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Stevens v. Stevens, 2026 MBKB 98

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COURT OF KING'S BENCH OF MANITOBA
(FAMILY DIVISION)

B E T W E E N:

DUSTIN MARK ALAN STEVENS, petitioner,	)	Jean-Rene Dominique Kwilu for the petitioner
- and -	)	
ANNA ELIZABETH STEVENS, respondent.	)	Reannah J. Hocken for the respondent
	)	JUDGMENT DELIVERED: July 16, 2026

KAZINA J.

I. INTRODUCTION

[1] The mother seeks permission to move from Winnipeg, Manitoba to Minnesota ("MN") with the parties' two sons. The father is opposed to the move. The parties proceeded to a five-day trial during which the primary issue was relocation along with the interrelated issues of parenting time, decision making and family violence. The other issues included retroactive and ongoing child support, spousal support, s. 7 expenses, and imputation of income to both parties.

[2] These reasons address only the issue of relocation and whether it is in the children's best interests. The decision on relocation is of paramount importance because the children require certainty of where they will attend school in September 2026. In addition, both parties expressed that the decision on relocation affects their positions on the outstanding support matters.

[3] In these reasons certain aspects of the evidence are analyzed more than others. This reflects the issues requiring determination and the findings necessary to resolve them. The conclusions reached are based on a consideration of the evidence as a whole.

II. BACKGROUND

[4] The mother is from MN, is a United States ("U.S.") citizen, and 37 years old. The father is from British Columbia ("B.C."), is a Canadian citizen, and 39 years old. The parties separated after a nine-and-a-half year marriage on July 15, 2023. Their oldest son is turning nine years old this August and is entering Grade 4. Their youngest son is turning five years old this October and is starting kindergarten in the Fall. The children both have Canadian and U.S. citizenship.

[5] When the parties married the mother lived in MN and worked full-time as a registered nurse. The father lived in B.C. attending university and worked part-time. After they married in MN, the mother moved to B.C. to be with the father. The father graduated in 2017 with a master's degree in Teaching English to Speakers of Other Languages from Trinity Western University and started his own tutoring business. The mother, unable to work as a nurse in Canada, worked across the border in Washington State until giving birth to their first son in 2017.

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[6] When their first son was 18 months old the parties left B.C. They travelled around Chile and Argentina for nine months. They returned to Canada in March 2020, which was earlier than planned due to the COVID-19 pandemic. They stayed in B.C. for approximately four months before moving to Winnipeg in July 2020.

[7] Winnipeg is the closest major Canadian city to the mother's home state of MN. They chose to move to Winnipeg because of its proximity to MN and to be close to the mother's family. The parties' plan prior to separation was to move as a family from Winnipeg to MN. Neither party had any prior connection to Winnipeg or Manitoba, and neither had, nor continues to have, extended family there. The father's extended family resides in B.C., and the mother's extended family resides in MN.

[8] After moving to Winnipeg, their second son was born in October 2021. The parties' relationship deteriorated, and on July 15, 2023, the father advised the mother that he was ending the relationship.

[9] The mother did not provide proper notice of her intent to relocate by serving the required form pursuant to the ***Divorce Act***, R.S.C. 1985, c. 3, ("***DA***"). However, she filed an Answer and Petition for Divorce on September 14, 2023, seeking permission to relocate to MN "in or around July 2024". The parties entered into an Agreement with counsel on April 12, 2024, setting out a shared parenting schedule. The parties attended triage, two case conferences, and attended at a contested motion before Berthaudin J. At the contested motion on July 11, 2025, Berthaudin J. pronounced an Interim Order denying the mother's request for interim relocation, incorporating the time-sharing

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schedule from the parties' Agreement into the Interim Order, and setting the father's obligation to pay child support and spousal support.

[10] Since the children's birth the father has been the primary income earner, and the mother has been largely a stay-at-home parent. From 2017 to 2025, the father was self-employed, operating his tutoring business and private practice teaching English as a second language. Since 2025, he has continued this business, but in a limited capacity, and is currently employed as an educational assistant at Dasmesh School. Since the children's birth the mother did not work, except part-time as a caregiver for six months when their oldest son was one year old, and from 2023 to June 2025 as a lunch supervisor one hour a day at their son's school. She started boarding pets after the separation from which she earns minimal income. She also receives social assistance. The parties' plan was for the mother to return to work as a nurse in MN after their move and once both of their children were in school full-time.

[11] The father's income was set at $57,000 in the Interim Order of Berthaudin J. pronounced July 11, 2025 and the mother's income was imputed at minimum wage. The father was ordered to pay child support of $341 per month and spousal support of $500 per month which he continues to pay.

[12] The mother primarily cared for the children prior to separation and continued to do so for their older son until October 2023, and their younger son until June 2024. Since then, the children have resided in a shared-care arrangement, spending three nights each week with the father, Sunday to Wednesday, and four nights a week with

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the mother, Wednesday to Saturday. Both parties are involved parents who love their children deeply.

[13] Both parties alleged that the other has perpetrated family violence. The parties spent considerable time on these allegations, making the nature and extent of any family violence a primary focus at trial.

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III. THE PARTIES' POSITIONS

[14] The mother's position is that relocation is in the children's best interests for the following primary reasons:

- the children would benefit from growing up with a large network of extended family including grandparents, aunts, uncles, and cousins, which is not available to them in Winnipeg, where they have no extended family on either their paternal or maternal side;
- it would improve her strained financial circumstances in Winnipeg, and provide her and the children with long-term economic stability and financial independence while facilitating her return to work as a registered nurse;
- it would provide both her and the children with a support system which they do not have in Winnipeg, which for several reasons, would benefit her and the children;
- it would enhance and foster her emotional and psychological well-being and mental health, which is precarious while in Winnipeg;
- it would serve the children's best interests considering the family violence perpetrated by the father; and
- it reflects the longstanding plan of the parties to move to MN for the benefits it provides to her and the children.

[15] The father's position is that relocation is not in the children's best interests for the following primary reasons:

- it would detrimentally affect his relationship with the children by reducing his parenting time from regularly weekly contact to holidays and long weekends;

- it would introduce "cross border complexities";
- it would disrupt the children's stability, by eliminating the time schedule they have been accustomed to, and by removing them from their home, friends, school and daycare, and community;
- it would compromise the children's relationship with his side of the family, and the children's relationship with the mother's side of the family can be maintained while residing in Winnipeg
- the mother can improve her financial circumstances without relocating to MN, and she could complete the education and training necessary for her to work as nurse in Manitoba;
- her plan for relocation is vague because she has not secured employment in MN; and
- her plan for relocation is also vague because she does not have a specific timeline for moving out of her parents' home in MN.

IV. THE RELOCATION LEGAL FRAMEWORK

A. The Burden of Proof

[16] Section 16.93(1) of the ***DA*** imposes the burden on the mother of proving that the relocation is in the best interests of the children because the children substantially spend equal time with each party. However, s. 16.94 provides the Court with the discretion not to apply that burden if, such as here, the time sharing arrangement followed by the parties is pursuant to an Interim Order.

[17] The Interim Order pronounced July 11, 2025 by Berthaudin J. simply incorporates the time-sharing schedule from the parties Agreement of April 12, 2024. The parties agreed to the shared arrangement as set out in their Agreement pending a final determination of the mother's request to relocate. Before the parties entered into the Agreement, the mother's request to relocate was already a contested issue, and

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pleadings had been filed. The Agreement itself confirms that the time-sharing was not intended to be final and was entitled the "Interim Reviewable Agreement". Further, it includes a clause stating the Agreement terminates upon an order of the Court on the issue of parenting arrangements and a Final Order. The Preamble includes the following clause:

> AND WHEREAS the parties are negotiating and preparing for further proceedings in the Court of King's Bench (Family Division), they wish to enter into the within Interim Agreement to have force and effect while negotiations and legal proceedings move forward;

[18] The Interim Order followed by the parties was intended to preserve the status quo until the Court could fully assess the issue of relocation with a complete analysis of the children's best interests. Thus, the Court is exercising its discretion under s. 16.94 of the ***DA***, in finding that both parties bear the burden of proving whether the relocation is in the best interests of the children. That said, the assessment of the best interests factors as set out herein, and the Court's conclusion on relocation, would have remained the same even if the mother alone bore the burden.

B. Double Bind and Blended Analysis

[19] Pursuant to s. 16.92(2) of the ***DA*** when deciding whether to authorise the relocation, the Court shall not consider, if the relocation was prohibited, whether the mother would relocate without the children or remain in Winnipeg. The purpose being to avoid favouring the status quo if the mother were to state she will not move if relocation is denied or draw a negative inference about her commitment to the children if she states that she intends to relocate without them.

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[20] A parent's request to relocate is simply part of the factual matrix in assessing what parenting arrangement is in the children's best interests (***Barendregt v. Grebliunas***, 2022 SCC 22, para. 112). The Saskatchewan Court of Appeal in ***Chapman v. Somerville***, 2022 SKCA 88, referring to ***Duggan v. White***, 2019 BCCA 200, describes this requiring a "blended analysis" of relocation and parenting arrangements together in one seamless and overall cohesive analysis. The Saskatchewan Court of Appeal further confirms that in relocation cases there is nothing to be gained by the Court analyzing whether hypothetical parenting arrangements are in a child's best interests. Rather, the analysis is to be confined to the parenting arrangements that are realistically before the Court (paras. 36, 42-45).

[21] The father did not testify that he would ever be willing to move to MN or that he has made any inquiries about employment in MN. In any event, he clearly represented that he is remaining in Winnipeg and thus opposes the relocation. Having regard to the totality of the evidence adduced at trial, the father's evidence from an immigration lawyer is not relevant.

[22] The Court has neither considered whether the mother would move or not if relocation is denied, nor whether the father would move to MN if relocation were permitted. In assessing whether the proposed relocation is in the children's interests the Court's inquiry is limited to whether the children's interests would be better served residing in Winnipeg primarily with the father or residing in MN primarily with the mother.

