

EYB 2008-143827 – Texte intégral – SVA

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

NO: 500-04-047959-086
DATE: 18 JUILLET 2008
DATE D'AUDITION: 17 JUILLET 2008
EN PRÉSENCE DE:
SYLVIE DEVITO, J.C.S.

F. O.

Plaintiff

v.

D. B. (Droit de la famille - 081767)

Defendant

et

Attorney General of Quebec

Impleaded Party

et

The Director of Youth Protection of the Batshaw Youth and Family Center

Intervenant

Sylvie Devito, J.S.C. :-

INTRODUCTION

1 THE COURT IS SEIZED WITH MR. F. O.' (THE "PLAINTIFF") INTRODUCTIVE MOTION OF SUIT FOR THE IMMEDIATE RETURN OF THREE MINOR CHILDREN TO THE UNITED STATES OF AMERICA, MORE PARTICULARLY TO THE STATE OF FLORIDA.

2 HIS MOTION IS BASED ON PROVISIONS OF THE *ACT RESPECTING THE CIVIL ASPECTS OF INTERNATIONAL AND INTERPROVINCIAL CHILD ABDUCTION* (THE "ACT")¹.

3 D. B., THE MOTHER (THE "DEFENDANT") OPPOSES THIS MOTION.

THE CHILDREN

4 THE MOTION CONCERNS THE RETURN OF THREE CHILDREN, X, Y AND Z, RESPECTIVELY AGED 12, 9 AND 4.

5 THE TWO ELDEST WERE BORN IN CANADA, WHEREAS Z WAS BORN IN FLORIDA.

6 IT IS ADMITTED THAT Y AND Z ARE THE PARTIES' BIOLOGICAL CHILDREN. PLAINTIFF IS NOT X' BIOLOGICAL FATHER, NOR HAS HE ADOPTED HIM, ALTHOUGH HE HAS LIVED WITH HIM SINCE HIS BIRTH.

THE PROCEEDINGS

7 ON MAY 6, 2008, DEFENDANT FLED THE FAMILY HOME IN FLORIDA WITH THE THREE CHILDREN. SHE LATER LEFT THE COUNTRY AND ENTERED QUÉBEC, ON OR ABOUT MAY 14, 2008.

8 UPON HER ARRIVAL IN QUÉBEC, SHE WENT TO A SHELTER WITH THE CHILDREN AND ALSO ADVISED THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER ("DIRECTOR OF YOUTH PROTECTION") CONCERNING THE CIRCUMSTANCES THAT LED HER TO LEAVE FLORIDA, WHICH DEAL WITH PLAINTIFF'S ALLEGED VIOLENT BEHAVIOUR TOWARDS HERSELF AND THE CHILDREN.

9 THE RECORD SHOWS THAT DEFENDANT INSTITUTED SEPARATION AS TO BED AND BOARD PROCEEDINGS IN MONTREAL ON MAY 22, 2008 IN FILE NUMBER 500-04-047694-089.

10 SUBSEQUENTLY TO THE INTRODUCTION OF THESE PROCEEDINGS, ON JUNE 10, 2008, PLAINTIFF MADE A REQUEST TO THE CENTRAL AUTHORITY OF QUÉBEC IN ORDER TO RECEIVE ASSISTANCE IN THE APPLICATION OF THE ACT.

11 ON THE SAME DAY, DEFENDANT'S ATTORNEYS AGREED TO CONTINUE THE SEPARATION PROCEEDINGS *SINE DIE* AFTER WHICH, ON JUNE 16, 2008, DEFENDANT REVOKED THE MANDATE GIVEN TO HER ATTORNEYS IN THAT FILE.

12 ON OR ABOUT JUNE 17, 2008, PLAINTIFF INSTITUTED PROCEEDINGS IN DIVORCE AGAINST DEFENDANT IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL DISTRICT IN AND FOR SARASOTA COUNTY, FLORIDA. A HEARING IS SCHEDULED FOR JULY 23 2008 BEFORE JUSTICE BECKY TITUS.

13 ON JUNE 25, 2008, THE CENTRAL AUTHORITY OF QUÉBEC PRESENTED A MOTION IN ORDER TO OBTAIN A MANDATE TO FIND THE WHEREABOUTS OF THE CHILDREN AND TO IMMEDIATELY REPORT AND BRING THEM BEFORE THE DIRECTOR OF YOUTH PROTECTION, ACCORDING TO SECTION 10 OF THE ACT, WHICH MOTION WAS AWARDED BY THIS COURT ON JUNE 26, 2008.

14 AT THIS TIME, THE CHILDREN ARE UNDER THE PROTECTION OF THE DIRECTOR OF YOUTH PROTECTION WHO HAS TAKEN STEPS TO SHELTER THEM. IN FACT, ALL THREE ARE NOW LIVING TOGETHER IN A FOSTER HOME.

THE ISSUES

15 PLAINTIFF ALLEGES THAT THE UNITED STATES OF AMERICA IS A SIGNATORY STATE OF THE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION SIGNED AT THE HAGUE ON OCTOBER 1980 (THE "CONVENTION") AND HAS BEEN A DESIGNATED STATE UNDER THE CONVENTION SINCE JULY 1, 1988.

16 HE ALLEGES THAT THE HABITUAL RESIDENCE OF THE THREE MINOR CHILDREN HAS BEEN THE STATE OF FLORIDA SINCE 2001.

17 HE STATES THAT IN FLORIDA, PARENTS OF MINOR CHILDREN HAVE EQUAL RIGHTS AS NATURAL PARENTS, WHICH INCLUDE ISSUES OF CUSTODY AND IN PARTICULAR, THE RIGHT TO DETERMINE THE CHILDREN'S PLACE OF RESIDENCE.

18 PLAINTIFF ALLEGES THAT HE NEVER CONSENTED TO THE REMOVAL OF THE THREE MINOR CHILDREN FROM THEIR HABITUAL PLACE OF RESIDENCE, AND THAT HE WAS EXERCISING HIS RIGHT OF CUSTODY AT THE TIME OF THEIR WRONGFUL REMOVAL.

19 THEREFORE, HE ALLEGES THAT THE DEFENDANT'S ACTIONS ARE IN BREECH OF HIS CUSTODIAL RIGHTS AND CONSTITUTE A WRONGFUL REMOVAL WITHIN THE CONVENTION.

20 HE THEREFORE SEEKS THE IMMEDIATE RETURN OF THE THREE MINOR CHILDREN TO THE STATE OF FLORIDA.

21 DEFENDANT OPPOSES THE RETURN OF HER CHILDREN FOR THE FOLLOWING REASONS:

A) AS REGARDS X, SHE STATES THAT PLAINTIFF NEVER ADOPTED HIM, THAT HE IS NOT HIS BIOLOGICAL FATHER AND THAT THEREFORE, HE DOES NOT HAVE STANDING UNDER THE ACT WHICH WOULD ALLOW HIM TO REQUEST X' RETURN TO FLORIDA;

B) AS CONCERNS ALL THREE CHILDREN, DEFENDANT ALLEGES THAT THERE WOULD BE A GRAVE, SEVERE AND IN HER OPINION, ABSOLUTELY CERTAIN RISK THEY WOULD BE PLACED IN PHYSICAL AND PSYCHOLOGICAL DANGER, AND BE FORCED INTO AN INTOLERABLE SITUATION, SHOULD THEY BE REQUIRED TO RETURN TO PLAINTIFF.

