stability appears to have settled but her new job is very new. The stability of care support in Calgary is less clear than in Vancouver – BTLC will not be an option beyond the current school year, but I am satisfied suitable long term options would be available in Calgary.

[294] The Mother's instability with respect to relationships with those involved in the Child's care is a serious concern. I agree with the Expert that the Mother's communications with adults are often emotionally dramatic, erratic, chaotic, reactive and manipulative. Her communications increase in aggression and intensity, and become accusatorial or threatening when others do not agree with or act in accordance with her view of the Child's best interests. The evidence is replete with examples of this, and her treatment of the Father, the Arbitrator, the Expert, the supervising agency and LFD are particularly troubling examples. Her apology and assertion in 2023 that she had learned from therapy about the unproductive nature of her communications did not extinguish this problem. The Mother's communication style and approach to disagreements about the Child risk significant instability for the Child if he remains in Calgary with the Mother and the Father is Vancouver. It is a major downside to the Child remaining in Calgary.

[295] The Mother raises the special needs of the Child and asserts that he has regressed while in the Father's care. Her argument is that the Child's needs require him to be with her in Calgary. I disagree. I accept the evidence that the Child has ups and downs, does not develop linearly, and had some significant regression following the change to the Father's care in 2023. However, on balance, the significant support network assembled by the Father has worked and I find the Child has, overall, seen significant improvement since the involvement of the ABA-focussed approach of AP and BTLC. I accept the Expert's observation (and other evidence) of improvement between the time of the PN8 Report and the PN8 Update. I reject the parties' attempts to blame each other for the Child's specific, nuanced, situation-dependent behaviours.

[296] I find that this factor strongly supports the Child relocating to Vancouver with the Father.

### 7. Nature and Strength of Child's Relationships with Important People in their Lives (Section 16(3)(b))

[297] As per ***Lemay*** at para 107:

> [107] Assessing the nature and strength of children's relationships under section 16(3)(b) is not necessarily an exercise in tallying up which post-relocation scenario will likely have more relationships. It should not be assumed that quantity is necessarily more important than quality. The analysis should focus on the nature of the specific relationships children currently have (which could be positive or negative), the importance or influence of the relationships on the children's lives, and the impact the relocation would actually have on those relationships. Further,

> the court should factor in the opportunity to develop new relationships, or deepen existing relationships. It is an assessment of, on balance, which post-relocation scenario provides more overall benefit (or least detriment) to the children in terms of their relationships. Assessing this can be an immensely difficult task.

[298] Notwithstanding being exposed to multi-year tumult, the Child maintains a strong attachment and positive relationship with both parties. I find that both parties are committed and loving in their care. In my view, the Father at times unreasonably attempted to downplay the Child's relationship with his Mother.

[299] I also find that the Child has strong relationships with each of his half-sisters, CA and IM, however, the Child's interactions with CA have been significantly reduced since 2023 due to the Mother's reduced parenting time. Meanwhile, the Child has been living primarily in the same home with IM. In either scenario, the Child will have his relationship with one parent and one-half sister significantly disrupted.

[300] The Father's siblings and parents do not reside in Calgary or Vancouver; they are in Victoria, the United States and Ottawa. He will be closer to his brother in Victoria if he relocates to Vancouver. The Child has positive relationships with the Father's family. The Mother does not appear to have a positive relationship with her family, located in British Columbia and Edmonton. It does not appear the Child has a material relationship with the Mother's family.

[301] As noted, relocation will cause disruption with the Child's support team at AP, BTLC and his nanny. There is no guarantee whether or for how long these relationships would remain if the Child stays in Calgary. It is unknown whether the Father's nanny would be willing to work with the Mother. BTLC would remain involved at best only for a short time.

[302] On balance, I find this factor is neutral.

### 8. Willingness to Support the Other Spouse's Relationship with the Child (Section 16(3)(c))

[303] Although I accept that both parties claim to be willing to support the other spouse's relationship with the Child, both parties struggle to actually do that. This is an area that needs significant work. Far too often the parties seem to allow litigation strategy or emotions to govern their approach, instead of the Child's best interests. Their inability to rise above their differences is not in the Child's best interests.

[304] For the Mother's part, she was willing to provide the Father parenting time with the Child in the early years, but only if it was on her terms and when she believed it was appropriate. And she did so often while she was also quite critical of the Father. As the Father began to push for more structured and certain parenting time, the Mother became less and less collaborative, and eventually became actively counterproductive toward the Father-Child relationship. She withheld the Child based on her erroneous understanding of a court order. She made unsubstantiated allegations of neglect and abuse of the Child to Children's Services, the police, the Expert, the Arbitrator, and the Court. She initially suggested the Father be subject to supervised parenting. She threatened to remove him from the Child's life.

[305] For the Father's part, he was overly rigid with the Mother. Once he had primary parenting, he was willing to give the Mother parenting time only on his terms, but otherwise stood steadfastly upon the court orders when it suited him. After he obtained the June 2023 Order, he took no steps to enforce, or to encourage the Mother to enforce, the Arbitrator's April 2023 Award, which eliminated a day per week of parenting time the Arbitrator intended the Mother to have. It was obvious that Justice Price was only enforcing an award, not intending to make a new substantive parenting decision. The Father precipitously resorted to contacting the police in August 2023 which he likely knew would further escalate matters. He refused to reasonably negotiate new parenting terms to increase the Mother's parenting time after the restrictions of the Mother's release conditions and criminal charges were removed. Then, he refused to immediately give the Mother the parenting time recommended by the Expert in the PN8 Report unless the Mother completely agreed with the Father's position. He failed to consult with the Mother about decisions pertaining to the Child in breach of some court orders. He failed to reasonably provide her information about the Child. He actively took steps to reduce her involvement.



[306] In the circumstances, neither party can be considered to have been a particularly "friendly" parent, as contemplated in ***Barendregt*** at para 133. I agree with the Expert that clear guardrails are necessary.

[307] This factor is neutral.

### 9. The Child's Views or Preferences (Section 16(3)(e))

[308] Given the Child's age and stage of development, the Child's views and preferences cannot be ascertained and are not relevant to my determination.

### 10. Cultural, Linguistic, Religious and Spiritual Upbringing (Section 16(3)(f))

[309] There is not much information about this factor in this case. It is a neutral factor.

### 11. Plans for the Child's Care (Section 16(3)(g))

#### a. Residence / Home Life

[310] The Father has lived in Vancouver twice before, for an aggregate of 15 years. He plans to find a home near the Child's school. After the first phase of the Hearing, the Mother moved to a larger home in Crescent Heights so the Child and CA could have separate bedrooms. This factor is neutral.

#### b. Support Networks

[311] Support networks for parents and children are a critical part of a parenting plan, as the best interests of children are served when parents feel supported: ***Barendregt*** at paras 19, 172; ***RLF v STF***, 2022 ABQB 492 at para 34; ***Lemay*** at para 131.