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C. The Best Interests Analysis

[23] Only the best interests of children are to be considered when determining relocation. This requires assessing all the best interest factors, including the relocation best interest factors set out in s. 16.92(1)(a) - (g) of the ***DA*** and the general best interest factors set out in s. 16(3)(a)-(k) of the ***DA***. In assessing the general best interest factors, primary consideration is to be given to the children's physical, emotional and psychological safety, security and well-being as per s. 16(3). All the best interest factors are to be considered holistically and in conjunction with one another (See ***Reid-Taylor v. Vecchio***, 2023 ONSC 7159, at para. 970).

[24] Inquiry into what is best for a child is highly contextual because of the multitude of factors that impinge on a child's best interests. Determining a child's best interests is always a fact-specific and highly discretionary determination (***Barendregt***, paras. 97, 100, and 152). As a result, the inquiry does not begin with a legal presumption in favor of either parent, any location, or the status quo, but focuses only on the best interests of the children in the unique and particular circumstances of each case.

[25] Concerns about parenting time are inevitably engaged in relocation cases. Section 16(6) of the ***DA*** provides guidance in how the "parenting time factor" intersects with best interests as follows:

> Parenting time consistent with best interests of child
>
> (6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

[26] The "parenting time factor", previously referred to as "the maximum contact principle", is explained by Karakatsanis J. in ***Barendregt*** as follows:

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> [135] … It is worth repeating that what is known as the maximum contact principle is *only* significant to the extent that it is in the child's best interests; it must not be used to detract from this inquiry …
>
> . . .
>
> [164] … These considerations are not synonymous. Nor are they necessarily mutually reinforcing. Courts should only give effect to the parenting time factor *to the extent* that it is in the best interests of the child.

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[27] Karakatsanis J. specifically addressed the "parenting time factor" in the context of relocation, confirming the question for the Court is not how to best promote the "parenting time factor", but how to best promote the best interests of the children, and whether it is in the children's best interests to move notwithstanding the impact on their relationship with the other parent (***Barendregt,*** paras. 132 and 164).

[28] The best interests analysis in relocation is necessarily prospective. The forward-looking nature of relocation cases requires the Court to craft a disposition at a fixed point in time that is both sensitive to children's present circumstances and can withstand the test of time and adversity (***Barendregt,*** para. 8). Further, in assessing the children's best interests, past conduct of the parties is only to be considered as it is relevant to the exercise of parenting time or decision making as mandated by s. 16(1)(5) of the ***DA***.

V. THE PARTIES' PLAN TO MOVE TO MN

[29] The parties' plan to move to MN is relevant to evaluating the mother's reasons for relocation. It provides context for the mother's current desire to relocate and the benefits she alleges would flow to her and the children. It also supports a finding, as in ***Link v. Lenskyj***, 2022 BCCA 341, that her reasons of wanting to pursue a career and obtain family support are *bona fide* because they pre-date the parties' separation.

[30] The parties' plan to move to MN is also relevant to assessing the parties' credibility. At trial the father downplayed and was non-committal about their plan to move to MN. He characterised the mother as having "a lot" of ambivalence and concern about moving and wanting to move to other places. However, the evidence supports that the mother's reservations were transient or mostly about the timing of the move and did not reflect a definite change of mind about moving. This included the mother expressing some hesitation about the timing of the move earlier in the relationship during the COVID-19 pandemic and during Donald Trump's presidency, and mentioning moving to Switzerland and Washington which ideas were fleeting and speculative. This is unlike the parties' plan to relocate to MN, which the evidence, including their 2023/2024 Goals List as set out below and the mother's maintenance of her MN nursing license, showed was a plan of formed intention and concrete planning.

[31] The long-term nature of the parties' plan to move to MN is corroborated by the mother maintaining a nursing license in MN throughout their entire nine-and-a-half year relationship. She renewed her MN nursing license every two years and completed the required continuing education credits necessary to do so. Their plan is further corroborated by documentary evidence, the parties 2023/2024 Goals List, which is a "to-do" list created during their marriage (Exhibit #51, hereinafter "the move list"). This list supports the mother's testimony that the parties intended to relocate to MN by June 2024 and purchase a home in MN, having only ever rented in Winnipeg. The last item on the list is to "take a final U-Haul load to MN in the 3rd or 4th week of July 2024", and has the following other to do items:

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2023/2024 Goals

- Ask about Canadian loan for US [house] purchase 3/27
- Research self employment health insurance 4/14
- Research temporary health insurance and decide on approach 4/14
- Decide on living arrangement in MN 5/31
- Gain Mortgage pre-approval 06/30
- Submit requests for all needed PR documents by 6/30
- Submit US PR 08/31
- Become landed immigrant 12/31
- Research transportation for move and cost it 12/31
- Begin packing 05/01/2024
- Take 1 U-haul load to MN June of 2024
- Take final load to MN 2nd U-haul trip in 3rd of 4th week of July 2024

[32] The mother testified that the father typed this list on his computer and printed it out. It was taped to his locker found in his home office and Exhibit #51 is a photo the mother took of his locker showing the list. The photo also shows another list for the father's small business, [D.]'s Party's Rentals, was attached and taped above the move list ("business list").

[33] The father testified that he had no recollection of the move list and tried to accuse the mother of making it. He testified that he had no recollection of the business list or recall making it. This testimony is not believable and does not reconcile with the significance of these lists, and the following factors in their totality:

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- It is highly unlikely that anyone would have made the business list other than the father, and the father did not point to anyone else who may have. [D.]'s Party Rentals was the father's sole business, and the mother was not involved.

- Both lists are detailed with 35 items on the business list and 18 items on the move list. It is clear time and thought went into compiling them, they were typed and printed, rather than being a quick handwritten note.

- The move list has items that relate only to the father such as obtaining immigration and Permanent Residence status, and financial matters which he handled during the marriage. This corroborates the mother's testimony that this was not her list, she did not create it, and the father gave her a copy (page 1 of Exhibit #51). It is further corroborated by the fact the mother's copy had her "to do" items in her handwriting, which included making family photo books, renewing their younger son's passport, and applying for citizenship.

- In consideration of the above points, it is reasonable to assume the father was interacting with both the business list and the move list. Both lists had a handwritten "X" next to certain items indicating completion.

- The father had seen the move list prior to trial and had been asked about it. At trial when presented with the list he testified "I don't recall as stated previously". Even if he did not recall the list after separation, which is not believable for the totality of reasons as set forth above, he previously had the opportunity to refresh his memory about the list prior to being asked about it at trial.

[34] The father's evidence about the move list and business list is not credible. His testimony appears to have been motivated by a reluctance to acknowledge evidence he perceives as being unfavorable to him, being the parties plan to move from Winnipeg to MN by June 2024. Similar conduct was evident in other aspects of his testimony and informs part of the assessment of the parties' respective credibility as explained in the following section.

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VI. CREDIBILITY OF THE PARTIES

[35] The mother argues that the father is not credible. The father made no submissions about the mother's overall credibility. It is trite law that the Court may accept all, part of, or none of the evidence of a party and may attach different weight to different aspects of their evidence. Having considered the totality of the evidence, the mother was a more credible witness. Where the parties' evidence conflicts, the mother's evidence is preferred.

A. The Father's Credibility

[36] At times, the father did not acknowledge basic facts or the obvious. At points, he did not recall things that reasonably appear to be capable of being remembered, was noncommittal and argumentative. Some examples are set out below.

[37] He refused to state that the Petitioner is a good mother, when asked in examination for discovery, direct examination and cross-examination, and would only name positive characteristics he believes she has as a mother.

[38] The mother testified that during the relationship the father was absent-minded and on occasions did not latch the outside gate of their home, leading to their younger son escaping and running down the sidewalk unsupervised, putting him at risk of getting hit by a car. The father denied this occurring when asked in cross-examination. However, after his denial when asked if such a scenario would provoke anxiety in him, he answered, "you are creating a condition if that were true" and "I am not an expert in anxiety, so I am not going to speculate on it". In discovery he would not commit to something that he should know, being whether he owns real estate anywhere other than

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Winnipeg or if he rents any property other than his house, with his answer being "not that I'm aware of".

[39] On a number of occasions, the father had difficulty giving direct answers, with the Court needing to direct him to answer the question posed to him. He had difficulty answering straightforward questions like whether the children had daycare at different time periods.

[40] The father was very motivated to display himself in a positive light. It is certainly understandable that, in high conflict family litigation, and particularly in relocation cases where the stakes are so high, parties may be inclined to present themselves in an overly favourable manner. The father's behaviour went further than this. In cross-examination, on several occasions he volunteered explanations at countering the inference suggested by the question, including stating when answering "I don't agree with the way you are setting that up", and "I don't agree with the way you are framing it". When asked in cross-examination about accusing the mother of infidelity, his initial answer was "this has already been addressed in detail".

[41] The father's tendency to deflect from matters that may portray poorly on him is illustrated by his failure to acknowledge anything wrong with his conduct that is found by the Court to be coercive and controlling behaviour as set out herein. A further example is his testimony regarding play therapy for their older son. The father did not agree to their son being enrolled in play therapy and would only agree to Theraplay. He told the mother it was because he did not want "to be tempted" to subpoena the play therapist's records for Court. When questioned about this in cross-examination his

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explanation was that although he told the mother this, it was untrue. He never "felt tempted" to subpoena the records and explained that he told her this because he did not want to be accusatory of her so he "turned it on myself and not her". There is no evidence that the mother ever intended or expressed a desire to subpoena records if their son saw a play therapist.