22 SHE ESSENTIALLY ALLEGES THAT VERY EARLY ON IN HER RELATIONSHIP WITH PLAINTIFF, SHE HAS BEEN THE VICTIM OF CONJUGAL VIOLENCE. SHE STATES THAT SHE HAS BEEN BEATEN, RAPED AND SEXUALLY ASSAULTED, INSULTED, DENIGRATED AND CONTROLLED BY PLAINTIFF.

23 THE VIOLENCE AGAINST HER HAS ESCALATED AND ACCORDING TO HER, TO THE POINT WHERE PLAINTIFF HAS NOW BEGUN TO ABUSE THE CHILDREN.

24 SHE STATES THAT X AND Y HAVE BEEN ASSAULTED AND PSYCHOLOGICALLY ABUSED BY PLAINTIFF WITHIN THE LAST TWO OR THREE YEARS. MOREOVER, SHE ADDS THAT ALL THREE CHILDREN HAVE BEEN EXPOSED TO VIOLENT EPISODES PERPETRATED BY PLAINTIFF, EITHER AGAINST HERSELF OR AGAINST THE TWO ELDEST CHILDREN.

25 SHE THEREFORE REQUESTS THAT THE COURT APPLY THE EXEMPTION PROVIDED IN SECTION 21 (2) OF THE ACT, THAT PLAINTIFF'S MOTION BE DISMISSED, THAT IT BE ORDERED THAT THE CHILDREN BE RETURNED TO HER SOLE CARE, AND THAT SHE BE GRANTED THEIR SOLE CUSTODY.

ADMISSIONS

26 PRIOR TO THE HEARING, THE PARTIES, THROUGH THEIR RESPECTIVE ATTORNEYS, AGREED TO FILE THE FOLLOWING ADMISSIONS IN ORDER TO CIRCUMSCRIBE AND LIMIT THE PRINCIPAL ISSUES AT HAND TO ALLOW THE CASE TO PROCEED EXPEDIENTLY, TO WIT:

Common admissions

A) THE FOUR CRITERIA OF APPLICABILITY OF THE ACT ARE MET AS CONCERNS THE TWO YOUNGEST CHILDREN, Y AND Z, TO WIT:

- both children are aged less then 16 years old (Section 5 of the Act);
- the United States of America is a designated state in the meaning of Section 41 of the Act;
- the habitual residence of the children, immediately before their removal, was located in the State of Florida, USA (Section 3 of the Act);
- the removal has been made in violation of the custodial rights of Plaintiff (Sections 2 and 3 of the Act) but Defendant invokes the exception to the return of the children provided in Section 21 (2) of the Act.

B) THREE OF THE FOUR CRITERIA CONCERNING THE APPLICABILITY OF THE ACT ARE MET AS CONCERNS X, TO WIT:

- the child is aged less than 16 years old (Section 5 of the Act);
- the United States of America is a designated State as provided in Section 41 of the Act;
- the habitual residence of X, immediately before his removal, was located in the State of Florida, USA (Section 3 of the Act).

Admissions pertaining to debated questions of law

27 A SERIES OF ADMISSIONS ALSO DEAL WITH THE QUESTIONS OF LAW TO BE DECIDED BY THIS COURT, TO WIT:

A) AS CONCERNS X, SEEING THAT PLAINTIFF IS NOT THE BIOLOGICAL FATHER OF THE CHILD AND THAT HE HAS NOT FORMALLY ADOPTED HIM, DOES PLAINTIFF HAVE A RIGHT OF CUSTODY WITHIN THE MEANING OF SECTION 3 OF THE ACT?

B) ASSUMING THAT THE FACTS ALLEGED IN DEFENDANT'S DETAILED AFFIDAVIT DATED JULY 3, 2008, FILED IN SUPPORT OF HER OPPOSITION, ARE TAKEN TO BE EXACT, IS THE DEFENCE ACCORDING TO SECTION 21 (2) OF THE ACT APPLICABLE IN THE PRESENT CASE? MORE PARTICULARLY, ARE THOSE ALLEGED FACTS SUFFICIENT TO ENABLE THE COURT TO CONCLUDE THAT RETURN OF THE CHILDREN TO FLORIDA EXPOSES THEM TO A GRAVE RISK OF PHYSICAL OR PSYCHOLOGICAL HARM, OR OTHERWISE PLACES THEM IN AN INTOLERABLE SITUATION?

Additional admissions by plaintiff, the Attorney General of Québec and the Director of Youth Protection

28 THE ADDITIONAL FOLLOWING ADMISSIONS WERE ALSO FILED AS PERTAINS TO MODALITIES TO BE APPLIED, SHOULD THE COURT ORDER THAT THE CHILDREN MUST BE RETURNED TO FLORIDA:

- the return of the children would be done under the supervision of a representative of the Director of Youth Protection and Plaintiff undertakes to pay the cost of airfare for the children and for the representative designated by the Director to accompany them, as the case may be;
- the Central Authority of Québec and the Director of Youth Protection undertake to make all necessary steps in order to obtain the guarantee that the children will be placed in a foster home pending the hearing concerning the determination of their custody in Florida;
- a hearing is scheduled before the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County in Florida, on July 23, 2008, before Justice Becky Titus, in case number 2008-DR-009762-NC, concerning the divorce proceedings introduced by Plaintiff.

29 ON THIS LAST ISSUE OF ADDITIONAL ADMISSIONS, DEFENDANT ARGUES THAT THE APPLICATION BY PLAINTIFF FOR THE RETURN OF THE CHILDREN SUSPENDS ANY SUCH PROCEEDINGS IN FLORIDA UNTIL THE COMPLETION OF THE PROCEEDINGS HERE IN QUÉBEC.

30 SHE FURTHER ADDS THAT THE LAW DOES NOT PROVIDE FOR THE RETURN OF THE CHILDREN TO THE STATE OF FLORIDA, OR ANY INSTITUTION OF THE STATE SUCH AS CHILD SERVICES, BUT RATHER ONLY A RETURN TO THE FATHER.

THE FACTS

31 PURSUANT TO THE AGREEMENT BETWEEN THE PARTIES, THE EVIDENCE WAS LIMITED TO DEFENDANT'S AFFIDAVIT AND THE TESTIMONY OF THE SOCIAL WORKER FROM THE OFFICE OF THE DIRECTOR OF YOUTH PROTECTION IN CHARGE OF THE CHILDREN, MS. REBECCA MILLER.

Defendant's affidavit

32 TO EXPLAIN THE DANGERS AND FEARS THAT SHE HAS IF HER CHILDREN WERE TO RETURN TO PLAINTIFF, IN HER SWORN STATEMENT, DEFENDANT RELATES SEVERAL FACTS CONCERNING HER LIFE WITH PLAINTIFF SINCE THE PARTIES BEGAN LIVING TOGETHER IN 1995.