[312] It does not appear that either party has extensive personal support networks. The Father describes a very deep network of friends and contacts in Vancouver. He plans to hire a nanny in Vancouver. The Mother has AV and other supporters.

[313] This factor is neutral.

### c. Work / Financial Matters

[314] The Father appears to have a good job in Vancouver, and his proximity to his business contacts may provide him additional opportunities. He would not have to work weekends, but would continue to travel once per month for conferences. The Child's placement at PALS would allow the Father to work in person. I am satisfied that the Father has the financial capacity to care for the Child. Little evidence was presented about the British Columbia financial support system for children with ASD, or whether it is comparable to what the Child receives in Alberta. The Father's current financial situation has been significantly weakened by this litigation.

[315] The Mother's employment has been somewhat sporadic since she re-entered the employed workforce in 2024. Since the first phase of the Hearing, she changed jobs to be in Calgary to better facilitate her parenting. She currently has a stable salaried position in the hospitality industry where she makes approximately $55,000 per year. The Child would continue with FSCD and PUF funding, and I find the Mother has the financial capacity to care for the Child and CA in her present circumstances. The Mother's financial situation has likely also been weakened by this litigation, and she has not yet paid her court-ordered share of the Arbitrator's fees, or any child support since the change of parenting in 2023. In the event the Separation Agreement is not binding, her financial situation may have been weakened by the Father's failure to pay adequate spousal and/or child support, but I do not make any findings in this regard.

[316] On balance, this factor is neutral.

### d. School and Education

[317] The Father has the Child enrolled to begin with PALS. PALS is an appropriate and strong long term educational support program for the Child with an ABA focus, attractively low staff to student ratios and other supports are available including speech therapy. However, for reasons stated above, I do not accept the Expert's opinion that PALS is "optimal", in the sense that it is to be preferred over Calgary options, or the Father's opinion that there is no comparable program in Calgary.

[318] The Mother believes that an appropriate educational support program will be available for the Child in Calgary. While the evidence about options in Calgary is not as concrete as it is for Vancouver, I am satisfied that Janus Academy in Calgary, which offers an ABA focus and low staff to student ratios, would likely be available to the Child in Calgary long term, if not immediately, and that AP and BTLC would likely agree to act in the best interests of the Child to provide continued support in the short-term until a long-term plan could be put into place.

[319] The concrete and strong long term plan in Vancouver is offset by the existing known support environment in Calgary, albeit with a less concrete but still strong long term plan.

[320] On balance, this factor is neutral.

### e. Community Engagement

[321] Neither party put much evidence about their plans to engage the Child in the community. I find the Mother has a more outward-looking focus with the Child and is more likely to actively engage with the community than the Father.

### f. Extracurricular Activities

[322] The parents have different approaches to extracurricular activities. The Father does not support engaging in numerous activities, and only plans to continue with swimming as an extra-curricular activity. The Mother supports a more varied extracurricular activity schedule, which in the past appears to have been beneficial for the Child's development and social skills.

### g. Conclusion

[323] Considering all of the plans for the Child's care, I find this factor to be neutral.

## 12. Willingness and Ability of the Parents to Meet the Child's Needs (Section 16(3)(h))

[324] Both parties are willing to care for the Child.

[325] I accept and agree with the Expert that both parties are generally able to meet the Child's needs. I also accept that when it comes to direct parenting of the Child, the Mother has stronger direct parenting skills than the Father but this does not mean the Father is inadequate. The Mother offers a more nurturing, explorative, activity-based parenting style. The Father offers a less nurturing, more structured, rigidly scheduled, less explorative parenting style.

[326] The parties each challenged the other parent's parenting ability. They have both done this frequently since separation and at the Hearing. Based on the evidence before me, I reject the Mother's assertions that the Father is neglectful or abusive toward the Child, or an unfit parent.

[327] On balance, I find this factor favours the Child relocating with the Father. The Mother's superior one-on-one parenting skills are outweighed by at least two other factors.

[328] First, I agree with the Expert that the Mother exhibits, at times, impulsive and questionable decision-making. An example of this was her choice to move to Canmore (even temporarily) rather than Calgary when her Bragg Creek home required repairs and she had to sell her vehicle, at a time that the Father was in Calgary and the Child's LFD care program was just outside Calgary. She effectively stranded herself and the Child distant from established support, and her main reason for doing so appears to have been because she wanted to maintain a mountain lifestyle for the Child. The Father, on the other hand, has made decisions methodically and with the engaged support of professionals.

[329] Second, parenting ability, particularly for a special needs child, involves more than direct parenting of the Child. It includes being a stable, collaborative advocate for the Child to ensure

appropriate supports are in place. This also requires active and constructive communication with numerous third parties.

[330] As noted, the Mother's communication style is problematic when others do not agree with her about the Child's best interests, when she does not agree with a party's conduct related to the Child, and when she is stressed. She acknowledged acting in what she described as "out of character" numerous times and apologized. Despite steps toward improving through therapy and counselling, the Mother continues to struggle with her communication style and conflict. I agree with the Expert that these personality issues "are negatively and significantly impacting her parenting and co-parenting abilities, particularly in light of [the Child's] unique needs for stability and very substantial support"[19] and that, despite positive steps toward her personal development, the Mother is "significantly less equipped to obtain appropriate supports" for the Child.[20] I find that the Mother's combative communication style puts the Child's stability and best interests at material risk if the Child remains in Calgary with the Mother.

[331] As noted in ***FAH***, at paras 28-29 (emphasis added):

> [28] **The courts do not expect perfection from parents, but where a parent cannot see that his or her destructive behaviours are contrary to the best interests of the children, the court has an obligation to intervene**. [...] As part of the consideration of the best interest of the children, I must consider that children should have as much contact with each parent when it is in their best interests to do so. That requires that I take into consideration a parent's insight, understanding and ability to assist his/her children through emotional, psychological, developmental, academic, social and other challenges. [...]
>
> [29] The question in this trial is not really about who contributed to what conflict. Instead, it is to consider those factors that help define the best interests of the children, including each parent's ability to understand his/her role in the conflict and to understand how that conflict has impacted the children. **It is also to consider whether the parent is equipped to assist the children by altering his/her own behaviours**, and by learning the skills needed to help the children with their behaviours and emotions.

[332] The Father, on the other hand, has a more constructive and collaborative approach with third parties (other than the Mother). I find the Father's decision-making and parenting ability, while certainly not perfect, on balance, is more aligned with the Child's best interests.

[333] This factor favours Relocation.

### 13. Willingness and Ability to Communicate and Cooperate on Matters Affecting the Child (Section 16(3)(i))

[334] As per ***Lemay*** at para 151:

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[19] PN8 Report at paras 184-185.
[20] PN Update at paras 58-60.