[42] The father, when confronted with evidence he perceived as reflecting unfavorably on him, would at times seek to deflect by attributing responsibility to the mother or highlighting perceived shortcomings on her part. There were a number of examples of this, one of which is found in the Trial Transcript, Volume 2, May 13, 2026, p. T68, as follows:

> Q I suggest that during the marriage, you would frequently leave the stove on?
> A No I don't agree with that.
>
> Q Have you ever left the stove on?
> A Have I left the stove on to cook?
>
> Q Burners.
> A Okay --
>
> Q You left the burners on.
> A -- so this requires clarification. [the mother] would come in and be angry with me, and then I would come out of that room, and then she would accuse me of having the stove on and things like that. Things like that happened in the home.
>
> Q So the stove was left on by you?
> A Again --
>
> Q It -- just did you leave the stove on?
> A I don't recall –

[43] The father exaggerated the mother's role in preventing his involvement in the children's medical care. The evidence did not support the father's characterization.

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The father tried to portray the mother as diminishing his role with the children by being the only listed parent with the children's family doctor, and alleging that she failed to keep him informed about medical appointments. Additionally, he pointed to her having booked appointments during his parenting time, testifying he was "straight out refused" from attending their youngest son's pediatric dermatology appointment, while also describing himself as being "able" to attend two specialist appointments in October 2023.

[44] Rather, the evidence supported that, as is common in traditional marriages, the mother was the stay-at-home parent and assumed primary responsibility for managing the children's medical needs. The mother did not withhold the father's name or information from the children's family doctor. The father was correct that two medical appointments ended up being scheduled during his parenting time. However, these were for specialist appointments. One, a pediatric dermatology appointment scheduled months before the parties even separated, and the other an audiology appointment booked before he was scheduled to have their son in his care the day of the appointment.

[45] It is true that the mother disagreed with the father taking their son to his pediatric dermatology appointment. However, the father's request was made at 8:10 a.m. for the appointment scheduled for 9:00 a.m. In any event, the day of the appointment their son was already in the mother's care following an overnight, while the father was responsible for taking the parties' older son to school for 9:00 a.m. The father was also unaware that the appointment was related to mastocytosis, a benign skin condition that their younger son has had since birth, despite the mother telling him before separation.

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For the two specialist appointments the father describes as "being able" to attend in October 2023, an audiology appointment and speech pathology appointment, the mother invited him to attend.

B. The Mother's Credibility

[46] The issues with respect to the father's credibility did not arise with the mother. Overall, she did not exhibit difficulty answering questions or acknowledging basic facts in the same manner as the father. She unequivocally answered that the father is a good father when asked and did not minimise his role or involvement in their lives.

[47] The mother readily admitted and took responsibility for things that were not favourable to her. This includes her acts of aggression towards the father, her criticism of the father's parenting in front of the children, and there being certain detriments to the children if they were to relocate. Additionally, she did not downplay the father's involvement in the children's lives, or his recent improvements in his treatment of her and in cooperating and communicating regarding the children.

[48] The mother was measured and forthright in her testimony. She acknowledged the father's perspective at times, and even though she disagreed with him on certain things, expressed that she understood how he could have seen things a certain way. For example, she understood how he felt strained as the primary income earner, and how an incident of her physical aggression could have caused him distress. She also acknowledged that even though they had plans to relocate to MN before separation she understood that plans can change.

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[49] She explained circumstances and context but did not excessively try to deflect blame from her own conduct or to repeatedly qualify her answers on cross-examination. She was careful not to draw correlations in proper circumstances and was tempered in her answers. She acknowledged that they each have different strengths as parents and differences to bring to the children. Although there are times their younger son has difficulty with transitions and has said he hates his dad, she never tried to attribute this to any issues with the father's parenting time.

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C. Credibility and Relocation

[50] Not all issues with the father's credibility as set out herein relate to matters that are central to the ultimate determination of relocation. However, these issues remain relevant to an overall assessment of credibility which is especially important in relocation cases. The credibility of the parties directly intersects with assessing whether a relocation is in the best interests of the children.

[51] Findings of credibility in relocation cases require an extended inquiry beyond the questions of whether a party's evidence is internally consistent. Overall, the Court must conclude that a party is forthright, trustworthy, and reliable. While past actions can be a useful predictor of future behaviour, relocation decisions necessarily require faith in a parent's stated intention and commitment about their future conduct. In other words, to some extent, the Court is always relying on the word or promise of the parent. This was articulated by Thomson J. in the relocation case of ***W.S.C. v. K.A.Y.***, 2008 MBQB 129, 229 Man. R. (2d) 46:

> [40] The Court's conclusions with respect to the credibility of each of the parties are significant in this particular case, in assessing the capacity of each

> to consistently, and comprehensively, serve the best interests of their children. The level of confidence the Court has that it can accept and rely upon "the word" of each parent is obviously important; more so, perhaps, where the party who will exercise future control over the children may be in a different jurisdiction, and makes representations regarding her willingness to ensure subsistence of the children's relationship with the other parent.
>
> . . .
>
> [60] In arriving at the foregoing conclusions, particularly with respect to the relative credibility of the two parties, what is obviously impacted is not simply the Court's ability to arrive at conclusions where facts and testimony are in dispute as between the parties, but also the Court's assessment of each parents' capacity to meet the needs and serve the best interests of the children.

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[52] When considering the parties' testimony as a whole, and for the reasons set out above, the Court finds that the mother is the more forthright, trustworthy and reliable witness. This finding contributes to why the Court has more confidence that the mother is the parent who will facilitate the children's best interests if the parties were to live in different jurisdictions.

VII. BEST INTEREST FACTORS AND ANALYSIS

[53] The relocation specific best interest factors, and general best interest factors in the ***DA*** will now be considered in assessing whether relocation is in the best interests of the children. The factors relating to geographic restriction s. 16.92(1)(e), the children's views and preferences s. 16(3)(e), their cultural, linguistic, spiritual upbringing including Indigenous heritage s. 16(3)(f), and any civil or criminal proceeding, order, condition, or measure s. 16(3)(k) are not relevant in this case.

1. Family Violence (s. 16(3)(j) of the *DA*)

[54] The best interest factor of family violence will be assessed first as both parties allege that the other was the perpetrator of family violence and this was a significant

focus of their testimony. In addition, the legislation and jurisprudence identify that family violence is an important consideration when assessing best interests.

[55] ***Barendregt*** is the most authoritative decision on relocation and the role of family violence in the context of the best interest analysis. Karakatsanis J. emphasises family violence is an important factor in relocation cases, stating:

> [147] Because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases

[56] Family Violence is defined in the ***DA*** as follows:

> Interpretation
>
> 2 (1) In this Act,
>
> . . .
>
> *family violence* means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes
>
> (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
>
> (b) sexual abuse;
>
> (c) threats to kill or cause bodily harm to any person;
>
> (d) harassment, including stalking;
>
> (e) the failure to provide the necessaries of life;
>
> (f) psychological abuse;
>
> (g) financial abuse;
>
> (h) threats to kill or harm an animal or damage property; and
>
> (i) the killing or harming of an animal or the damaging of property;

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[57] Where conduct amounting to family violence is proved, the ***DA*** then requires the Court to assess its impact on the children's best interests as set out in s. 16 (3)(j):

> Factors to be considered
>
> (3) …
>
> (j) any family violence and its impact on, among other things,
>
> (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
>
> (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

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[58] In assessing the impact of family violence and applying s. 16(3)(j) the Court shall consider the following factors set out in s. 16(4) as follows:

> Factors relating to family violence
>
> (4) …
>
> (a)the nature, seriousness and frequency of the family violence and when it occurred;
>
> (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
>
> (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
>
> (d) the physical, emotional and psychological harm or risk of harm to the child;
>
> (e) any compromise to the safety of the child or other family member;
>
> (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
>
> (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
>
> (h) any other relevant factor.

a. Parties' Positions on Family Violence

[59] Regarding the family violence alleged to be perpetrated by the father, the parties' positions are as follows:

- The mother alleges that the father has engaged in a pattern of coercive and controlling behaviour, psychological abuse, harassment, and financial abuse.

- The father for the most part does not dispute having engaged in the conduct alleged by the mother, but disputes the meaning to be attributed to it.

- The father argues that the mother has put forward a "distorted narrative." He submits the conduct pointed to by her reflects ordinary grievances and relationship discord. In relation to finances he explains that money was tight and his "disciplined approach" to family funds was necessary, to which the mother deferred, and she had access to financial information and funds.

- The father argues that his conduct should be treated as a neutral factor in the relocation analysis. In support of this position, he emphasizes that despite the mother's allegations of family violence she has agreed to a shared parenting arrangement which has functioned well with minimal conflict.

[60] Regarding the family violence alleged to be perpetrated by the mother, the parties' positions are as follows:

- The father alleges that the mother has been physically violent, denigrated him and generally had aggressive and raging tendencies.

- Despite spending a significant amount of time at trial on the mother's conduct, the father ultimately submitted that her family violence does not weigh against her proposed relocation. He characterised her family violence as a "neutral" factor for purposes of the Court's analysis pointing to the parties having been able to share parenting with minimal conflict.

- The mother acknowledges three acts of physical aggression, and acknowledges that there were times when she yelled, swore and was angry with the father. The mother is remorseful for her conduct.

- The mother submits her conduct needs to be understood in the context of the coercive and controlling behaviour which she was subjected to by the father and the oppressive circumstances in which she was living. She submits her actions were acts of resistance rather than acts of domination or control.

[61] In assessing the parties' allegations of family violence and its impact, a more detailed analysis of the father's conduct is necessary. This is because of the parties' respective positions as set out above, and because the mother's allegations relate to an

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alleged pattern of coercive and controlling behaviour. As common to coercive and controlling behaviour much of the conduct raised by the mother is nuanced and context dependent. In addition, the pattern of coercive and controlling behaviour alleged by the mother can only be accurately assessed by examining its cumulative effect, requiring a thorough examination of the conduct within its broader context.