33 ALTHOUGH NOT CITED EXHAUSTIVELY HEREIN, HER AFFIDAVIT ESSENTIALLY CONVEYS THE FOLLOWING.

34 SHE HAD ALREADY GIVEN BIRTH TO X WHEN SHE BEGAN LIVING WITH PLAINTIFF.

35 SHE DESCRIBES THAT EARLY ON IN THE RELATIONSHIP, PLAINTIFF BEGAN TO BERATE AND DENIGRATE HER, CONTROL HER LIFE, TREAT HER AS BEING STUPID, CRITICIZE HER, BELITTLE HER AND YELL AT HER.

36 SHE ALSO STATES THAT HE ALREADY HAD PARTICULAR SEXUAL BEHAVIOURS WITH WHICH SHE WAS NOT COMFORTABLE.

37 THE PARTIES DID NOT LIVE LONG IN TOWN A AFTER X' BIRTH AND QUICKLY MOVED TO NOVA SCOTIA WHERE THEY LIVED FROM 1995 TO 2001.

38 THEY WERE MARRIED IN 1998.

39 DEFENDANT DESCRIBES CONTINUING PSYCHOLOGICAL AND SEXUAL ABUSE TOWARDS HER ON THE PART OF PLAINTIFF. SHE STATES PLAINTIFF CONTROLLED HER LIFE BY YELLING AT HER AND DIMINISHING HER IN FRONT OF OTHERS. HE STARTED TO PHYSICALLY ABUSE HER AND WAS ASKING HER TO DRINK EXCESSIVELY IN ORDER TO PERFORM PARTICULAR SEXUAL ACTS. SHE ALSO SUSPECTS SHE MAY HAVE BEEN DRUGGED.

40 THE PARTIES MOVED TO FLORIDA, IN 2001.

41 SHE STATES THAT PHYSICAL AND SEXUAL ABUSE ESCALATED AND AT TIMES, IN FRONT OF THE CHILDREN. SHE ALLEGES THAT SHE WAS PHYSICALLY HARMED BY PLAINTIFF.

42 ACCORDING TO HER, IN 2004, PLAINTIFF BEGAN TO BERATE X AND ONCE, KNOCKED HIM TO THE GROUND CAUSING HIM TO HURT HIS HEAD. PLAINTIFF WOULD CALL HIM NAMES AND DENIGRATE HIM, AND AT TIMES, SMACK HIM ON THE HEAD.

43 SHE ALLEGES PLAINTIFF ONCE SLAPPED AND PUNCHED Y'S LEG CAUSING A "TERRIBLE BRUISE". HE WOULD ALSO SLAP HER WHEN SHE THREW TANTRUMS, WHILE DEFENDANT STATES THAT SHE AND X, TERRIFIED OF HER SCREAMS AND CRYING, WOULD HIDE ELSEWHERE IN THE HOUSE.

44 DEFENDANT STATES THAT THE PHYSICAL AND SEXUAL ABUSE TOWARDS HER INCREASED AROUND CHRISTMAS 2007, TO THE EXTENT THAT SHE DESCRIBES HERSELF AS BEING TERRIFIED AND SCARED THAT PLAINTIFF MAY KILL HER AND THE CHILDREN.

45 SHE DESCRIBES EPISODES, WHICH OCCURRED AFTER DECEMBER 2007, WHERE THERE WAS VERBAL ABUSE TOWARDS X BY PLAINTIFF, AND A LOT OF YELLING AT THE KIDS.

46 ON ONE PARTICULAR EVENT, SHE CONFRONTED PLAINTIFF WHO IN TURN ATTACKED HER. SHE TOLD HIM THAT SHE WAS NOT AFRAID TO DIE WHICH, ACCORDING TO HER, SNAPPED HIM OUT OF HIS RAGE.

47 BY THIS TIME, SHE DESCRIBES HERSELF AS BASICALLY A PRISONER OF PLAINTIFF WHOM SHE SAYS THREATENED TO HURT THE CHILDREN IF SHE DISOBEYED HIM.

48 IN EARLY MAY 2008, SHE "BEGAN TO BELIEVE IT WAS POSSIBLE THAT PLAINTIFF WAS SEXUALLY ASSAULTING THE CHILDREN". SHE FLED THE FAMILY RESIDENCE TO FIND SHELTER, WITH THE CHILDREN, AND PROCEEDED TO REPORT THE ASSAULTS TO LOCAL POLICE AUTHORITIES. HER COMPLAINTS WERE NOT MAINTAINED AS SHE STATES SHE "HAD NO EVIDENCE AND THE CHILDREN PRETENDED THAT NOTHING WAS WRONG BECAUSE OF THEIR FEARS OF" PLAINTIFF.

49 SEEING SHE COULD NOT WORK IN FLORIDA AND WOULD NOT RETURN TO PLAINTIFF, SHE LEFT FLORIDA TO ENTER QUÉBEC ON MAY 14 WHERE SHE HAS FAMILY.

50 SHE HAS SINCE BEEN LIVING IN A SHELTER AND THE CHILDREN HAVE BEEN PLACED INTO FOSTER CARE.

Ms Miller's testimony

51 MS. MILLER, A SOCIAL WORKER FOR THE DIRECTOR OF YOUTH PROTECTION, HAS TAKEN CHARGE OF THE CHILDREN'S CASE.

52 AS THE MINUTES WILL SHOW, THE COURT RELIEVED HER OF HER CONFIDENTIALITY OBLIGATION AT THE OUTSET OF HER TESTIMONY.

53 SHE REPORTS THAT THE CHILDREN ARE NOW LIVING TOGETHER IN A FOSTER HOME AND THAT THEY ARE BASICALLY DOING WELL.

54 BECAUSE OF HER YOUNG AGE, Z IS LEAST AWARE OF THE EVENTS. Y IS CONFUSED AND X FEELS MUCH ANGER AND RESENTMENT. HE ONLY LATELY FOUND OUT THAT PLAINTIFF IS NOT HIS BIOLOGICAL FATHER.

55 MS. MILLER MENTIONS THAT THE CHILDREN'S BEHAVIOUR AMONGST THEMSELVES IS NOT ALTERED.

56 NEITHER PARENT KNOWS WHERE THE FOSTER HOME IS LOCATED, AND NEITHER ONE CAN INITIATE CONTACT WITH THE CHILDREN. HOWEVER, THE CHILDREN ARE FREE TO CONTACT BOTH PARENTS, AS THEY WISH, AND DEFENDANT HAS BEEN ABLE TO VISIT THEM, ONCE A WEEK.

57 A REPORT CONCERNING THE CHILDREN WAS INVESTIGATED BY THE DIRECTOR OF YOUTH PROTECTION AND IT HAS BEEN FOUND THAT THEIR SECURITY AND DEVELOPMENT IS COMPROMISED ACCORDING TO SECTION 38 C) OF THE YOUTH PROTECTION ACT WHICH PROVIDES:

38. FOR THE PURPOSES OF THIS ACT, THE SECURITY OR DEVELOPMENT OF A CHILD IS CONSIDERED TO BE IN DANGER IF THE CHILD IS ABANDONED, NEGLECTED, SUBJECTED TO PSYCHOLOGICAL ILL-TREATMENT OR SEXUAL OR PHYSICAL ABUSE, OR IF THE CHILD HAS SERIOUS BEHAVIOURAL DISTURBANCES.