> [151] When one parent is physically distant from the day-to-day lives of their children, the willingness and ability of the parents to transparently communicate and constructively cooperate about matters affecting the children becomes a critical factor. The parent having primary care of the Children becomes the main link for the distant parent to know details about young children's lives, and to maintain and foster a relationship with them. This is particularly the case in the years before the children become independently able to communicate by phone or via electronic means. An open and flexible approach is essential to avoid the distant parent becoming "out of sight, out of mind".

[335] Both parties frequently struggle to communicate effectively about the Child. As noted elsewhere, the Mother often resorts to insults, aggression, threats, attacks and claims against the Father. In response, the Father tends to avoid communication with the Mother as much as possible, to the point of unreasonably excluding the Mother from important decisions and information about the Child. Their approaches aggravate the problem. The Father's avoidance amplifies the Mother's aggression, and the Mother's aggression causes the Father to avoid communications further, in an accelerating cycle of dysfunction.

[336] Both parties need to improve their communication, although I have concerns about whether this will be possible. I agree with the Expert that clear communication guardrails are needed in the future. However, on balance, I find that the Father's communication is more likely to improve with clear guardrails than the Mother's communication.

[337] This factor favours Relocation.

### 14. Family Violence and its Impacts (Section 16(3)(j))

[338] Family violence is a critically important factor in relocation cases: ***Barendregt*** at paras 146-147. At para 143, the Supreme Court of Canada said (emphasis added):

> [143] The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. **Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives**: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. **Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it**: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 *I.J.C.Y.F.S.* 493, at p. 497.

[339] See also ***Laurence v Ross***, 2025 ABKB 131 at paras 121-123.

[340] Section 16(3)(j) of the *Divorce Act* requires the Court to consider any family violence and its impacts on, among other things: (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child.

[341] The *Divorce Act* includes a non-exhaustive definition of family violence:

> ***family violence*** means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes
>
> (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
>
> (b) sexual abuse;
>
> (c) threats to kill or cause bodily harm to any person;
>
> (d) harassment, including stalking;
>
> (e) the failure to provide the necessaries of life;
>
> (f) psychological abuse;
>
> (g) financial abuse;
>
> (h) threats to kill or harm an animal or damage property; and
>
> (i) the killing or harming of an animal or the damaging of property;

[342] The Expert has expertise in and actively screens for family violence in every case as part of his ordinary PN8 practice. He did not flag any specific concern about family violence in this case, but noted the concerns the raised by the parties. He did not observe any indication that the Child required therapy to address the consequences of family violence. He did not reach conclusions about whether there was a pattern of coercive and controlling behaviour.

[343] I find that there is no evidence of physical abuse, sexual abuse, the failure to provide the necessaries of life, or harm to animals or property in this case. It is unfortunate and inappropriate that concerns about physical or sexual abuse were even implied in this history of this case. They are not a concern.

[344] However, violence need not be physical: ***R v Perkins***, 2024 ABCA 409 at para 50; ***Laurence*** at para 127; ***NKM v KE***, 2024 ONCJ 551 at para 21; ***Dayboll v Binag***, 2022 ONSC 6510 at para 41; ***El Khatib v Noun***, 2023 ONSC 1667 at para 71.

[345] Both parties accuse the other of non-physical family violence in the form of coercive and controlling behaviour, which can also engage the distinct enumerated examples of family violence in the form of harassment, psychological abuse and financial abuse.

[346] What is clear from a review of the jurisprudence and academic literature in this area is that the distinct forms of non-physical family violence often overlap, and can insidiously manifest themselves cumulatively in subtle and nuanced ways: ***JMM v CRM***, 2025 ONSC 3067 at paras 286-287; ***Laurence*** at paras 129, 135; ***NKM*** at para 17; ***MAB v MGC***, 2022 ONSC 7207 at para 183; ***LL v AL***, 2025 BCSC 551 at para 30; ***NM v SM***, 2022 ONCJ 482 at para 111; ***Wiafe v Afoakwa-Yeboah***, 2021 ONCJ 201 at para 238.

[347] Given the nature of family violence, statutory definitions and labels cannot be given precise definitions. Any definition adopted must be sufficiently flexible, and should be interpreted in a large and liberal manner that best protects and promotes the safety and wellbeing of families and children: ***JMM*** at para 287.

[348] Generally, "coercive control" has been described as a pattern of abusive behaviours used to control or dominate a family member or intimate partner: ***Ginese v Fadel***, 2024 ONSC 2427 at para 123. "Coercive" behaviour involves conduct that is threatening, intimidating or exerts inappropriate pressure on the person, and "controlling" behaviour involves conduct that has the intent or effect of inappropriately managing, directing, restricting or interfering with, undermining or manipulating any important aspect of the other person's life: ***JMM*** at para 287.

[349] It is useful to acknowledge the types of conduct that can constitute or contribute to non-physical family violence. In ***JMM*** at paras 288-289, the Court provided a helpful list of general types of behaviour that have been considered coercive and/or controlling, either alone or in combination:

1. Isolating the person from friends and family;

2. Depriving the person of basic needs, such as food;

3. Monitoring the person's time;

4. Monitoring the person via online communication tools or spyware;

5. Taking control over aspects of the person's everyday life, such as where they can go, who they can see, what they can wear and when they can sleep;

6. Controlling aspects of the person's health and body;

7. Depriving the person of access to support services, such as medical services;

8. Humiliating, degrading or dehumanising the person;

9. Repeatedly making jealous accusations;

10. Regulating the sexual relationship;

11. Inappropriately controlling the person's finances, limiting access to financial support or controlling how they spend money;

12. Making threats or intimidating the person;

13. Threatening to harm children, other people or pets;

14. Threatening to publicize sensitive information about them;

15. Threatening to report them to police or other authorities without justification;

16. Damaging property;

17. Pressuring them to participate in activities against their will;

18. Setting inappropriate rules and regulations for the person;

19. Inappropriately blaming the person for issues;

20. Repeatedly treating the person with disrespect in private and in front of others;

21. Stalking the person;

22. Inflicting physical, sexual, verbal or financial abuse;

23. Gaslighting the person, by using various tactics including denial, misdirection, contradiction, withholding and hiding information, discounting information and lying to make them question their own memory, perception, emotional stability and sanity;

24. Not allowing the person to go to work or school;

25. Threatening to take actions that could threaten their employment;

26. Taking the person's electronic devices and changing passwords;

27. Repeatedly reinforcing traditional gender roles; and

28. Turning children against the person, ie. alienation.

[289] Following separation or divorce, a party may use different means of asserting control over their former partner, either directly or through the

children. Examples of post-separation coercive and controlling behaviour as accepted in the caselaw are:

1. Refusing to comply with court orders;

2. Regularly threatening a former partner with the loss of parenting time with a child;

3. Constantly making unilateral decisions about children without legal authority to do so;

4. Encouraging the children to disrespect the other parent, or otherwise undermining the other party's parenting;

5. Picking up or dropping off children late;

6. Refusing to make support payments on time or at all;

7. Sharing inappropriate information with children, or regularly involving them in adult issues;

8. Excessively e-mailing, phoning or texting the former partner;

9. Stalking, harassing, or threatening to hurt someone;

10. Filing false reports with the police or a child protection agency;

11. Inappropriately undermining the person's relationship with their children,; and/or

12. Engaging in frivolous or abusive tactics in relation to the legal process[21]

[350] See also: ***Laurence*** at para 132, 134; ***MAB*** at paras 184, 187.