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b. The Father's Conduct

(i) The Legal Framework for Assessing Coercive Control

[62] Conduct that forms a pattern of coercive and controlling behaviour has been defined as family violence in the ***DA*** since the amendments in 2021, with the Court having a duty to assess its impact in deciding the best interests of children.

[63] ***Ahluwalia v. Ahluwalia***, 2026 SCC 16, is a groundbreaking case creating a new tort of intimate partner violence ("IPV") to address the harm caused by coercive and controlling behaviour. Kasirer J. explained that a finding of IPV, specifically including "a pattern of coercive and controlling behaviour", is "highly relevant to parenting orders" (para. 219).

[64] The ***DA*** does not define coercive and controlling behaviour, nor does it set out factors for its determination. Chappel J. of the Ontario Superior Court of Justice, through a trilogy of decisions starting with ***M.A.B. v. M.G.C.***, 2022 ONSC 7207, and continuing with (and repeated in) ***S.V.G. v. V.G.***, 2023 ONSC 3206, and ***V.K.G. v. I.G.***, 2023 ONSC 6329. In ***V.K.G.***, Chappel J. described coercive control as follows:

> [117] The concept of "coercive and controlling behaviour" is distinct from other forms of family violence in that it can consist of many different types of acts occurring over time which, in isolation, do not seem abusive or significant, but which paint a picture of a very destructive relationship when viewed in their totality. Accordingly, the significance of the individual incidents can only

> be truly understood in the context of the larger picture. In addition, a pattern of coercive and controlling behaviour is particularly concerning because it is easier to inflict in its various forms post-separation than other types of family violence. … a general review of this caselaw indicates that "coercive" behaviour includes conduct that is threatening, intimidating or exerts inappropriate pressure on the other person. Behaviour is broadly being considered as "controlling" if its intent or effect is to inappropriately manage, direct, restrict, interfere with, undermine or manipulate any important aspect of the other person's life, including their important relationships and their physical, emotional, intellectual, spiritual, social and financial autonomy or wellbeing….

[65] The Supreme Court of Canada in ***Ahluwalia*** describes coercive control as operating to deprive a partner of dignity, autonomy, and equality within a relationship. The Court sets out this includes psychological, sexual or emotional violence, controlling behaviour such as stalking, monitoring activities and financial control, intimidation, threats to family members, or making false allegations to the police or employers, litigation abuse, and preventing the victim from seeing family and friends, working or participating in other educational or recreative activities (***Ahluwalia***, para. 187).

[66] The Court in ***Ahluwalia*** offers important guidance about coercive control. Drawing from that decision, I have distilled the following six general principles that are equally relevant to assessing coercive control for the purpose of determining children's best interests:

1. Coercive control is a way to encompass and understand the use of a range of behaviours to control and restrict victims, rather than being a specific form of conduct. It is not a specific act, but a relational pattern.

2. Central to coercive control is the idea that it operates through a power dynamic where one partner exerts dominance over the other.

3. Coercive control involves a course of conduct embedded in control structures that have cumulative effects. Coercive control focuses on a cumulative effect that is far greater than the mere sum of its parts.

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4. It is crucial for judges to be attuned to coercive behaviour in all its manifestations and the context in which it occurs.

5. Coercive control exposes dimensions of partner abuse that have gone largely unnoticed, including particularly subtle acts undertaken over a period of time that may not appear abusive outside their relationship context. It is a myth that intimate partner violence must be punctuated by egregious incidents of physical or psychological abuse.

6. It is the intimate partnership context that allows an individual to shape discrete acts into patterns of dominance that entrap partners and make them subordinate.

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[67] A finding of a pattern of coercive and controlling behaviour in assessing children's best interests under family law legislation does not automatically translate into a finding of coercive control sufficient to prove a tort claim. Each serves a different purpose. The purpose under family law legislation is to assist in assessing children's best interests and to promote their safety and wellbeing in the context of deciding parenting time and decision making. The purpose of a finding of coercive control for a tort of IPV is not to advance the best interests of children, but to recognize harm caused to an individual and to compensate them for that harm by way of damages. These different purposes necessarily inform a more broad and purposive approach to conduct that may fall within the scope of coercive and controlling behaviour under family law legislation.

[68] There is no tort claim for IPV by the mother in this case, and nothing in these reasons should be taken as a finding that the father's conduct satisfies the legal requirements for such.

(ii) The Father's Coercive and Controlling Conduct

[69] The father has engaged in a pattern of coercive and controlling conduct that undermined the mother's equality, dignity and autonomy. This includes psychological

and emotional manipulation, gaslighting, financial control, and conduct to maintain power and control through a variety of means. The specific examples outlined in the following section are among the evidence that supports this finding.

[70] The examples of the father's conduct are not, in isolation, necessarily determinative of a finding of coercive control. Their significance lies in their cumulative effect. When viewed collectively, and in the context of the parties' relationship as a whole, the father's conduct reflects a pattern of coercive control.

[71] The father's conduct must be assessed within the broader context of the parties' relationship and their respective circumstances. The assessment of coercive and controlling behaviour is inherently contextual. Conduct that may be psychologically degrading, manipulative, or controlling to one individual may not have the same effect on another. Thus, the impact of the father's conduct must be assessed having regard for the particular characteristics, vulnerabilities, experiences, and dynamics of the parties.

[72] The particular characteristics and vulnerabilities of the mother are important factors in understanding the impact of the father's conduct. The mother never viewed divorce as an option regardless of how damaged their relationship was. She believed marriage was forever, and divorce was virtually unheard of in her immediate and extended family. She was extremely devoted to her children. The mother loved and trusted the father and saw him as intelligent and a critical thinker and respected his views. She would do anything to keep their marriage together. This explains why the father convincing the mother she was ruining their family, relationship and damaging

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their children, had the impact of maintaining power and control over her. It explains why the father's tactics had a damaging psychological effect with her having "internalized his narrative about me", and in part why the specific examples of his conduct detailed below, of the recording, his assertion she had narcissistic personality disorder, and the planting a condom, display tactics of psychological and emotional manipulation.

[73] The father's conduct and its impact on the mother must also be considered within the surrounding circumstances of their relationship. This includes the father at times being demeaning, disrespectful and mocking the mother. It also includes him abruptly withdrawing from the relationship, withholding communication, affection, and emotional engagement, creating feelings of isolation and anxiety in the mother, leading her to feeling trapped and powerless to save their marriage. These surrounding circumstances are corroborated by emails the mother sent herself beginning in May 2023 which are akin to a journal. The mother explained that she created these emails to document her experiences because she was struggling to make sense of what was occurring. There is evidence supporting the authenticity and reliability of these emails, including that they were created contemporaneously.

(iii) Examples of the Father's Coercive and Controlling Conduct

The Recording (Exhibit #65)

[74] The mother sought to admit a surreptitious audio recording of an eight minute and 35 second interaction between the parties. The father objected. After submissions and argument by counsel, oral reasons were provided during the trial for admitting it.

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Those oral reasons form part of and are to be considered along with the reasons that follow.

[75] To admit a surreptitious recording into evidence, the probative value must outweigh its prejudicial effects. There are strong policy factors that lean towards exclusion as such recordings are often harmful and unreliable. The bar for admission is high, and careful scrutiny is required for the prejudicial effect. As stated by Dunlop J. in ***Ostrovski v. Ostrovski***, 2021 MBQB 160:

> [47] … liberally admitting into evidence the deceitfully recorded conversations between two people involved in years of nasty litigation, further perpetuates the nastiness and the underhandedness and infuses continued distrust between the parties. Children in the middle of these disputes can only be hurt by condonation of such conduct.

[76] The Court concurs with these comments but is satisfied that this case is one where the probative value of the recording outweighs the strong policy factors that lean towards its exclusion. The mother made this recording to corroborate coercive and controlling behaviour by the father. This contributes to its probative value as domestic violence allegations are notoriously difficult to prove, as family violence often takes place behind closed doors, and may lack corroborating evidence (***Barendregt***, para. 144). Family violence that is coercive control and emotional and/or physical abuse is especially challenging to prove because there is often a lack of tangible evidence, compared to physical abuse which often leaves visible signs.

[77] The mother testified that she made the recording because she thought no one would believe the way the father treated her, and as a form of "reality checking". This is corroborated by her text messages the next day to her father and cousin with the recording asking them not to share it, stating she was scared the father would find it

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and delete it from her phone. She described the recording in her text messages as "dark and distressing", that "we cannot agree on reality", that she was "in turmoil and doesn't know what to do" and asked her cousin to pray.

[78] The reliance on a recording to prove coercive and controlling behaviour will not necessarily mean its probative value outweighs its prejudicial effects. There are several additional factors present in this case that contribute to its probative value. In particular, the father's own position regarding family violence at trial added to its probative value. This includes his position of completely denying he engaged in coercive and controlling behaviour. It also includes his position that the mother was the perpetrator of family violence and the aggressor, or in the alternative they were equal participants. Additionally, it is important that the children are not part of the recording, and it was made before the parties separated without any evidence that the mother was trying to gain a litigation advantage. This is distinct from many cases where recordings are made amid nasty litigation or high conflict divorce.

[79] The Court having decided the recording is admissible, the next issue is what weight it should be given. The father argues that the recording should be given little, if any weight, because the mother may have altered it and because the recording does not capture all of the parties' interaction. These are important factors for the Court to consider when assessing a recording. However, they raise no concern in this case.

[80] The father had the opportunity to cross-examine the mother about the recording. The mother confirmed that it was the full recording, and it was not altered. There is no evidence to suggest otherwise. Nor did the mother have several recordings of the father

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and sought to admit just this one. She had only recorded him on one other occasion and did not seek to submit that additional recording because it only captured "snippets" of their conversation.