In this Act, [...]

- c) "*psychological ill-treatment*" refers to a situation in which a child is seriously or repeatedly subjected to behaviour on the part of the child's parents or another person that could cause harm to the child, and the child's parents fail to take the necessary steps to put an end to the situation. Such behaviour includes in particular indifference, denigration, emotional rejection, isolation, threats, exploitation, particularly if the child is forced to do work disproportionate to the child's capacity, and exposure to conjugal or domestic violence;

58 ACCORDING TO THE *YOUTH PROTECTION ACT*², SUCH A FINDING IMPACTS ON THE ORIENTATION OF THE CHILD. THIS CAN BE DEALT WITH EITHER BY PUTTING IN PLACE

VOLUNTARY MEASURES ON THE PART OF THE PARENTS, OR HAVING SAID MEASURES ORDERED BY THE COMPETENT COURT.

59 MS. MILLER CONFIRMS THAT CONTACTS HAVE BEEN ESTABLISHED WITH THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES IN FLORIDA ("FLORIDA CHILD SERVICES"), ABOUT THE CHILDREN'S CASE. THERE, MS. LYNN JOHNSON IS FOLLOWING-UP ON THIS CASE, AND SHE AND MS. MILLER HAVE EXCHANGED DOCUMENTS AND HAVE DISCUSSED THE EVALUATION MADE HERE ABOUT THE CHILDREN'S SITUATION.

60 BOTH AUTHORITIES ARE AWARE OF THE ACTUAL PROCEEDINGS REQUESTING THE RETURN OF THE CHILDREN AND ALSO OF THE PENDING PROCEEDINGS IN THE FLORIDA FAMILY COURT. BOTH SERVICES ARE WILLING AND AVAILABLE TO COOPERATE TO ENSURE THE CHILDREN'S WELL-BEING.

61 ACCORDING TO MS. MILLER, FLORIDA CHILD SERVICES HAVE INDICATED THAT THEY ARE WILLING TO FOLLOW-UP ON THE DIRECTOR OF YOUTH PROTECTION EVALUATION REPORT, SHOULD THE CHILDREN BE RETURNED. THEY ALSO OFFER COOPERATION IN SCHEDULING MODALITIES OF RETURN, TRANSPORTATION (THEY COULD EVEN COME HERE TO PICK-UP THE CHILDREN), MEETING AND TAKING CHARGE OF THE CHILDREN UPON THEIR ARRIVAL. THEY ONLY NEED A FEW OF DAYS TO GET ORGANIZED.

62 MS. MILLER IS ALSO AVAILABLE TO TAKE THE CHILDREN DOWN TO FLORIDA HERSELF.

63 BECAUSE FOSTER CARE HAS TO GO THROUGH THE COURT SYSTEM IN FLORIDA, THE FLORIDA CHILD SERVICES CANNOT GUARANTEE THE TYPE OF PLACEMENT AVAILABLE AT THE IMMEDIATE ARRIVAL OF THE CHILDREN, IF THIS WERE TO BE THE CASE. HOWEVER, THEY HAVE ASSURED MS. MILLER THEY CAN MOVE SWIFTLY TO GET THIS DONE.

64 MS. MILLER MENTIONS SHE IS NOT FAMILIAR ABOUT THE LEGAL MODALITIES PERTAINING TO FORMALIZING THE ABOVE-STATED COOPERATION WITHIN THE PENDING COURT PROCEEDINGS IN FLORIDA.

THE LAW AND GENERAL PRINCIPLES

65 THE RELEVANT PROVISIONS OF THE ACT ARE THE FOLLOWING:

1. THE OBJECT OF THIS ACT IS TO SECURE THE PROMPT RETURN TO THE PLACE OF THEIR HABITUAL RESIDENCE OF CHILDREN REMOVED TO OR RETAINED IN QUÉBEC OR A DESIGNATED STATE, AS THE CASE MAY BE, IN BREACH OF CUSTODY RIGHTS.

A FURTHER OBJECT OF THIS ACT IS TO ENSURE THAT THE RIGHTS OF CUSTODY AND ACCESS UNDER THE LAW OF A DESIGNATED STATE ARE EFFECTIVELY RESPECTED IN QUÉBEC AND THE RIGHTS OF CUSTODY AND ACCESS UNDER THE LAW OF QUÉBEC ARE EFFECTIVELY RESPECTED IN A DESIGNATED STATE.

[...]

3. THE REMOVAL OR THE RETENTION OF A CHILD IS TO BE CONSIDERED WRONGFUL, WITHIN THE MEANING OF THIS ACT, WHERE IT IS IN BREACH OF RIGHTS OF CUSTODY ATTRIBUTED TO ONE OR SEVERAL PERSONS OR BODIES UNDER THE LAW OF QUÉBEC OR OF THE DESIGNATED STATE IN WHICH THE CHILD WAS HABITUALLY RESIDENT IMMEDIATELY BEFORE THE REMOVAL OR RETENTION AND WHERE, AT THE TIME OF REMOVAL OR RETENTION, THOSE RIGHTS WERE ACTUALLY EXERCISED BY ONE OR SEVERAL PERSONS OR BODIES OR WOULD HAVE BEEN SO EXERCISED BUT FOR THE REMOVAL OR RETENTION.

THE RIGHTS OF CUSTODY MENTIONED IN THE FIRST PARAGRAPH MAY ARISE IN PARTICULAR BY OPERATION OF LAW, OR BY REASON OF A JUDICIAL OR ADMINISTRATIVE

DECISION, OR BY REASON OF AN AGREEMENT HAVING LEGAL EFFECT UNDER THE LAW OF QUÉBEC OR OF THE DESIGNATED STATE.

[...]

6. FOR THE PURPOSES OF THIS ACT, THE MINISTER OF JUSTICE IS THE CENTRAL AUTHORITY FOR QUÉBEC, AND IN A DESIGNATED STATE THE CENTRAL AUTHORITY IS THE AUTHORITY APPOINTED BY THAT DESIGNATED STATE. FURTHERMORE, THE SUPERIOR COURT IS THE COMPETENT JUDICIAL AUTHORITY FOR QUÉBEC.

[...]

21. THE SUPERIOR COURT MAY REFUSE TO ORDER THE RETURN OF THE CHILD IF THE PERSON WHO OPPOSES HIS OR HER RETURN ESTABLISHES THAT :

- 1) THE PERSON HAVING THE CARE OF THE PERSON OF THE CHILD WAS NOT ACTUALLY EXERCISING THE CUSTODY RIGHTS AT THE TIME OF REMOVAL OR RETENTION, OR HAD CONSENTED TO OR SUBSEQUENTLY ACQUIESCED IN THE REMOVAL OR RETENTION; OR
- 2) THERE IS A GRAVE RISK THAT HIS OR HER RETURN WOULD EXPOSE THE CHILD TO PHYSICAL OR PSYCHOLOGICAL HARM OR OTHERWISE PLACE THE CHILD IN AN INTOLERABLE SITUATION.