[351] Financial tactics that can contribute to coercive and controlling behaviour can include deliberately making inadequate support payments to financially control the other party (***Laurence*** at para 128; ***NM*** at para 125; ***FS v MBT***, 2023 ONCJ 102 at paras 132-133; ***SN v EC***, 2014 BCPC 82 at para 132) or intentionally failing to make financial disclosure for the purpose of inflicting psychological harm or to control a party (***Laurence*** at para 138; ***TAG v DCP***, 2022 BCPC 99 at para 373).

[21] This has been coined "litigation abuse": Nicholas Bala, *Litigation Abuse in Ontario Family Law Cases*, [Source not specified], 2025 CanLIIDocs 1843, <https://canlii.ca/t/7np4x>, retrieved on 2025-11-16.

[352] In the context of making parenting decisions or relocation decisions, a key consideration is the assessment of the likelihood that parents will continue to engage in family violence and expose the child to it and its significant associated harm.

[353] The Mother asserts the Father weaponized police involvement, engaged in economic manipulation, systematic intimidation and used the Child as an instrument of control. She argues that the Relocation is the final step in a lengthy campaign of parental alienation designed to remove the Mother from the Child's life.

[354] I find that the Father did not engage in systematic intimidation and did not use the Child as an instrument of control. I specifically reject the Mother's position that the Father has engaged in a lengthy campaign of parental alienation.

[355] However, I find the Father engaged police assistance precipitously as noted above, made a very questionable choice to stop making child support payments during the period March 2023 to August 2023 (when primary parenting was changed). He contributed to the Mother's isolation from the Child by failing to offer an unconditional increase in parenting time following the removal of the criminal release conditions and the issuance of the PN8 Report, and excluding the Mother from decision-making and information about the Child. The Father's approach, while at times a response to the destructive communication style of the Mother, significantly contributed to the conflict between the parties and complicated this litigation.

[356] On balance, the Father's conduct did not rise to the level of family violence and, even if it did, I am satisfied that with appropriate court guidance, there is a low risk of the Father engaging in similar conduct in the future.

[357] In contrast, based on all my findings noted above, I find that the Mother engaged in a pattern of coercive and controlling behaviour, including harassment and attempted psychological abuse of the Father. She did so through her cumulative conduct, including aggressive, insulting and demeaning communications to him; unsubstantiated allegations against the Father that she made to police, the Arbitrator, Children's Services, the Expert and the Court; and her threats to the Father (including threats of obtaining EPOs against him, using information from his computer against him, and exposing the Mother's narrative of the Father's conduct publicly or to his family). Without further, ongoing and long-term professional mental health support, I am concerned the Mother will continue to engage in this conduct.

[358] It is in the Child's best interests to be with the parent that is less likely to engage in family violence or similar conduct in the future. This factor favours Relocation.

### 15. Relevant Proceedings, Orders, Conditions or Measures (Section 16(3)(k))

[359] The relevant proceedings, orders, conditions and measures are described elsewhere in these Reasons and will not be repeated. The criminal release conditions, peace bond conditions, and Restraining Order restrictions previously applicable to the Mother are no longer extant. Previous interim court orders will be replaced and are not binding on me. This factor is neutral.

### 16. Reasons for the Relocation (Section 16.92(1)(a))

[360] A court should avoid casting judgment on a parent's reasons for moving; a moving 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: ***Barendregt*** at para 129; ***Lemay*** at para 164. All Canadians are free to move from one place to another without their reasons being unnecessarily scrutinized by courts or their former partners: ***VTM v RTM***, 2025 ABKB 89 at para 38; ***Gordon*** at para 34.

[361] The Father's reasons for moving are reasonable and are not designed to destroy the Mother's relationship with the Child as alleged. The Father's work requires him to relocate soon, and he will be exposed to other business or financial opportunities which would benefit the Child. He has a deeper network of friends and contacts there. He legitimately believes that there are superior educational programs in Vancouver.

[362] This factor is neutral.

### 17. Impact of the Relocation on the Child (Section 16.92(1)(b))

[363] Several of the relocation impacts on the Child are discussed elsewhere in these Reasons.

[364] If the Child relocates, the Child will be moving to a new environment, including a new city, a new school, and a new support network. His strong relationship with his Mother will be impacted and he will be under her care much less than he historically has (prior to August 2023). He will lose his current education and caregiving supports, other than his Father. He will maintain his exposure to his Father and associated routine.

[365] If the Child remains in Calgary with the Father in Vancouver, the Child will maintain his general environment and some of his support network (at least temporarily). His relationship with his Father will be impacted. He will be under his Father's care much less than he has been over the past two years. He will lose the benefit of the Father's more structured routine and gain the benefit of the Mother's more nurturing approach and strong direct parenting skills.

[366] A critical impact under this factor is the severe impact on the Child's relationships with their parents. This is the unavoidable reality of all relocation cases. As stated by the Court of Appeal in ***Scott***, at para 13:

> It is not strictly a decision about whether children stay or go, but the impact on them of the lessening presence of one parent and the greater presence of the other, combined with consideration of the challenges of fostering parental relationships in the circumstances.

[367] Ultimately, the Court must consider "...the least harmful situation for the child given the impact of the greater and lessening presence of each parent and the challenges involved in fostering parental relationships in those circumstances": ***Werry*** at para 6; ***Lemay*** at para 170.

### 18. Amount of Time Spent and Involvement with the Child (Section 16.92(1)(c))

[368] This factor has been addressed elsewhere.

[369] Ultimately, the crux of the dispute is whether it is in the Child's best interests to move notwithstanding the impact on their relationship with the other parent. In other words, the concern about maximizing parenting time consistent with the Child's best interests is folded into the central inquiry before the Court: ***Barendregt*** at para 132; ***Lemay*** at para 176.

### 19. Compliance with Mandatory Notice Requirements (Section 16.92(1)(d))

[370] The Father complied with the mandatory notice requirements. Even if he technically did not, I would exercise my discretion to dispense with those requirements, considering the factors set out in ***Lemay*** at paras 32-35. The Mother has had notice since at least December 2024. The Relocation has been the subject of a robust two-phase oral hearing. There is no prejudice to the Mother, and it is in the best interests of the Child to have the Relocation application decided.