[81] The fact that the parties' interaction continued after the recording stopped does not create concern. Firstly, after the recording was played in Court, the father testified that he did not specifically recall this interaction with the mother but remembers some of the things they were discussing around this time. This is incongruent with his later testimony that the recording is "absolutely not the full length of their discussion". Secondly, the father did not explain what discussion continued after the recording ended or how this may materially affect the interpretation of it. Additionally, the mother did not stop recording to selectively capture only part of their interaction. Rather, she stopped recording because she feared the father would discover that she was recording him.

[82] The recording captures an interaction that began with the father upset that the mother had charged the cost of her counselling to the family VISA. In the recording the father tells the mother she is destroying their family, harming their children, has chosen a path not to heal, her healing will not come, she is diluted in the crazy headspace that she is in, she devalues him and does not validate him, she is burning down the people in her life, she has an inner demon, she is a complete and utter weak and miserable coward, she is not strong, incredibly weak, she is not willing to face her demons for her family which will harm her kids, she has not put her children first, and has done untold damage to her children.

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[83] The full impact of the father's statements can only be appreciated by listening to the recording which conveys his tone of superiority and disdain for the mother, and the unequal power dynamic between them. Throughout the interaction, he engages in circular reasoning, repeatedly reframes the discussion, and deflects from issues raised by the mother, interrupting her and not allowing her to complete her thoughts despite her attempts to respond. The effect is not to resolve the issue under discussion, but to create confusion and frustration and to undermine the mother's confidence in her own perceptions and recollections. The father maintains control of the interaction through persistent and manipulative tactics rather than through overt displays of anger such as yelling or swearing.

[84] The recording reveals disturbing conduct of the father, which extends outside the ordinary range of marital disagreement or discord. It reflects a significant power imbalance between the parties, and a relationship dynamic in which the father assumes a position of dominance over the mother. It reflects conduct by the father consistent with psychological manipulation and coercive control. The father did not speak to the mother this way daily, or always to this degree, but the mother testified the recorded interaction reflected his typical treatment of her at the time. The father did not testify that this interaction reflected a one-time occurrence.

[85] Of particular concern is that at trial the father saw nothing inappropriate about his conduct captured on the recording and instead focused on justifying why he was upset. More troubling still, he attributed responsibility for his conduct to the mother and justified his conduct because she had "done something to frustrate him". He was

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preoccupied with explaining why he was upset, which in his view was not because of a charge she made to the VISA, but because she was mischaracterizing him to others which affected his relationship with her family.

Narcissistic Personality Disorder

[86] During the relationship, the father encouraged the mother to believe she had narcissistic personality disorder, which she does not. He sent the mother approximately 33 videos and links through WhatsApp on narcissism or mental health in just a one-week period. The mother explained that she really respected the father and the way he thought about things, and she took the possibility that she had narcissistic personality disorder seriously and listened to almost all the videos he sent.

[87] The father justified his behaviour at trial by stating that the mother was interested in learning about this personality disorder and encouraged these "discussions." However, the mother explained that this made her feel "wretched" and "confused", and that the father "really got into my head" with her beginning to believe her struggles were attributable to having a mental health disorder. It contributed to her feeling like she was the cause of the deterioration of their relationship and explained that if "he thought I had this, I wanted to do what I could to repair the relationship". She explained that she was really trying to save their marriage and family and would have done anything to keep her family together and sought out counselling. This conduct of the father is a continued example of psychological manipulation. It had the effect of causing the mother to believe she was mentally unstable, doubt her reactions and thoughts, and undermine her autonomy and confidence.

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Planting of Condom

[88] The mother was responsible for keeping and maintaining their condom supply during the relationship. The father described he noticed "condoms were being moved around" and he became concerned because they had agreed to a monogamous relationship. He searched her drawers and bags when she got back from a camping trip. He confronted her about missing condoms, and she explained she put some back in their nightstand drawer that she found in the medicine cabinet and her travel toiletry bag. She confirmed that she had not cheated on him, and the father accused her of lying. When the mother went downstairs, the father took a condom or condoms and tucked them in the pocket of her pants that were on a chair in their bedroom.

[89] After discovering the condoms in her pants, the mother privately questioned her memory. She emailed herself doubting whether she in fact had put the condoms in her pants pocket, questioning why she would have done that, and if so, why it would have been those pants, which she rarely wears around the house.

[90] This conduct by the father is an act of gaslighting, and an attempt by him to portray the mother as unfaithful. It reflects a continued pattern of psychological manipulation which caused the mother to doubt her reality and perceptions, and to question her role in their marital discord. At trial the father saw nothing troubling with his conduct and justified planting the condom or condoms because in his words he was "fearful, dysregulated, and reactionary".

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Financial Control

[91] The father was at times financially controlling, which had the effect of restricting the mother's autonomy and independence. His conduct must be understood within the context of the mother being financially dependent on the father. She did not have her own Canadian bank account. Her primary source of funds for her and the children's day-to-day needs was the parties joint bank account, and a VISA which had a set credit limit of $1,200-$1,400 per month.

[92] The night before the mother was leaving with the children to visit her family in MN, the father drained the joint bank account, leaving only a few hundred dollars and putting the funds into a savings account in his sole name. The father justified his conduct at trial, stating that he told the mother she could contact him if she needed more money. He further pointed to her having access to birthday money gifted from her parents, which was approximately $100, and whatever was left on the VISA credit. In addition, he gave her some U.S. cash he had on hand after he told her he had removed the funds and she became distressed. He justified draining the joint bank account because the funds needed to be safeguarded to pay household bills.

[93] The father's justification for his conduct is not persuasive. There is no evidence that he communicated concern to the mother about the payment of bills when informing her he had drained the joint bank account. Further, the evidence supports that the mother was not a frivolous spender and was mindful of the family's finances. His position that she had sufficient access to financial funds does not reconcile with the fact he surreptitiously recorded her when he told her that he had removed the funds. This

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supports an inference that the father predicted that his draining of the account would cause the mother significant distress and anger, and he may have wanted to document her reaction to support his allegation that she was the aggressor in the relationship. The mother's testimony that the father was unusually calm when he was recording her is consistent with this inference.

[94] The mother testified that his conduct of draining the joint bank account left her feeling vulnerable, desperate and scared, realizing she had no control over the situation. She was worried about not having a "financial cushion" given that she was traveling across the border with the children and she felt powerless. The impact of the father's conduct on the mother is consistent with the use of financial control as a means of exerting power and control within the relationship. Additionally, the father's criticism of the mother's spending reflects a continued pattern of financial control.

[95] Concern arises not because the father questioned certain expenditures of the mother. Spouses are entitled to discuss and disagree about financial decisions. Rather, the evidence supports that the father's criticism of the mother's spending formed part of a broader pattern through which he exercised control over the parties' finances and the mother's financial autonomy.

[96] The significance of the father being critical of the mother for purchasing treatment for lice lies in the nature of the expense itself, as it is a health-related expense rather than a discretionary purchase. Their older son contracted lice at school which the mother and their younger son then got as well. The mother was concerned because the school's lice problem was chronic, and if all the nits were not combed out, reinfestation

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was common. She had spent two hours a day combing the nits out of their oldest son's hair. The mother had thick and long hair at the time and was not able to do all the combing on herself. The mother asked the father to comb her hair, which he did, but she was not confident in him having done a proper or thorough job. The mother wanted to pay for an in-home lice treatment which cost approximately $450 to rid the problem completely. The father was upset about this, disagreed with it, and continued to justify his objection at trial.

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The Father's 50/50 Emails

[97] Certain aspects of the father's conduct reflects a marked difficulty accepting decisions or viewpoints of the mother that differ from his own. This dynamic reflects more than a dislike of disagreement which is common in many relationships, but discomfort with the mother's independent viewpoint and decision making and consistent with coercive control. One example of this is the father's unrelenting emails requesting 50/50 parenting time with the children.

[98] Starting on March 27, 2024, until December 18, 2024, the father exerted pressure on the mother by sending her the same email virtually every week demanding equal parenting time with the subject line 50/50. He sent this email 34 times. He was methodical and calculated in sending these emails when her parenting time commenced, and exactly at a certain time not one-minute sooner or later. At trial, the father saw nothing wrong in sending these emails and justified that it was based on the advice of his lawyer. This is not an acceptable excuse, especially when the mother made repeated

requests for him to stop which he ignored. He only stopped sending these emails when the mother filed to attend Court.

Withholding Consent for the Mother's Family Reunion

[99] The father withheld consent for the mother and the children to travel to a campground in MN for her annual family reunion in August 2023. Considering all of the circumstances, this appears to have functioned as a means of exerting control over the mother's choices and limiting her autonomy. The evidence does not support a basis for his stated concern that she may have absconded to MN with the children.

[100] The father had previously agreed to allow the mother and children to attend the reunion, and their travel to MN from August 11 to 25, 2023, had been planned for several months. Many members of the mother's extended family were planning to attend the reunion. The children were especially looking forward to boating, swimming, fishing and mini golf with their cousins with whom they are very close. Their older son was looking forward to a birthday celebration that was planned for him as his birthday fell during the reunion.

[101] Two days before the mother and children were set to leave for MN, the father withdrew his consent for their travel. He emailed the mother stating that he would not provide his consent until she was served with his Petition for Divorce and they reached an agreement. The mother and the children were stuck in Winnipeg for approximately one week waiting to be served, while the reunion occurred and their son missed his birthday celebration. Immediately after being served, the mother drove to the reunion arriving for the last day by which time most of the family and cousins had already left.

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[102] The father apologised to the mother for how long it took the process server to serve her and offered to extend her time in MN. Nonetheless, at trial he continued to justify his actions of withholding his consent. He testified that he did not know why he told the mother he would not provide his consent until they had an agreement, pointing to the fact he ended up providing consent without one. He justified withholding consent because he was concerned that she and the children may have stayed in MN. The evidence did not support his concern as being reasonable, including that the mother was unequivocally planning to return to Winnipeg and counsel was involved.