22. THE SUPERIOR COURT MAY ALSO REFUSE TO ORDER THE RETURN OF THE CHILD IF :

- 1) IT FINDS THAT THE CHILD OBJECTS TO BEING RETURNED AND HAS ATTAINED AN AGE AND DEGREE OF MATURITY AT WHICH IT IS APPROPRIATE TO TAKE ACCOUNT OF HIS OR HER VIEWS;
- 2) THE RETURN IS CONTRARY TO THE HUMAN RIGHTS AND FREEDOMS RECOGNIZED IN QUÉBEC.

[...]

25. THE SUPERIOR COURT, AFTER HAVING BEEN NOTIFIED THAT A CHILD HAS BEEN WRONGFULLY REMOVED OR RETAINED IN QUÉBEC, SHALL NOT DECIDE ON THE CUSTODY OF THE CHILD IF THE CONDITIONS SET OUT IN THIS ACT FOR THE RETURN OF THE CHILD MAY BE FULFILLED OR IF AN APPLICATION FOR HIS OR HER RETURN MAY BE MADE WITHIN A REASONABLE TIME.

26. THE SOLE FACT THAT A DECISION RELATING TO CUSTODY HAS BEEN GIVEN IN OR IS ENTITLED TO RECOGNITION IN QUÉBEC SHALL NOT BE A GROUND FOR REFUSING TO ORDER THE RETURN OF A CHILD, BUT THE SUPERIOR COURT MAY TAKE ACCOUNT OF THE REASONS FOR THAT DECISION WHICH ARE RELEVANT TO THE APPLICATION OF THIS ACT.

[...]

28. IN ASCERTAINING WHETHER THERE HAS BEEN A WRONGFUL REMOVAL OR RETENTION, THE SUPERIOR COURT MAY TAKE NOTICE DIRECTLY OF THE LAW OF, AND OF JUDICIAL OR ADMINISTRATIVE DECISIONS, FORMALLY RECOGNIZED OR NOT IN THE DESIGNATED STATE IN WHICH THE CHILD IS HABITUALLY RESIDENT, WITHOUT RECOURSE TO THE SPECIFIC PROCEDURES FOR THE PROOF OF THAT LAW OR FOR THE RECOGNITION OF FOREIGN DECISIONS WHICH WOULD OTHERWISE BE APPLICABLE.

[...]

30. A DECISION UNDER THIS ACT CONCERNING THE RETURN OF A CHILD SHALL NOT BE TAKEN TO BE A DETERMINATION ON THE MERITS OF ANY CUSTODY ISSUE.

[...]

34. ANY APPLICATION SUBMITTED TO THE MINISTER OF JUSTICE OR TO THE CENTRAL AUTHORITY OF A DESIGNATED STATE OR DIRECTLY TO THE SUPERIOR COURT OR THE JUDICIAL OR ADMINISTRATIVE AUTHORITIES OF A DESIGNATED STATE IN ACCORDANCE WITH THE TERMS OF THIS ACT, TOGETHER WITH DOCUMENTS AND ANY OTHER INFORMATION APPENDED THERETO OR PROVIDED BY A CENTRAL AUTHORITY, SHALL BE ADMISSIBLE IN THE SUPERIOR COURT.

66 THE JURISDICTION OF THE SUPERIOR COURT OF QUÉBEC IN SUCH MATTERS IS CONFERRED BY SECTION 6 OF THE ACT.

67 THEREFORE, CONCERNING PLAINTIFF'S MOTION, THE COURT DOES NOT HAVE TO DETERMINE WHETHER IT IS COMPETENT TO HEAR A DIVORCE ACTION OR AN ACTION IN SEPARATION, OR ANY OTHER REQUEST CONCERNING THE CHILDREN.

68 THE REVIEW OF THE ACT AND OF THE CONVENTION REVEALS THAT THE FIRST OBJECTIVE IS THE RETURN OF A CHILD WHO IS ILLICITLY REMOVED IN VIOLATION OF A CUSTODIAL RIGHT. THE COURT WHICH IS SEIZED OF SUCH A MOTION, ACCORDING TO THE ACT, MAY NOT PRONOUNCE ITSELF ON CUSTODIAL ISSUES. THE OBJECTIVE IS RATHER THE RETURN OF CHILD TO HIS HABITUAL RESIDENCE SO THAT THE COMPETENT COURT MAY PRONOUNCE ITSELF ON SUCH.

69 WHEREFORE THE REQUEST CONCERNING THE APPLICATION OF THE CONVENTION IS HEARD BY THE COURT OF THE STATE WHERE THE CHILD HAS BEEN ILLICITLY MOVED, WHEREAS THE CUSTODIAL RIGHTS ARE GENERALLY DECIDED BY THE COURT HAVING JURISDICTION WHERE THE CHILD HAD HIS HABITUAL RESIDENCE IMMEDIATELY BEFORE HIS REMOVAL.

70 THEORETICALLY THE LATTER IS PRESUMED TO BE BETTER-PLACED TO PRONOUNCE ITSELF ON THE CUSTODY OF THE CHILD.

71 THE ACT PROVIDES SPECIFICALLY THAT AFTER BEING INFORMED OF THE ILLICIT REMOVAL OF A CHILD IN QUÉBEC, THE SUPERIOR COURT CANNOT DECIDE OF THE CUSTODY OF THIS CHILD IF THE CONDITIONS RELATED TO THE RETURN OF THIS CHILD PROVIDED IN THE ACT CAN BE SATISFIED (SECTION 25). IT IS ALSO MENTIONED THAT A DECISION CONCERNING THE RETURN OF THE CHILD WHICH IS RENDERED IN A PROCEEDING BROUGHT ACCORDING TO THE ACT, DOES NOT AFFECT THE MERIT OF CUSTODIAL ISSUES (SECTION 30).

ANALYSIS

X

72 IT IS ADMITTED THAT PLAINTIFF IS NOT X' BIOLOGICAL FATHER.

73 X ONLY RECENTLY FOUND OUT (SINCE HE AND HIS SIBLINGS LEFT FLORIDA).

74 X' NAME WAS CHANGED FROM X B. TO X O. IN JANUARY 2001, UNDER THE PROVISIONS OF THE CHANGE OF NAME ACT OF NOVA SCOTIA³.

75 HIS BIRTH CERTIFICATE, UNDER THE ITEM "FATHER" MENTIONS "NON DECLARED".

76 PLAINTIFF NEVER ADOPTED HIM.

77 PLAINTIFF IS THE ONLY FATHER X HAS KNOWN SINCE HIS BIRTH. THERE IS NO INDICATION THAT X HAS NOT PARTICIPATED IN THE FAMILY LIFE, IN THE SAME STANDING AS HAVE Y AND Z. IT IS APPARENT THAT PLAINTIFF HAS CONTRIBUTED TO HIS FINANCIAL NEEDS, AT LEAST SINCE THE FAMILY HAS BEEN IN FLORIDA, AS DEFENDANT STATES SHE HAS NOT BEEN WORKING THERE. PLAINTIFF HAS IMPLICITLY, IF NOT EXPLICITLY ACTED AS BEING RESPONSIBLE FOR X AS A PARENT WITH NO APPARENT OPPOSITION FROM DEFENDANT.