### 20. Orders, Awards or Agreements Specifying the Geographic Area of the Child's Residence (Section 16.92(1)(e))

[371] This factor is not engaged in this case.

### 21. Reasonableness of Proposals for the Distant Parent's Parenting Time (Section 16.92(1)(f))

[372] The Father proposes that the Mother receive approximately 4 days of parenting time per month, contingent on her attending recommended therapy. He proposes that her parenting time be exercised in the lower mainland of British Columbia, at her expense, and that she should have to provide 30 days' notice of her parenting time with an emphasis on long weekends and avoiding instructional days. He proposes equal sharing of holidays and video-parenting on special occasions. He proposes the Mother should not be obligated to pay section 3 or 7 child support to offset the financial implications of exercising her parenting time.

[373] If Relocation is denied, the Mother proposes shared parenting in Calgary. Her proposal assumes the Father will not relocate, which impermissibly offends the "double-bind" rule and section 16.92(2) of the *Divorce Act*. Should the Father's Relocation be denied, further submissions would be required on the appropriate parenting schedule for the Father.

[374] The Expert endorses the Father's proposed parenting regime. The Mother asserts it is financially prohibitive for her and lacks safeguards to ensure consistent updates and collaborative decision-making.

[375] I find the Father's proposal to be a generally reasonable approach. However, it is not reasonable or appropriate to use the Mother's child support obligation as an offset in the way proposed because the Mother's child support obligation is the Mother's obligation to the Child. While the increased expense of the Mother's exercise of her parenting time is caused by the

Father's choice to relocate, there is no way to know if these two costs will be comparable moving forward. It is more appropriate that the Mother's child support obligations be reduced by amounts the Father owes to allow the Mother to exercise her parenting (with the parties paying the shortfall as applicable): *Divorce Act*, section 16.95; ***CJK v DWK***, 2025 ABKB 393 at para 114.

[376] Further, as noted further below, I find that the Father's proposal does not provide the Mother sufficient reasonable parenting time in the Child's best interests.



### 22. Compliance with Obligations Under Legislation, Orders Awards or Agreements (Section 16.92(1)(g))

[377] Parties are not entitled to unilaterally impose variations to agreements or court orders, or to engage in self-help remedies unless there is an immediate danger and no opportunity to seek a variation order: ***JM v EM***, 2022 ABCA 49 at para 31.

[378] As noted throughout these Reasons, both parties have failed to comply with court orders.

[379] Both parties provided the Expert communications outside those contemplated by the PN8 Order, and the Restraining Order. The Mother was a more egregious offender. Neither party applied for case management in 2022 as required by the PN8 Order, which delayed the PN8 process. Both parties failed to regularly use OFW as required, although this appears to have been instigated by the Mother.

[380] The Father failed to follow the April 2023 Award with respect to obtaining the Mother's consent for educational program decisions, and the November 2024 Order with respect to information sharing.

[381] The Mother:

(a) breached the 2022 Parenting Order by moving the Child to Canmore and failing to make the Child available for exchanges at her Bragg Creek home or at LFD;

(b) breached the parenting terms of the March 2023 Award;

(c) breached the April 2023 Award by staying in Canmore and not following its parenting terms;

(d) breached the June 2023 Order's parenting terms (in part based on her erroneous understanding of the effect of the June 2023 Order on the April 2023 Award);

(e) travelled with the Child outside Alberta without the Father's consent, which breached the terms of the June 2023 Order's parenting terms and led to her arrest;

(f) breached the Restraining Order in her communications with the Father by not limiting her communications to those for the purpose of exercising her supervised parenting time;

(g) breached the Restraining Order in her communications with the Father's counsel, because she did not limit her communications to the purpose of arranging and attending at court or serving filed court materials; and

(h) breached CMJ Kuntz' November 2024 order requiring the filing of financial disclosure by December 2024.

[382] Both parties' conduct is concerning, but the Mother's conduct is of greater concern than the Father's conduct. The Mother's approach reflects a disregard for authority or direction when it does not align with her own views or interpretations. Further, her communications to the Arbitrator and the Expert show a lack of respect for independent professionals engaged in assessing and determining the best interests of the Child. The Mother's threats to the Expert, the *Court's expert*, were particularly egregious. Threatening a court-appointed expert is akin to threatening the Court itself. That conduct cannot be condoned.

[383] I find that the Father is likely to follow clear court orders. I find the Mother is much more likely not to do so. This is a critical factor when the parties will be living in different provinces and adherence to the Court's orders is necessary to further the Child's best interests.

[384] This factor favours Relocation.

### 23. Summary: Best Interests of the Child

[385] Based on all of the above, I find that it is in the Child's best interest for the Father to be permitted to relocate the Child to Vancouver. The Father is better positioned and more likely to provide the Child stability and peace, more likely to improve his communication and information sharing style with court guidance, more likely to follow court orders, and less likely to engage in destructive communications with important people in the Child's life. These factors outweigh the benefits of the Mother's superior direct parenting skills and the reduced short-term instability which would be achieved by the Child remaining in Calgary. Relocation to Vancouver is the less harmful scenario overall in the long term and is, therefore, in the Child's best interests.

## B. What is an Appropriate Decision-making and Parenting order?

### 1. Decision-Making

[386] Decision-making is in the Court's discretion. Joint-decision making responsibility may be appropriate when there is a reasonable measure of communication and co-operation in place, so that the best interests of the child can be ensured on an ongoing basis: ***Khairzad v McFarlane***, 2015 ONSC 7148 at para 29; ***Amanquah v Oluwamuyide***, 2025 ONSC 4304 at para 57; ***McGuire v Tyrell***, 2024 ONCJ 643 at para 39; ***JM v PT***, 2024 ABKB 349 at para 197.

[387] On the other hand, a history of significant conflict that has impacted the functioning and parenting of the parties and the well-being of the child, or the inability of the parents to cooperate, will support an order for sole-decision making: ***Li v Runoh***, 2022 ABKB 669 at para 224, citing ***Richter v Richter***, 2005 ABCA 165; ***SJB v RDBB***, 2019 ABQB 624 at para 42; ***Amanquah*** at para 56; ***Khairzad v Erroussa***, 2023 ONSC 6741 at para 107. Sole-decision making is best suited where one parent has the children the majority of the time and is well positioned to make decisions

in their best interests: ***FDM v EGM***, 2021 ABQB 420 at para 120. However, one party's assertion that communication is untenable does not rule out joint decision-making: ***Pellegrini v Tkach***, 2023 SKCA 85 2023 at para 35. Further, courts should be mindful not to allow a party that is a significant source of the communication problem to use their own misconduct to justify sole decision-making in their favour: ***AJU*** at paras 70-72; ***JM*** at para 198.