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(iv) The Impact of the Father's Coercive Control and the Best Interests of the Children

[103] The father's pattern of coercive and controlling behaviour has impacted the children. It has exposed them to parental conflict, which even if indirect can have implications for children's welfare (***Barendregt***, para. 143). It has also indirectly impacted them by adversely affecting the mother's physical, emotional and psychological well-being. In ***V.K.G***, Chappel J. repeated her dicta in ***M.A.B.*** as follows:

> [174] … Where the directly victimized family members is a parent, the child can also suffer indirect consequences of the violence if the parents physical, emotional, and psychological well being are compromised, since these consequences in turn often negatively impact their ability to meet the child's physical and emotional needs.

[104] The father's conduct has undoubtedly affected the mother's physical, emotional, and psychological well-being. She testified that the father's treatment of her made her feel unsafe in her home, very confused and overwrought, and that she "just felt wretched most of the time". It is reasonable to conclude that it contributed to her stress and anxiety which caused detrimental effects on her physical and mental health. These

effects became pronounced in the Spring of 2023 when his treatment of her deteriorated significantly.

[105] The mother had rapid weight loss, which was so pronounced that her aunt who saw the mother in May 2023 expressed concern she might be anorexic. She also developed intense panic symptoms, heart palpitations, disrupted sleep, and numbness and tingling around her lips, arms, and hands that did not abate. The mother attended the emergency room in July 2023 after having a panic attack, and the doctor was concerned enough with her condition to order a CT scan of her brain.

[106] She was assessed by her family doctor, who referred her to a neurologist in August 2023. Neither doctor found any medical cause for the mother's symptoms and rapid weight loss other than stress and anxiety. The neurologist specifically confirmed that her paresthesia symptoms (the numbness and tingling) were a reaction to stress.

[107] The father's coercive and controlling behaviour continues to have a negative impact on the mother's emotional and psychological wellbeing. This includes her feeling anxious when dealing with the father and vulnerable in her interactions with him. She explained that she dreads discussing contentious issues with him about the children. The Court's assessment of the continuing impact of the father's coercive and controlling behaviour on the children is further impacted by the father's failure to acknowledge or have insight into his behaviour. It is also impacted by the concern for the father's ongoing animus towards the mother and the resulting exposure of the children to conflict. This cumulatively leads to a concern that his family violence has an impact on

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his ability and willingness to care for and meet the needs of the children in consideration of all the factors set out in s. 16(3)(j)(i) -(ii) and s. 16(4)(a) -(h) of the ***DA.***

[108] It is important to recognize that there have been improvements in the father's behaviour towards the mother, and that the shared parenting schedule has for the most part been working well. Also, the father testified that he has a role to play in understanding his own triggers and a responsibility to improve himself and ensure that the children are in an environment free from conflict. The father has completed courses he says were intended to improve their co-parenting relationship. He is in counselling, although he initially sought counselling to address what he perceives as his experience as a victim of the mother's violence, rather than seeking to address his coercive and controlling conduct as reflected by the testimony of his counsellor.

[109] While there are positive efforts by the father, they do not provide reassurance that they will prevent further coercive and controlling behaviour from occurring in the future. The father's coercive and controlling conduct cannot be viewed as solely a matter of the past. This is in part because the father does not acknowledge any wrongdoing in relation to the conduct found to be coercive and controlling behaviour. Nor does he appear to have any meaningful appreciation for the effect of that conduct on the mother or the children.

[110] In the absence of acknowledgment and insight, the Court cannot be satisfied that he has taken steps to prevent similar conduct from recurring in the future. There are also concerns that the father's improvements coexist with an ongoing animus toward the mother. The mother expressed concern that the father's improvements may not

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persist once he is no longer subject to the scrutiny inherent in contested litigation. Based on the totality of the circumstances at the time of trial the Court understands this concern.

[111] The Court's concern for the father's continued animus towards the mother arises not only from his lack of acknowledgment and insight into his coercive and controlling conduct, but also from his attempts to justify that conduct by attributing responsibility to the mother. Additionally, although any future coercive and controlling behaviour of the father may not be as overt as in the past, coercive control is easier than other forms of family violence to inflict post separation in subtle and nuanced ways. As stated by Chappel J. in ***M.A.B.*** coercive control in familial relations has "many faces, and it is chameleon-like in the ways that it can evolve, transform and ebb and flow over time" (para. 183).

[112] The mother testified that at recent exchanges, the father will often not look at her, speak to her, and ignore her if she asks him a question. He will only address her directly if absolutely necessary. She described this conduct as leaving her feeling demeaned and dismissed. In the totality of the circumstances, this conduct cannot be explained as a simple effort by the father to keep exchanges brief and avoid contentious discussions. Further, the mother described a specific exchange where she tried to give the father a hat for one of the children and the father deliberately dropped the hat on the ground and walked away. This occurred in the presence of the children. When asked about the incident in cross-examination, the father's answer was "it's my

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recollection that she didn't take it from me", and that he "dropped it not in a disrespectful way and to hand it back to her".

[113] The Court's concern is not the animus towards the mother itself, but the risk that it may influence his conduct in ways that allow conflict to spill over and adversely affect the children. This conduct of the father at exchanges directly underpins the Court's concern that a continuing animus towards the mother can spill over and effect the children. This is also supported by the fact that the mother testified that she has observed their older son trying to encourage the parties to talk to each other, and he has at times ignored her in a manner similar to the father.

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c. The Mother's Conduct and Findings on her Family Violence

[114] The father's position is that the mother's family violence is neutral for the purpose of assessing whether the proposed relocation is in the children's best interests and is not a factor that weighs against her proposed relocation. Even so, the Court is not concerned about the ongoing impact that her discrete acts of family violence has on her ability and willingness to care for and meet the needs of the children, nor that it has any significant or long term direct or indirect impact on the children when considering all of the factors set out in s. 16(4)(a)-(h) of the ***DA***.

[115] The mother acknowledges three isolated incidents of physical aggression before separation: on one occasion punching the father in the arm, on another pushing or shoving him, and on a separate occasion kicking his office door. The father testified that the mother also kicked him in the thigh once and tried to hit him in the face with a closed fist, which the mother adamantly denied. The father provided no context or any

particulars about these additional incidents, and the Court cannot conclude on a balance of probabilities whether these incidents occurred. The mother acknowledges that there were times when she was angry, yelled, swore and criticized the father, at times in front of the children.

[116] The children's exposure to the mother's conduct indirectly impacted them. Even being present in the home at the time of the mother's conduct would have been upsetting and stressful for them. There is, however, no concern that this conduct affects the mother's ability to care for and meet the needs of the children. Unlike the father, the mother took ownership for her behaviour and is remorseful for it. She explained that this was when she was at her worst, was being childish, and the most desperate. Her remorse appeared genuine. She did not first express remorse for her behaviour at trial or only once in contested litigation. Rather, prior to separation she apologised to the father for pushing or shoving him on the same evening it occurred.

[117] In addition, the mother's conduct, as opposed to the father's, was situational and not reflective of a pattern of coercive and controlling behaviour. It is also important to understand that her conduct was occurring within the oppressive circumstances in which she was living and the coercive and controlling conduct that she was subject to. Her acts of aggression were reflective of her frustration and feelings of entrapment, which contributed to her difficulty regulating her emotions. This is supported by an email she sent herself during the relationship in which she wrote "he likes to play it of like I am crazy when I finally snap after all the emotional neglect/abuse."

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[118] When assessing the actions of a party who is subject to coercive and controlling behaviour it is critical to understand the broader context of them being a victim of family violence. Although the Court does not necessarily find all of the conduct of the mother to be acts of resistance, the following comments by the Court in ***Ahluwalia*** are relevant and important to assessing the mother's conduct:

> [193] … when an intimate partner strikes out as an act of resistance against their aggressor, the victim has not acted in a controlling or coercive manner ... [s]tudies confirm that many women respond to abuse with violent acts of resistance [case law omitted].These instances of intimate partner violence often "result in false identification of the victim as a perpetrator or as an equal participant" when the context in which the acts occurred is overlooked …

[119] The father's intensive focus on the mother's family violence at trial was part of an attempt by him to deflect from his own coercive and controlling behaviour. Although the mother was aggressive at times and her conduct caused the father distress, he remained the primary aggressor in the relationship and the dominant and controlling party when all the evidence and context is considered.

2. The Mother's Reasons for Relocation (s. 16.92(1)(a) of the *DA*)

[120] The mother's reasons for seeking to relocate are child centered. They include providing the children with the opportunity to grow up with extended family, for her and the children to have a support network, to improve her psychological and emotional well-being, and for her to improve her financial circumstances and resume her career as a registered nurse. These reasons pre-date the parties' separation. The mother explained that her reasons of needing emotional support and financial independence are amplified since separation.

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[121] The mother's wish to return to her career as a nurse is readily understandable. It would provide her with financial advantages and professional fulfillment. It was the plan for her to return to her career as a nurse in MN once both children were school age. Nursing is something she loves, and she has a special interest in pediatric and maternity nursing.

[122] The mother could qualify to work as a nurse in Manitoba with further education and training. However, her returning to work as a nurse in MN provides a faster, less onerous, and stronger path to achieving financial independence which is her long-term goal. In addition, she testified that she would be able to earn "a lot more per hour" as a nurse in MN. Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child's wellbeing (***Barendregt***, para. 171).

[123] The process for the mother to become licensed as a nurse in Manitoba is expensive and demanding. Mr. Sigurdson, an Employment Navigator for internationally trained nurses with Shared Health, testified as an expert at trial. He confirmed that, for the mother to become licensed to practice as a nurse in Manitoba, she would have to complete an education program at Red River College, as well as a clinical component that includes shift work. The amount of time it would take the mother to complete these requirements is uncertain, but the process would be lengthy and could take up to 18 months. Students are discouraged from working while they are enrolled in the program and the cost of the program is approximately $18,000. Although funding of up to $23,000 may be available, most students end up with student loans.