DURING THE TWELVE YEARS THE PARTIES LIVED TOGETHER, X HAS NOT HAD ANY CONTACT WITH HIS BIOLOGICAL FATHER.

78 IN HER SEPARATION PROCEEDINGS INTRODUCED IN MONTREAL IN MAY 2008, DEFENDANT SIGNED A SWORN STATEMENT IN SUPPORT OF HER SEEKING SOLE CUSTODY OF THE CHILDREN, INCLUDING THAT OF X, IN WHICH SHE ALSO SEEKS CHILD SUPPORT FROM PLAINTIFF FOR ALL THE CHILDREN.

79 THE SAME IS INCLUDED IN HER MOTION TO OPPOSE THE RETURN OF THE CHILDREN, WITHOUT ANY DISTINCTION AS TO THE BENEFIT OF WHOM HER CHILD SUPPORT REQUEST IS MADE.

80 TO SOME EXTENT, THIS GOES TO SHOW THE PARTIES' INTENT AS CONCERNS THE SCOPE OF X' RELATIONSHIP TO PLAINTIFF AND HIS SIBLINGS, AND DEFENDANT'S RECOGNITION OF SUCH.

81 AGAIN, THE PRESENT DEBATE DOES NOT CONCERN CUSTODY ISSUES. THE JURISPRUDENCE AND DOCTRINE PRESENTED AT THE HEARING, PARTICULARLY ON THE QUESTION OF INCHOATE RIGHTS UNDER THE CONVENTION, HAS NOT CONVINCED THE COURT THAT PLAINTIFF'S CONTENTION CONCERNING HIS RIGHT TO CLAIM X' RETURN ON AN "IN LOCO PARENTIS" BASIS, JUSTIFIES THIS COURT TO GRANT HIM STANDING WITHIN THE MEANING OF THE ACT.

82 THEREFORE, THE COURT MUST CONCLUDE THAT DEFENDANT'S OPPOSITION, AS CONCERNS X, IS FOUNDED AND THAT IN THE PRESENT CIRCUMSTANCES, THE CONVENTION DOES NOT APPLY TO HIM.

83 HOWEVER, BECAUSE OF THE ABOVE-MENTIONED REPORT MADE BY THE DIRECTOR OF YOUTH PROTECTION, REFERRING TO SECTION 38 C) OF THE *YOUTH PROTECTION ACT*, AND THE DIRECTOR'S AGGRESSIVE INTERVENTION IN THE PRESENT FILE, THE COURT WILL NEVERTHELESS ORDER PROVISIONAL MEASURES CONCERNING X, ACCORDING TO SECTIONS 3084 AND 3140 OF THE *CIVIL CODE OF QUÉBEC*, PENDING EVENTUAL ADDITIONAL MEASURES CONCERNING HIM:

3084. IN CASES OF EMERGENCY OR SERIOUS INCONVENIENCE, THE LAW OF THE COURT SEIZED OF THE MATTER MAY BE APPLIED PROVISIONALLY TO ENSURE THE PROTECTION OF A PERSON OR OF HIS PROPERTY; [...]

3140. IN CASES OF EMERGENCY OR SERIOUS INCONVENIENCE, QUÉBEC AUTHORITIES MAY ALSO TAKE SUCH MEASURES AS THEY CONSIDER NECESSARY FOR THE PROTECTION OF THE PERSON OR PROPERTY OF A PERSON PRESENT IN QUÉBEC.

DEFENDANT'S OPPOSITION: THE EXCEPTION PROVIDED IN SECTION 21 (2) OF THE ACT

84 SECTION 21 (2) OF THE ACT STATES:

21. THE SUPERIOR COURT MAY REFUSE TO ORDER THE RETURN OF THE CHILD IF THE PERSON WHO OPPOSES HIS OR HER RETURN ESTABLISHES THAT :

1) [...]

2) THERE IS A GRAVE RISK THAT HIS OR HER RETURN WOULD EXPOSE THE CHILD TO PHYSICAL OR PSYCHOLOGICAL HARM OR OTHERWISE PLACE THE CHILD IN AN INTOLERABLE SITUATION.

85 THIS SECTION CONSTITUTES AN EXCEPTION AND MUST BE CONSTRUED RESTRICTIVELY. THE BURDEN OF PROOF LIES WITH THE OPPONENT OF THE RETURN AND AGAIN, THE JURISPRUDENCE CONFIRMS THAT THERE MUST BE CLEAR AND CONVINCING EVIDENCE THAT THERE IS A GRAVE RISK, WHICH IS MORE THAN A SERIOUS ONE, THAT THE RETURN WOULD EXPOSE THE CHILD TO PHYSICAL OR PSYCHOLOGICAL HARM, OR OTHERWISE PLACE HIM IN AN INTOLERABLE SITUATION⁴.

86 AS JUSTICE CHAMBERLAND OF THE COURT OF APPEAL MENTIONS⁵, THIS RISK MUST BE OF SUCH AN IMPORTANCE THAT IT CANNOT BE CIRCUMVENTED BY THE JUDGE IMPOSING APPROPRIATE CONDITIONS IN THE RETURN ORDER.

87 DEFENDANT FEARS THAT IF THE CHILDREN ARE RETURNED, THEY MAY BE SUBJECTED TO VIOLENCE AND ABUSE BY PLAINTIFF.

88 IT IS IMPORTANT TO DISTINGUISH THE QUESTION OF THE RETURN OF THE CHILDREN WITH THAT OF THE ATTRIBUTION OF CUSTODIAL OR ACCESS RIGHTS. THE COURT, IN THE PRESENT PROCEEDING, CANNOT DECIDE WHETHER IT IS PREFERABLE THAT THE CHILDREN REMAIN WITH THEIR MOTHER INSTEAD OF WITH THEIR FATHER, OR THAT ONE OF THEM IS MORE APT TO OBTAIN CUSTODY OF THE CHILDREN.

89 AS JUSTICE ROY OF OUR COURT STATES⁶, THERE ARE SEVERAL EXAMPLES WHERE THE CONVENTION IS APPLIED AND THE RETURN OF CHILDREN ORDERED, EVEN IN THE PRESENCE OF ALLEGATIONS OF ABUSE OR VIOLENCE⁷. HERE, THE TRUE PURPOSE OF THE PROCEEDINGS IS NOT FOR THE COURT TO DETERMINE IF THERE HAS BEEN ABUSE OR VIOLENCE, BUT ONLY TO DETERMINE IF THE RETURN OF Y AND Z POSES A GRAVE RISK TO THEM.