[388] The Expert recommended that the Father should be granted sole decision-making with respect to the Child. I agree. The parties' pattern of dysfunctional communication is not amenable to joint decision-making. It will only foster further expensive litigation and discord. The Child will be under the Father's care most of the time, and the Father has a proven track record of making informed decisions in the Child's best interests. The Father is granted sole-decision making for significant decisions about the Child's well-being, including in respect of health, education, culture, language, religion and spirituality and significant extra curricular activities. The parties shall each have decision-making authority for day-to-day parenting decisions while exercising their parenting time.

[389] I also agree with the Expert, however, that the Mother offers a valuable and different perspective to the Father and her input should be obtained. The Father shall meaningfully consult with, seek input of, and attempt to reach consensus with, the Mother in writing with respect to all significant decisions affecting the Child. He shall seek the Mother's input at least two weeks before any decision is made (except in the case of emergency). The Mother shall provide her written response and input within one week of receiving the request for input.

[390] Finally, I also find that sole decision-making does not necessarily need to be permanent, and should be reconsidered in the event the parties' communication and cooperation improves following this decision. The parties shall review decision-making one year from the date of these Reasons.

### 2. Parenting

[391] Having considered the parties' positions and the recommendations of the Expert, I make the following parenting order, which I find to be in the Child's best interests:

(a) the Father shall have parenting time with the Child at all times except when the Mother has parenting time;

(b) with respect to the Mother's parenting time:

(i) the Mother shall have parenting time, at the Mother's option, for up to four consecutive days every calendar month (which must include a weekend), in the Vancouver / lower mainland area of British Columbia (including White Rock). The Father shall pay the Mother's chosen non-business class airfare (with one checked bag), and the Mother shall be responsible for all other costs, including her cost of accommodation. The Mother shall provide her selected weekend of parenting time by the end of the month that is two months before the parenting time, or such other date as the parties agree in writing. For example, the Mother shall provide her chosen dates for March

by the end of January. If the Child is in school on the Mother's parenting time, she shall ensure the Child attends;

(ii) the Mother shall have two video parenting time sessions with the Child per week while the Child is in the Father's care, on Tuesday and Friday for 30 minutes, at a time to be agreed by the parties and, failing agreement, this shall occur at 5:00 p.m. Calgary time. The Mother shall be entitled to an additional 30 minute video parenting time session if the Child is not otherwise in her care on her birthday, the Child's birthday, or CA's birthday. The Mother shall initiate, and the Father or his delegate (an adult) shall facilitate, the video parenting time;

(iii) in addition, the Mother shall be entitled to parenting time over the Child's spring break (from the Friday before the spring break week at 6 p.m. to the Sunday after the spring break week at 6 p.m. Calgary time). If this parenting time is exercised in the Vancouver area, the Father shall pay the Mother's chosen non-business class airfare (with one checked bag), and the Mother shall be responsible for all other costs, including her cost of accommodation ;

(iv) in addition, the Mother shall be given a right of first refusal to have parenting time during any of the Father's work trips to Europe (at the Mother's expense);

(v) the parties shall equally share all other school holidays, including summer holidays and Christmas, as agreed in writing or, failing agreement, the Mother shall have parenting time for July and the Father shall have parenting time for August, and the Mother shall have the first half of the Christmas holidays and the Father shall have the second half of the Christmas holidays;

(vi) any parenting time of the Mother that is one week or longer may be exercised outside of British Columbia, provided that the Child is not in school and provided that the Mother provides least 30 days notice of her travel itinerary including where she will be staying and her contact number;

(vii) parenting exchanges shall take place at the River Rock Resort Hotel lobby at 8811 River Rd, Richmond, British Columbia, unless otherwise agreed by the parties in writing;

(c) all communications between the parties shall be respectful. The parties shall use OFW for their one-on-one communications, except in emergencies in which case they may contact each other by cell phone or text;

(d) the parties shall apply for the Child's passport. The Father shall retain possession of the passport but shall provide it to the Mother when reasonably required for travel;

(e) if a party seeks to travel with the Child, the traveling parent shall provide the other with a complete written itinerary no less than one month in advance of the anticipated travel. The itinerary should include all relevant information, including but not limited to: contact information, departure and return dates, dates and specific locations of travel, flight plans, and hotel/other residence information;

(f) the Father shall forward the Mother copies of all of the Father's substantive correspondence to or received from the Child's health care professionals or providers, schools, educational or development supports, and public funding contacts;

(g) the Father shall ensure the Mother is listed as a parent and emergency contact for all the Child's health care professionals, schools, educational or development supports and public funding contacts;

(h) all third parties involved in the care or education of the Child, including health care professionals, schools, educational or development supports, public funding contacts, or providers of extracurricular activities, shall be permitted and authorized to provide any and all information about the Child to both parents;

(i) the Father shall provide the Mother, by no later than 5 p.m. Calgary time every Sunday (except for weekends in which the Child is in the Mother's care), a meaningful and substantive written update about the Child's life (including in relation to health, education, development, residence, extracurricular activities, friends and associates, religious upbringing, general welfare, and any other issues of importance regarding the Child). At least two photos of the Child from that week shall also be provided; and

(j) the parties shall not speak negatively about each other, or permit others to do so, in the presence of the Child.

[392] With respect to police enforcement, it is intended to be used cautiously and sparingly, or as a last resort, given the harm it can cause to children and the escalation it can cause; it is not meant to be a long term, multiple use, regular scheme in enforcing parenting arrangements: ***Zawawi CA*** at para 70; ***Dousselaere v Baba***, 2019 ABCA 474 at para 10; ***Craig v Craig***, 2019 ABQB 375 para 18; ***Ouellette v Fitz***, 2007 ABQB 694 at para 37; ***Sokolov v Sokolov***, 2020 ONSC 2755 at para 18; ***ASJN v CAC1***, 2023 SKKB 167 at para 65-70. Further, courts should consider whether the parties' parenting relationship will actually be enhanced without police enforcement: ***Zawawi CA*** at para 70.

[393] Police enforcement was necessary here, but it also exposed the Child to police on several occasions to the Child's detriment.[22] Given the history of non-compliance, there will continue to be police enforcement of the parenting order, but I am hopeful that with the Relocation and the

[22] I specifically reject the Mother's assertion that her arrests caused "severe PTSD". There is no expert opinion to that effect.

safeguards included in this order, it will soon no longer be necessary. The parties will review whether police enforcement continues to be necessary one year after this decision.

[394] I strongly encourage the Mother to engage in such medical treatment, therapy or counselling as recommended by Dr. Nnabuchi (or such other professional as may be recommended by the Expert upon request). The Mother's psychologist shall be provided a copy of Appendix A to the PN Update.

[395] The parties may add or vary my parenting order by agreement in writing.

### C. What is an Appropriate Sharing of the PN8 Evaluation Costs?

[396] Costs of a parenting expert conducting PN8 evaluations, like any other court expert, are to be paid by the parties in equal proportions unless the Court otherwise orders: rule 6.43; ***JWS*** at para 13. It is within the court's discretion: ***Blume v Blume***, 2024 ABCA 343 at para 21.