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[124] The mother is qualified to start work immediately as a nurse in MN. While no additional education or training is required, before returning to practice she intends to complete a four-to-five-month optional skills refresher course in MN that costs approximately $2,000. She would start to build savings, of which she currently has none. She would not have the burden of paying rent or utilities, as she plans to live with her parents.

[125] The father submits that the mother's relocation plan is vague because she has not yet secured employment in MN nor produced a job offer. This criticism is not persuasive. It would be unrealistic to expect the mother to have seriously pursued employment before knowing the outcome of her request to relocate. There was no evidence to raise concerns about her ability to secure employment as a nurse in MN. The mother reviewed a number of job postings for nurses in MN and their corresponding salaries which were tendered as an exhibit at trial. Mr. Sigurdson testified that the market for nursing jobs is currently "very competitive" in Winnipeg, with the strong demand being in rural and northern Manitoba.

[126] The mother's desire to improve her financial circumstances and financial independence is understandable. Her financial circumstances in Winnipeg are not secure even with financial support from the father. The father is currently paying child support of $341 per month, and spousal support of $500 per month pursuant to the Interim Order of Berthaudin J. The father believes that the mother is not entitled to spousal support on a compensatory basis, only on a non-compensatory basis.

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[127] The mother receives social assistance and struggles to meet her monthly expenses. She has difficulty paying off her VISA, and stresses whether she will be able to pay her rent each month. Her financial statement affirmed May 1, 2026, reflects that she has no assets other than a vehicle worth $7,000, which was given to her by her parents following separation. Her employment income as reported on her Income Tax Returns in 2023 was $3,935, in 2024 was $11,092, in 2025 was $10,697, and her expected 2026 income is $8,794. The Court finds that the mother could have earned more after September 2025 when the younger son obtained a daycare spot. Her income for support purposes was imputed at full-time minimum wage as of August 2025 by Berthaudin J. in the Interim Order pronounced July 11, 2025. Although additional employment income of the mother would have improved her financial circumstances, it would not alleviate the current or long-term concerns about her financial situation.

[128] Following September 2025 when their younger son had daycare, the mother made efforts to obtain more remunerative employment in the health care field. These efforts were unsuccessful. She applied for care giving positions at personal care homes, as she does not meet the licensing requirements for health care aide positions despite her nursing education. She applied for a number of jobs and was not offered any interviews.

[129] The mother's other primary reason for wanting to relocate is to live near her parents and extended family. The father focuses on the mother and the children being able to maintain a close relationship without relocating. However, living near her parents

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and extended family provides several benefits to the mother and children, only one of which is maintaining their close relationship.

[130] There is a significant benefit to the children to growing up surrounded by community, and a large network of extended family including grandparents, aunts, uncles and several cousins of similar age. The mother explained a desire to provide her children with roots in a community filled with extended family with whom the children have a close relationship.

[131] The mother also explained that living near her extended family would provide her with the support and connection she lacks in Winnipeg. The mother has few close friends or significant community connections in Winnipeg. Her friends are some parents from the children's school. She also takes part in a nurse's choir, a running club and recreational soccer for the benefit of physical activity. The mother does not have a support system in Winnipeg other than the father. Considerable evidence shows that the mother's family has been her support system both before and after separation, including the fact that her parents and two sisters attended the trial to support her.

[132] The mother explained how the father's coercive and controlling behaviour exacerbates her isolation in Winnipeg and amplifies her need for a support system as she testified in Transcript Volume 3, May 14, 2026, p. T146:

> Really, it's a couple friends that I've gotten to know in the last couple years, and Dustin, really. I -- to me, like, that's -- part of the problem is since I'm here, I'm forced to rely on someone that's caused an immense amount of pain and harm and whom I actually don't trust. So that, to me, is -- leaves me feeling very vulnerable.

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[133] Residing near her parents and extended family provides a level of support that cannot be replicated through regular visits. It affords the mother ongoing day-to-day emotional support. It also provides practical support with childcare and other aspects of daily life while the mother returns to full-time work and rebuilds her life after separation. The additional support of family and community at a new location can enhance a parent's ability to care for their children, and extended family can provide additional support to children while parents begin to navigate the new terrain of post-separation life (***Barendregt***, para. 172).

[134] The mother's psychological and emotional state would improve by relocating to MN by facilitating her meaningful connections to her family. This would benefit the children and is recognized as a factor that promotes children's best interests as stated in ***Barendregt*** as follows:

> [169] … [a] move that can improve a parent's emotional and psychological state can enrich a parent's ability to cultivate a healthy, supportive, and positive environment for their child. Courts have frequently recognized that a child's best interests are furthered by a well-functioning and happy parent [case law omitted].

[135] As summarized by the mother's counsel, MN is somewhere where she is loved, supported, fulfilled and calm versus Winnipeg where she is panicked, anxious and in distress, and is treading water and struggling immensely. As the mother testified in Transcript Volume 3, May 14, 2026, at p. T135:

> I know I will be in a much better position to be present with them and be the best mom I know I can be to them if I have that support underneath—that foundation and support underneath me. It's been extremely hard just keeping it together, kind of feeling like I've been hanging by a thread for so long.

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3. Impact of the Relocation on the Children (s. 16.92(1)(b) of the *DA*)

[136] The children have a close relationship with their father, and he is an involved parent. Relocation would impact the children's relationship with their father. Since October 2023 for the parties' older son, and June 2024 for their younger son, the children have spent three consecutive overnights with the father each week. This is a significant amount of time, and a relocation would make this frequent and regular in-person contact to which they have become accustomed to no longer possible. There would be extended periods between in-person visits with the father. A relocation would also reduce his involvement in their day-to-day lives, including their schooling and routine activities. The mother acknowledges that these are detriments associated with the proposed relocation.

[137] Although relocation would reduce the children's time with their father, they would still have regular and quality time with him. Their relationship could be maintained. In addition, the father's employment appears conducive, although not necessary, for the children to spend quality time with him if they lived in MN and he lived in Winnipeg.

[138] The father is currently employed as an educational assistant at Dasmesh School and has plans to transition to becoming a teacher. The father also continues to work as a private tutor and is in control of his tutoring schedule. His ultimate goal is to work as a teacher in the public school system which he describes as a "really good situation for the family." Working in the school system provides guaranteed blocks of time off, including Christmas break and summer break, when the children may also be out of

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school. There are also professional breaks that often create long weekends, Spring Break, and other statutory holidays.

[139] Relocation would also impact the children by requiring them to travel a considerable distance for visits that occur in Winnipeg with the father. The distance is an approximate seven to eight hour car ride, or a one-and-a-half hour direct flight. In addition, the children would be leaving their surroundings to which they have been accustomed to since June 2020. The parties' older son would have to change schools, and leave his friends, including his best friend. Their younger son would have to leave his daycare and the friends he has made. The children would be leaving their neighbourhood and family home.

[140] Although relocating would be a significant change for the children, they would not be relocating to an unfamiliar place or community. The mother's plan is to reside with her parents until she has saved up enough money to obtain her own accommodations. The children have spent a significant amount of time in MN and at their grandparent's home over the years. Their grandparent's home is like a second home to them. Both before and after separation, the children visited MN and stayed with their grandparents frequently. They have travelled many times between Winnipeg and MN and are familiar with the long commute.

[141] With respect to their younger son, the disruption of relocating would be less significant for him than for his older brother. He is younger and has not yet started school. He would not be starting a new daycare, but would be cared for by his maternal

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grandparents. If he continued to reside in Winnipeg, he would be changing daycares this Fall when he starts kindergarten.

[142] If the children relocated to MN, the frequency of their in-person contact with the father's extended family in B.C. could decrease. However, in assessing the significance of this concern, it is relevant that the children have had relatively limited in-person contact with the father's family since moving to Winnipeg in June 2020. Between June 2020 and the parties' separation in June 2023, the children had one visit with their paternal grandmother in Winnipeg. Since separation, the paternal grandparents and the father's stepfather have visited twice, and the father's brother once. The children have not travelled to B.C. to visit the father's family since moving to Winnipeg, other than one occasion in 2024 when their older son travelled there with the father.

[143] Maintaining the children's relationship with the father’s side of the family is important, and this could be done if the children relocate. Although it may be more difficult for his family to travel to MN than to Winnipeg, they could continue to visit the children during the father's parenting time, the father could travel with the children to B.C. during school breaks and the summer, and the children could continue the video calls they have historically enjoyed. The Court also has confidence that the mother would support the children’s relationship with his family. She regularly shared photographs, videos, and updates with the father’s mother and maintained a positive relationship with his family during the relationship. The evidence did not establish that the mother discouraged the children’s relationship with his side of the family as the father alleged.

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4. The Amount of Time Spent by Each Parent with the Children and Their Level of Involvement in the Children's Life of Each Parent (s. 16.92(1)(c) of the *DA*) and History of Care of the Children (s. 16(2)(d) of the *DA*)

[144] Both parties spend significant time caring for the children and play active roles in their day-to-day lives. They each provide emotional support and guidance, routine, and discipline. They are involved in the children's schooling and activities, and are knowledgeable about their friends, interests and needs. The father is particularly engaged in their older son's educational development, regularly working with him at home on reading and math and providing additional learning exercises.

[145] Historically, the mother assumed a greater share of the children's day-to-day care than the father. She was the primary caregiver for the parties' older son until October 2023 and for their younger son until June 2024. This was during a time when the children were very young, and she was mostly a stay-at-home parent with no daycare for the children. This provides important context for the nature, intensity, and quantity of care she historically provided relative to the father, notwithstanding that he was also involved in caring for the children. This is relevant because, although having either parent residing at a distance would be a disruption, transitioning from shared care to the father's primary care with their mother residing in MN would likely be more disruptive for the children than a return to the mother's primary care with their father residing in Winnipeg.