90 THE COURT FINDS THAT DEFENDANT'S AFFIDAVIT DOES NOT SUFFICIENTLY SUPPORT HER CLAIM UNDER SECTION 21 (2) OF THE ACT TO PREVENT THE RETURN OF Y AND Z IN THEIR HABITUAL PLACE OF RESIDENCE.

91 HOWEVER, THE PROOF IS SUFFICIENT TO WARRANT PARTICULAR CONDITIONS TO ENSURE THEIR SAFE RETURN TO FLORIDA, PENDING THE DECISION OF THE COMPETENT COURT ON CUSTODIAL AND ACCESS ISSUES.

92 TO THIS PURPOSE, BOTH YOUTH PROTECTION AUTHORITIES, IN QUÉBEC AND IN FLORIDA, HAVE ESTABLISHED A COLLABORATION TO ENSURE THAT THE CHILDREN BE TAKEN CARE OF UPON THEIR RETURN.

93 THE DIRECTOR OF YOUTH PROTECTION HAS AGGRESSIVELY INTERVENED IN THE PRESENT CASE AND RECOGNIZES THAT ORDERS MAY BE MADE TO ENSURE THAT ITS COOPERATION AND PARTICIPATION ARE FORMALIZED.

94 MOREOVER, FLORIDA CHILD SERVICES, THROUGH DISCUSSIONS WITH THE ATTORNEY FOR THE DIRECTOR OF YOUTH PROTECTION, ME CAMPEAU, ARE AWARE OF THE PRESENT PROCEEDINGS AND HAVE INDICATED TO MS. MILLER THAT THEY ARE READY AND WILLING TO TAKE OVER THE CASE WHEN THE CHILDREN ARRIVE IN FLORIDA, AND TAKE WHATEVER STEPS ARE REQUIRED TO ENSURE THE CHILDREN'S SAFETY UNTIL A COURT DETERMINES THE CUSTODIAL ISSUES.

95 FURTHERMORE, THROUGH HIS ATTORNEY, PLAINTIFF HAS FORMALLY UNDERTAKEN (NOTED IN THE MINUTES) NOT TO SEE OR TRY TO SEE OR CONTACT HIS DAUGHTERS UPON THEIR ARRIVAL, AND AGREES THAT THEY BE RETURNED TO FLORIDA IN THE CARE OF THE FLORIDA CHILD SERVICES, TO BE SHELTERED IN A CONFIDENTIAL LOCATION, UNTIL A COURT DECISION IS MADE CONCERNING THEIR CUSTODY. THE COURT HAS NOTED HIS UNDERTAKING THAT HE IS ALSO WILLING TO PROVIDE FOR OR REIMBURSE AIRFARE FOR THE CHILDREN AND FOR MS. MILLER, OR WHOMEVER IS AUTHORIZED BY THE DIRECTOR OF YOUTH PROTECTION TO ACCOMPANY THEM.

96 DEFENDANT INDICATED TO THE COURT THAT SHE DOES NOT INTEND TO GO BACK TO FLORIDA FOR THE SCHEDULED JULY 23RD HEARING, BECAUSE SHE DOES NOT HAVE THE MEANS TO DO SO, NOR HAS SHE SECURED PROPER REPRESENTATION, WHICH SHE HAS NOT SOUGHT UP TO NOW. SHE DOES NOT WANT TO RETURN AND FACE PLAINTIFF WHOM SHE FEARS. SHE IS ALSO FEARFUL THAT THIS SITUATION WILL DISFAVOUR HER AT THE JULY 23RD HEARING AND THAT A DECISION MAY BE SET DOWN IN HER ABSENCE, OR IN THE ABSENCE OF REPRESENTATION ON HER PART.

97 THIS IS A CHOICE THAT DEFENDANT MUST ASSUME. HOWEVER, BECAUSE OF DEFENDANT'S FINANCIAL DEPENDENCY ON PLAINTIFF WHEN SHE LIVED IN FLORIDA, THE COURT WILL ORDER, AS A PROVISIONAL AND SAFEGUARD MEASURE, THAT PLAINTIFF PROVIDE SOME FINANCIAL ASSISTANCE TO ALLOW DEFENDANT TO TRAVEL AND BE PRESENT AT THE JULY 23RD HEARING OR ANY POSTPONEMENT THEREOF.

98 TO THIS PURPOSE, THE COURT WILL GIVE ACT TO PLAINTIFF'S UNDERTAKING THAT HE PROVIDE FOR AIRFARE AND TWO NIGHTS STAY FOR DEFENDANT, UP TO A MAXIMUM OF 1500\$.

99 FINALLY, BECAUSE OF THE NATURE AND OF THE URGENCY OF THIS CASE, THE COURT WILL ORDER THE PROVISIONAL EXECUTION OF THE PRESENT JUDGMENT, NOTWITHSTANDING APPEAL.

FOR THESE REASONS, THE COURT:

100 *GRANTS* THE REDUCTION IN THE TIME PERIODS FOR SERVICE OF PLAINTIFF'S MOTION AND DEFENDANT'S OPPOSITION;

101 *GRANTS* THE REDUCTION IN THE TIME PERIOD FOR FILING THE NOTICE OF PRESENTATION OF PLAINTIFF'S MOTION AND DEFENDANT'S OPPOSITION;

102 *DISMISSES* PLAINTIFF'S MOTION AS CONCERNS X O.;

103 *GRANTS* PLAINTIFF'S MOTION AS CONCERNS Y O. AND Z O.;

104 *ORDERS* THE IMMEDIATE RETURN OF Z O. AND Y O. TO THE STATE OF FLORIDA, U.S.A.;

105 *ORDERS* THAT BOTH CHILDREN REMAIN IN THE CONFIDENTIAL FOSTER HOME UNTIL THEIR DEPARTURE FOR FLORIDA;

106 *GIVES ACT* TO PLAINTIFF'S UNDERTAKING THAT HE NOT SEE, TRY TO SEE, CONTACT OR TRY TO CONTACT THE CHILDREN UPON THEIR ARRIVAL IN FLORIDA, AND UNTIL A COURT DECISION IS RENDERED ON CUSTODIAL OR ACCESS ISSUES, AND *ORDERS* HIM TO CONFORM TO IT;

107 *GIVES ACT* TO PLAINTIFF'S CONSENT THAT THE CHILDREN BE SHELTERED IN A CONFIDENTIAL FOSTER HOME OR OTHER CONFIDENTIAL ACCOMMODATION DETERMINED BY THE CHILD AND FAMILY SERVICES IN FLORIDA, OR BY THE COMPETENT COURT, FROM THEIR ARRIVAL UNTIL A COURT DECISION IS RENDERED ON CUSTODIAL OR ACCESS ISSUES, AND *ORDERS* HIM TO CONFORM TO IT;

108 *ORDERS* THAT THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER TAKE ALL APPROPRIATE AND NECESSARY MEASURES TO BUY AIRLINE TICKETS AS SOON AS POSSIBLE TO ENSURE THE PROMPT RETURN OF THE CHILDREN;