[397] In ***AE v TE***, 2017 ABQB 674 [***AE Costs***] at paras 76-80, the Court addressed different possible approaches to the apportionment of PN8 costs, including as an expert witness disbursement that follows the allocation of costs based on the success of the parties, or as a resource for the Court, distinct from (if not entirely independent of) success in the litigation. The Court effectively decided that a hybrid approach was appropriate: treating the costs as a litigation expense but with special consideration given to the allocation between the parties. The Court held that equal sharing may be the result but is not the presumption. Other courts have taken different approaches.

[398] The Court in ***AE Costs*** did not reference rules 6.40-6.43 and, since ***AE Costs***, the Court of Appeal in ***JWS*** confirmed that PN8 experts are court experts under rule 6.43. In my view, rule 6.43 provides that, *prima facie* or presumptively, there is to be equal sharing by the parties of court expert costs (including PN8 costs) unless the court is satisfied, in its discretion, that equal sharing is not appropriate. Equal responsibility underlies the primary commitment parties share for the growth, development and welfare of their children: ***DBF v BF***, 2013 ABQB 16.

[399] The varied approaches taken by this Court over the years, in allocating PN8 or similar court expert costs, reflects the diverse situations and factors each case presents. Rather than providing a particular binding framework, ***AE Costs*** and other cases provide helpful insight into non-exhaustive factors the Court might consider in determining whether to order unequal sharing. Those include:

(a) the standard order provision directing one party to pay for the assessment initially subject to later apportionment of costs is only a financing mechanism and does not determine ultimate financial responsibility: ***AE Costs*** at para 76; ***Chouinard v Skippen***, 2013 ABQB 465 at para 14;

(b) whether the assessment resulted from a consent order and, if not, which party opposed it: ***AE Costs*** at para 80;

(c) conduct preceding and contributing to the need for the assessment: ***AE Costs*** at para 80; ***LAU*** at para 243; ***Pederson v Pederson***, 2025 ABKB 109 at paras 186-187; ***KAB v RMB***, 2022 ABQB 542 at para 317;

(d) conduct during the assessment, especially where it caused the assessment costs to increase: ***AE Costs*** at para 80; ***LDW v KDM***, 2011 ABQB 384 at para 263; ***Seitz v Seitz***, 2017 ABQB 146 at paras 29-32;

(e) conduct following the assessment: ***AE Costs*** at para 80; ***LDW*** at para 263;

(f) rule 10.33 considerations as applied by analogy to the assessment: ***Chouinard*** at para 23; ***AE Costs*** at para 80;

(g) the relationship of the assessment recommendations to the decision, including how helpful the assessment was to the Court. The more necessary or helpful the assessment was to the Court, the more likely equal sharing is appropriate: ***AE Costs*** at para 80; ***DBF v BF***, 2016 ABQB 708 at para 25; ***JS v JD***, 2023 ABKB 288 at para 17; ***ZWN v PT***, 2022 ABQB 113 at para 7; ***DC v NC*** at para 265;

(h) how helpful the assessment was to the parties, including whether it assisted them in reaching resolution. The use of the PN8 evaluation, and the helpfulness of the evaluation to the parties, supports equal sharing: ***Pederson*** at para 187; ***ZWN*** at para 7;

(i) whether the party resisting payment challenged the assessment or its recommendations, and if so, the bases for the challenge and its results: ***AE Costs*** at para 80;

(j) the parties' proportionate income. It is "not uncommon for the cost of such assessment to be divided proportionate to income levels...": ***LDW*** at para 261; ***AE Costs*** at para 78;

(k) ability to pay and financial hardship, relating to the ability to support the parties' children: ***AE Costs*** at para 78; ***SS v AS***, 2021 ABQB 294 at para 26. In my view, and with respect, the reference in ***Chouinard***, at para 18, to the ability to pay being irrelevant is a litigation costs principle that is inconsistent with court-ordered expert costs, in particular with the unique nature of PN8 evaluations where ability to pay is a condition to PN8 evaluations being ordered in the first place;

(l) success in underlying parenting litigation. Unsuccessful parties are more likely to be required to pay the expert costs, while divided success is a factor supporting equal sharing: ***Chouinard*** at para 23; ***Pederson*** at para 92; ***Ting v Ting***, 2023 ABKB 77 at para 29; and

(m) the reasonableness of the expenditure: ***Chouinard*** at para 21.

[400] In this case, the parties consented to the PN8 evaluation, although according to the Mother it was the Father's suggestion. I reject the Mother's assertion that it was "not voluntary in the true sense". It was agreed early in the litigation process, when the parties' communications and co-parenting relationship were deteriorating, and shortly after the Child's ASD diagnosis. Neither party was significantly more responsible for its need. Then, neither party particularly pushed to get the PN8 evaluation moving forward after the PN8 Order. The Father was responsible to initially

finance it. The Mother's arrests complicated that process, for which I find the parties are both partly responsible.

[401] Both parties reasonably cooperated with the Expert at times, although the Mother began making veiled threats. Both parties provided the Expert with significant amount of information, not all of which was clearly requested by the Expert and thus was likely inconsistent with the PN8 Order (and then the Restraining Order), the volume of which undoubtedly increased the costs. The Mother was significantly more responsible for this than the Father. The PN8 Report was of limited use to the parties, in part because the Mother did not review it for months, did not accept it, and challenged it. The PN8 Report was useful to the Court, but was outdated, and was also of limited use because the situation materially changed by virtue of the Father's choice to pursue Relocation only after the PN8 Report was issued.

[402] The PN8 Update was largely needed because of the Father's choice to pursue Relocation. It was helpful to the Court, but was also limited on a key factor, educational programming options. The parties, in particular the Mother, again barraged the Expert with communications, and the Mother continued with more express threats against the Expert, all of which likely increased costs and risked undermining the utility of the Expert's opinion.

[403] The Mother unsuccessfully challenged the Expert's reports and testimony. The Expert's recommendations were largely, but not entirely, consistent with my findings, which generally supported the Father's parenting position.

[404] The Father had capacity to pay the cost of the Expert's work when initially ordered, and I find he continues to likely have greater financial capacity given his higher proportionate income.[23] The true nature and quantum of his income was not presented at the Hearing, and his 2024 filed disclosure did not disclose what he or his consulting business is paid. Further, he has more financial support from his family; the PN8 Update was funded by his elderly parents on his behalf. On the other hand, the Mother has not filed her required financial disclosure.

[405] The cost of the PN8 Report was reasonable, but the PN8 Update was significantly more than the estimate I was provided for the PN8 Update at the time I directed it in June 2025 and the Father agreed to finance it. It was much more than I expected it would be. It clearly surprised the parties as well. On July 14, 2025, I clarified to the Expert and the parties:

> When the PN8 report was discussed at length on June 3, 2025, we discussed an update to [the Expert's] PN8 report. I referred to it as such, an update, and not a full-blown new PN8 report. The purpose of the report was to allow [the Expert] to update his PN8 report and put into the new context, firstly, in light of [the Father's] application to relocate [the Child] and, secondly, given the new circumstances of the parents since September 2024....