109 *ORDERS* THAT THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER TAKE ALL APPROPRIATE AND NECESSARY MEASURES TO ENSURE THAT THE CHILDREN ARE SECURE UPON THEIR DEPARTURE, DURING TRAVEL AND UPON THEIR ARRIVAL IN FLORIDA;

110 *ORDERS* THAT THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER TAKE ALL APPROPRIATE AND NECESSARY MEASURES WITH CHILD AND FAMILY SERVICES IN FLORIDA TO ENSURE THAT UPON THEIR ARRIVAL, THE CHILDREN ARE MET BY A COMPETENT REPRESENTATIVE OF THE DEPARTMENT, WHOSE NAME MUST BE CONFIRMED TO THE DIRECTOR, PRIOR TO DEPARTURE FROM QUÉBEC;

111 *GIVES ACT* TO THE UNDERTAKING OF THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER, THAT MS. REBECCA MILLER OR ANOTHER PERSON AUTHORIZED BY THE DIRECTOR, ACCOMPANY THE TWO CHILDREN TO FLORIDA AND REMIT

THEM ONLY TO THE CARE OF THE SPECIFIED REPRESENTATIVE OF CHILD AND FAMILY SERVICES IN FLORIDA;

112 *ORDERS* THAT THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER TAKE ALL APPROPRIATE AND NECESSARY MEASURES WITH CHILD AND FAMILY SERVICES IN FLORIDA TO ENSURE THAT THE CHILDREN ARE TAKEN CHARGE OF UPON THEIR ARRIVAL IN FLORIDA;

113 *AUTHORIZES* THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER TO COMMUNICATE TO CHILD AND FAMILY SERVICES ALL INFORMATION IN ITS POSSESSION CONCERNING THE ACTUAL SITUATION OF THE CHILDREN;

114 *ORDERS* THE ATTORNEY GENERAL OF THE PROVINCE OF QUÉBEC TO REMIT TO THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER, ALL IDENTIFICATION DOCUMENTS OF THE TWO MINOR CHILDREN, Z O. AND Y O., AS WELL AS ANY DOCUMENT REQUIRED FOR THEIR RETURN IN THE U.S.A.;

115 CONDITIONAL UPON DEFENDANT ADVISING PLAINTIFF OF HER INTENT TO BE PRESENT AT THE HEARING SCHEDULED FOR JULY 23RD 2008 BEFORE THE CIRCUIT COURT OF THE TWELFTH JUDICIAL DISTRICT IN AND FOR SARASOTA COUNTY, OR ANY POSTPONEMENT THEREOF, *GIVES ACT* TO PLAINTIFF'S UNDERTAKING TO PAY TO DEFENDANT, UP TO A MAXIMUM OF \$1,500.00, FOR THE COST OF AIRFARE AND TWO NIGHTS STAY TO ALLOW DEFENDANT TO BE PRESENT AT SAID HEARING, AND *ORDERS* HIM TO CONFORM TO IT;

116 *ORDERS* DEFENDANT NOT TO INTERFERE IN THE PROCESS FOR THE IMMEDIATE RETURN OF THE TWO MINOR CHILDREN;

117 AS CONCERNS X O., *ORDERS* THAT THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER TAKE ALL NECESSARY MEASURES TO ENSURE HIS SAFETY AND WELL-BEING, ACCORDING TO LAW;

118 IN THE MEANTIME, *ORDERS* THAT X O. BE MAINTAINED IN A CONFIDENTIAL FOSTER HOME;

119 *ORDERS* THE POLICE AUTHORITIES OF THE JUDICIAL DISTRICT OF MONTREAL AND/OR ANY OTHER DISTRICT, IF REQUIRED, TO TAKE ALL AVAILABLE STEPS TO ALLOW THE EXECUTION OF THE PRESENT JUDGMENT;

120 *ORDERS* THAT THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER COMMUNICATE COPY OF THE PRESENT JUDGMENT TO CHILD AND FAMILY SERVICES IN FLORIDA AS SOON AS POSSIBLE;

121 *ORDERS* THAT THE ATTORNEY GENERAL OF THE PROVINCE OF QUÉBEC COMMUNICATE COPY OF THE PRESENT JUDGMENT TO THE CENTRAL AUTHORITY FOR THE STATE OF FLORIDA;

122 *ORDERS* THAT THE ATTORNEY GENERAL OF THE PROVINCE OF QUÉBEC REMIT AS SOON AS POSSIBLE, THE PASSPORT OF X O. TO THE DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH AND FAMILY CENTER;

123 *ORDERS* THAT THE ATTORNEY GENERAL OF THE PROVINCE OF QUÉBEC REMIT, AS SOON AS POSSIBLE, THE PASSPORT OF D. B. TO HERSELF;

124 *ORDERS* THAT PLAINTIFF, THROUGH HIS ATTORNEYS, COMMUNICATE COPY OF THE PRESENT JUDGMENT TO JUSTICE BECKY TITUS OF THE CIRCUIT COURT OF THE TWELFTH JUDICIAL DISTRICT IN AND FOR SARASOTA COUNTY, FLORIDA;

125 RESERVES *PLAINTIFF'S RECOURSES UNDER SECTION 39 OF THE ACT* RESPECTING THE CIVIL ASPECTS OF INTERNATIONAL AND INTERPROVINCIAL ABDUCTION, R.S.Q., CHAPTER A-23.01;

126 ORDERS THE PROVISIONAL EXECUTION OF THE PRESENT JUDGMENT,
NOTWITHSTANDING APPEAL;

127 THE WHOLE, WITHOUT COST.

SYLVIE DEVITO, J.S.C.

ME PIERRE-HUGUES FORTIN, FOR F. O.

ME FREDERIC STEWART LIVERMAN, FOR D.B.

ME RIMA KAYSSI, FOR ATTORNEY GENERAL OF QUEBEC

ME FRANCINE CAMPEAU, FOR DIRECTOR OF YOUTH PROTECTION OF THE BATSHAW YOUTH
AND FAMILY CENTER

[1.](#) R.S.Q., chapter A-23.01.

[2.](#) R.S.Q., chapter P-34.1.

[3.](#) Exhibit P-2 of Plaintiff's motion.

[4.](#) *R.F. c. M.G.*, J.E. 2002-1604 (C.A.); *M.T. c. T.B.*, J.E. 2004-117 (C.A.).

[5.](#) *Les Aspects civils de l'enlèvement d'enfants*, Conference given to Superior Court Judges,
January 15, 2001, Jacques Chamberland, C.A.J.

[6.](#) *Droit de la famille – 09497*, J.E. 2008-802.

[7.](#) *C.T. c. L.D.*, 2004 CanLII 31387 (QC CS); *M. (V.) c. S. (E.)*, 2001 IJCan 27415 (QC CS);
Blondin c. Dubois, 189 F.3d 240 (2d Cir. 1999); *Re L.L. (Children)*, 22 May 2000, (N.Y. Fam
Ct.); *N. c. N. (Abduction : Article 13 Defence)*, [1995] 1 FLR 107 (England H.C.).

DATE DE MISE À JOUR : 15 AOÛT 2008

DATE DE DÉPÔT : 15 AOÛT 2008