[406] Further, a significant cost of the PN8 Report related to the Expert's assessment of educational program options for the Child in Vancouver and Calgary. While this was related to the Expert's task, the focus of the PN8 evaluation and its update was intended to be a "comprehensive and objective assessment *of the family*" to allow an expert to provide "opinion evidence on

[23] Disclosure Statement of the Father filed December 13, 2024.

parenting arrangements, parenting responsibilities and decision-making": PN8 at paras 1-2 (emphasis added). When I directed the PN8 Update, it was not my intention or direction that the Expert spend significant time comparing the suitability of educational programs in Calgary and Vancouver, as I would have other evidence about that and, as set out in my order directing the PN8 Update, I did not allow the Mother to adduce additional expert evidence solely about school suitability.



[407] Some of the increased cost, and the Expert running out of time to complete a more meaningful assessment of education program options, appears to have arisen due to the Expert's summer schedule and his insistence on a new retainer agreement. I also note that the Expert increased his hourly rate from $450 per hour for the PN8 Report and preparation for his testimony for the first phase of the Hearing, to $600 per hour for the PN8 Update (an unexplained 33% increase). It is unknown to me whether the rate increase was discussed with the parties' counsel when the estimate for the PN8 Update was given to them and then provided to me.

[408] PN8 evaluations can be a helpful tool for the Court to make decisions in children's best interests. They are in-depth and expensive. Under PN8, the Court only orders a PN8 evaluation if it is satisfied the parties can afford it or if one party agrees to finance it up front. However, it is counterproductive to children's best interests for the Court to approve a PN8 process if it will financially cripple the parents. The reality is that not many Alberta families can afford to pay over $100,000 for PN8 evidence, including over $40,000 for an update (as occurred here). For the PN8 process to provide its intended benefits, proposed court experts must provide realistic cost and time estimates and are expected to commit to the process reasonably within those estimates. When deciding to embark on a PN8 process, parties and the court should require clear cost parameters, and then should engage in a proportionality assessment of different proposed experts' comparative expected timing and costs against the likely utility and timing of the information a PN8 will provide. The PN8 tool is at serious risk of falling into disuse if PN8 costs regularly put them out of reach for all but a small percentage of families.

[409] In all the circumstances, I find:

(a) with respect to the PN8 Report, it is fair that the parties equally share those costs;

(b) with respect to the Expert's preparation for testifying at the first phase of the Hearing, this was largely lost time significantly caused by the need for the PN8 Update and the Father shall be responsible for 100% of those costs;

(c) with respect to the PN8 Update, I would have otherwise found the Father to be 100% responsible for those costs because it was an expense primarily needed due to the timing of his Relocation request. However, I find it is appropriate the Mother bear a material portion of those costs due to her conduct which increased the Expert's costs. It also denounces her approach to the Expert, including threats against the Court's expert which appear to have been an attempt to intimidate the Expert (see, for example ***Lau*** at para 212). I find that Mother shall bear 50% of the PN8 Update costs; and

(d) with respect to the cost of the Expert's preparation for and testimony at the second phase of the Hearing, I find it fair that responsibility should fall somewhere between equal sharing and the Father's responsibility, and I find it is fair and appropriate the Father shall be responsible for 66% of those costs.

[410] The Expert is directed to confirm to the parties how much of his total costs related to (1) the PN8 Report; (2) the preparation for phase one of the Hearing; (3) the PN8 Update report preparation and (4) his preparation and attendance for testimony at phase two of the Hearing, so the parties may insert those amounts into my order. The Expert shall not charge the parties for providing this information. Upon receipt of these amounts, and calculating the amount owing by the Mother to the Father (since the Father has paid for all Expert costs to date), the Mother shall be obligated to immediately pay her calculated amount owing.

### D. What is an Appropriate Costs Award?

[411] The Oral Hearing Order contemplated that the Hearing would also address "previous Costs Awards in Arbitration and Court proceedings", but this was not materially addressed by either party. I direct the parties to attempt to negotiate and settle these costs and the costs of the Hearing.

[412] If the parties cannot reach agreement on costs of the Hearing, costs of the proceedings before the Arbitrator, and previous court proceedings within 30 days of these Reasons, then the following shall apply:

(a) by January 9, 2026, the parties shall file and serve on each other, and submit to my office a written cost submission setting out their costs position;

(b) by January 23, 2026, the parties shall file and serve on the opposing party and submit to my office their response cost submissions; and

(c) each party's costs submission shall provide: (a) their position with respect to the factors set out in rule 10.33; (b) any formal offer or other settlement offer they wish considered that predates these Reasons; (c) a draft proposed bill of costs pursuant to Schedule C of the *Rules*; (d) a summary of their proposed reasonable and proper costs that the party incurred in respect of the Hearing or other steps. These submissions will be a maximum of five pages in letter format, single spaced (excluding authorities, offers, or proposed bills of costs).

[413] If the parties require more time given the upcoming holiday season and Relocation of the Child, they may contact my office.

## VI. Conclusion

[414] I make the orders noted above regarding the permission for the Relocation, decision-making, parenting, allocation of the PN8 costs and the process to determine Hearing and other costs.

[415] Neither party has requested a publication ban pursuant to section 100 of the *FLA*, or otherwise. However, I am of the view that, consistent with that provision, and independent of it,

and including my *parens patriae* jurisdiction, I have the jurisdiction to protect the best interests of children by taking steps in this decision not to identify the Child, his parents and others in this decision. I have done so upon consideration of the test set out by the Supreme Court of Canada in ***Sherman Estate v Donovan***, 2021 SCC 25 at para 38, namely:

a) the court openness poses a serious risk to an important public interest;

b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[416] In this case, there are details about the Child's personal medical matters and alleged family violence. I am of the view that identifying the Child, his parents or close family members, may significantly impact the Child, CA and IM in a negative way, and that this risk to an important public interest (i.e. the best interests of children) cannot be addressed through alternative measures. As a matter of proportionality, the minor impact on the openness of court proceedings is far outweighed by the potential negative effects to these children. As a result, I have exercised my discretion to use initials for the parties and the children, and other people that may identify the family, and also omitted other specific potential identifying information.

Heard on June 3-6, and 9, 2025 and September 2-4, 2025. Written submissions provided on September 15, September 17 and September 22, 2025.
**Dated** at the City of Calgary, Alberta this 2nd day of December, 2025.

**M.A. Marion**
**J.C.K.B.A.**

**Appearances:**

Soni Dhaliwal
for the Father

Ramandeep K Sidhu
for the Mother