[146] When children are very young, they are highly dependent on a caregiver to meet virtually all of their needs, requiring a caregiver to be by their side at most times. This includes not only feeding, bathing, and dressing, but also for comfort, reassurance,

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emotional regulation, and a sense of safety and security. For much of the children's early years, the mother was primarily the parent to provide this intensive caregiving. The continuous and intensive nature of such caregiving changes as children age and they become more independent and less reliant on a parent to meet their day-to-day needs.

[147] The parties' older son was cared for primarily by the mother at home from the time he was born until he started kindergarten at age five. He thereafter remained primarily in her care until shortly after his sixth birthday. Their younger son was cared for primarily by the mother from the time he was born until he was approximately two-and-a-half years of age and was not in daycare. When he was approximately two-and-a-half years old the father started to have him in his care three nights a week, and he did not begin daycare until shortly before his fourth birthday. Since September 2025, there remains occasions when the mother cares for their younger son during the day instead of him attending daycare, including during the father's parenting time.

5. Compliance with Notice Requirements (s. 16.92(1)(d) of the *DA*)

[148] The mother did not provide notice in the form prescribed by the ***DA***. However, she provided notice by way of her Answer and Petition for Divorce filed September 14, 2023, of her intent to relocate to MN. The mother has never taken steps to relocate without the father's consent or a Court order. It is appropriate to find that she has substantially complied with the notice provision required by the ***DA*** under s. 16.96(3).

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6. The Reasonableness of the Arrangements Proposed by the Mother to Vary the Exercise of Parenting Time Taking into Consideration, Among Other Things the Location of the New Place of Residence and the Travel Expenses (s. 16.92(1)(f) of the *DA*)

[149] Although the Court may not adopt all aspects of the mother's proposal if relocation is granted, her proposal for the father's parenting time if she relocates is reasonable. It provides him with predictable, meaningful and quality parenting time. The mother's proposal includes the following parenting to the father:

- Seven weeks in June, July and August, which can be up to two weeks consecutively.
- One week at Christmas and alternating Spring Beak.
- Four days over Canadian Thanksgiving in October, and four days over Memorial Day weekend.
- Three four-day weekends in February, April and November in MN.
- Any additional time he travels to MN, including long weekends of four days, not to exceeding two weekends per month, and if he travels for more than four days the children could be in his shared care with him having three nights a week.
- FaceTime video calls up to five times per week.
- The mother would share in driving by meeting the father in Fargo, MN for Spring Break, Memorial Day weekend, during the summer, Thanksgiving, and Christmas.

[150] Although MN is located across an international border, it is possible to drive from Winnipeg in one day. This creates flexibility to exercise parenting time, including additional parenting time for the father if he travels to MN to see the children. In this respect, the proposed relocation presents fewer practical barriers to in-person parenting time than many relocations to other provinces in Canada that require more driving or air

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transportation. The option of driving also reduces the costs associated with exercising parenting time as the cost of gas is less than the cost of flights.

[151] The mother's plan for relocation adequately provides for the practical needs of the children. Her parents' property where she would be residing is on five acres, providing the children with lots of space to play and explore. There is a hobby farm, chicken coop where her parents raise chickens and guinea fowl, an orchard, and a garden. The children especially enjoy riding the tractors with their grandfather and the animals. With respect to the home, the mother and the children would have the upstairs level to themselves with two bedrooms and a bathroom, while her parents would have a renovated suite on the main floor.

[152] The father argues that the mother's plan is vague because she has no fixed timeline for moving out of her parents' home. This is not a legitimate concern, and the mother intends to obtain her own housing once she has secured nursing employment and accumulated savings. The children would attend the local elementary school half-a-mile from the house. They would not be in daycare, and her parents would provide childcare.

[153] The father raised some concern with the safety of the children residing in MN, and the mother raised similar safety concerns with the father's neighborhood in Winnipeg. There is no merit to either of these arguments, and they do not factor into the Court's consideration.

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7. Whether Each Parent has Complied with Their Obligations Under Family Law Legislation, an Order, Arbitral Agreement, or Agreement, and the Likelihood of Future Compliance (s. 16.92(1)(g) of the *DA*)

[154] The mother alleges that at times the father did not comply with the time-sharing schedule in their Agreement and Interim Order. Irrespective, the Court does not have concerns with either partes likelihood of future compliance with a Court order.

8. The Needs of the Children, Given the Children's Age and Stage of Development, Such as the Child's Need for Stability (s. 16(3)(a) of the *DA*)

[155] The children need a relationship and quality time with each parent. They require a predictable schedule and stability. They need to be protected from family violence and shielded from conflict between their parents.

[156] Young children benefit from frequent in person contact with their parents. Regardless of whether the relocation is approved or denied, the children will be living at a distance from one parent, and such frequent contact will not be possible. The children are old enough, particularly the older child, to participate in meaningful and sustained video communication.

[157] The parties' older son has some behavioural challenges at school and may undergo an assessment for ADHD. These circumstances are not a significant factor in the Court's analysis, and both parents are currently attentive to his educational and behavioural needs. The father did not argue their son's circumstances weighed against a relocation. The mother argued that their son may benefit from a fresh start at a new school and believes her parenting style is conducive to addressing his struggles.

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9. The Nature and Strength of Children's Relationship with Each Parent, Each of the Child's Siblings, and Grandparents and Any Other Person Who Plays an Important Role in the Child's Life (s. 16(3)(b) of the *DA*)

[158] The children have a strong relationship with both parties. They are both active, caring and concerned parents. There are no other adults that play a meaningful role in the children's lives that reside in Winnipeg or Manitoba.

[159] With respect to extended family, the children are more closely connected to their maternal extended family in MN, than to their paternal extended family in B.C. The children have a particularly strong bond with their maternal grandparents. The children also have a close relationship with each other.

10. Each Spouse's Willingness to Support the Development and Maintenance of the Children's Relationship with the Other Spouse (s. 16(3)(c) of the *DA*)

[160] Since separation both parties have exhibited a willingness to support the development and maintenance of the children's relationship with the other. With respect to the father, this includes displaying a photo of the mother in his home, agreeing to the mother caring for their younger son during his parenting time when working, living down the street from the mother, and helping the children make a Mother's Day card. While his outward supportive behaviours and stated support for the children's relationship with their mother are positive, concerns remain about his ability to consistently support and facilitate that relationship over the long term if the children were residing primarily with him in Winnipeg and she lived in MN. This is due to the concern related to his continued animus towards her as set out previously, the findings with respect to his credibility as it relates to his overall trustworthiness, reliability and forthrightness, including that he

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would not state that she is a good mother. These same concerns do not exist with the mother.

[161] The Court has confidence in the mother's willingness to support the maintenance of the children's relationship with the father over the long term if she were residing with them in MN and he was residing in Winnipeg. This is because the same concerns with respect to the father do not exist with the mother as set out above, but also because there are numerous examples of her support for his relationship with the children. Some examples include that she unequivocally stated that he was a good father, acknowledges the important role he plays in the children's lives, and recognizes his strengths as a parent. Further, despite the difficulties she has faced with the father, she agreed to shared care because she believes it is important for the children to spend time with him.

[162] The mother's delay in agreeing to their younger son napping and sleeping overnight at the father's home following separation was a significant focus of the father at trial. Her delay does not reflect a lack of support for the father's relationship with the children, as it was motivated by a desire to maintain a routine and schedule of breastfeeding for their younger son. Breastfeeding was not used by the mother as an excuse to limit the father's time. The Court does find the mother could have weaned their son sooner, and her continued breastfeeding lead to some instability in the parenting schedule. However, during the relationship both parties viewed extended breastfeeding as important for their children's wellbeing, with their older son also being breastfeed well past 18 months when they were together.

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11. Plans for the Children's Care (s. 16(3)(g) of the *DA*)

[163] The mother's plan for the children's care has been addressed in the assessment of the best interest factor of s. 16.92(1)(f) above. The father's plan for the children's care if relocation is denied is reviewed within the context of assessing whether the children's interest would be better served residing in Winnipeg primarily with the father or residing in MN primarily with the mother.

[164] The father's proposal for the mother's parenting time if relocation is denied is reasonable. It provides her with meaningful and quality parenting time, although the Court may not adopt all aspects of the father's proposed time-sharing schedule if relocation is denied. His plan is for the mother to have the following parenting time:

- Six weeks from July 1 to August 15.
- Half of the Christmas break by continuing the current schedule and every Spring Break.
- Three long weekends and three regular weekends in Winnipeg, and a week during U.S. Thanksgiving.
- No additional time is referenced if she travels to Winnipeg.
- No reference is made to FaceTime video calls.
- The father would share in driving by meeting the mother in Fargo or the U.S. border crossing in St. Francis, Ontario for Spring break, summer, Christmas, and U.S. Thanksgiving.

[165] The father's plan if relocation of the children is denied and the mother moves to MN adequately provides for the practical needs of the children. Their older son would continue at the same school, where their younger son would start kindergarten. Both children would have daycare. However, there remains uncertainty about the father's

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plans for child-care if the children are ill, school or daycare is unavailable, or other unexpected circumstances arise. Like the mother, the father has no significant support network in Winnipeg. He does have one neighbour Dana as a support, a few work friends, and is developing relationships with some neighbours.

12. The Ability and Willingness of Each Person in Respect of Whom the Order Would Apply to Care for and Meet the Needs of the Children (s. 16(1)(h) of the *DA*)

[166] There are no concerns about the mother in this regard. There are likewise no concerns about the father, apart from the concerns arising from his coercive and controlling behaviour as discussed in the consideration of s. 16(3)(j) and s.16(4) of the ***DA*** above.

13. The Ability and Willingness of Each Person in Respect of Whom the Order Would Apply to Communicate and Cooperate, in Particular with One Another, on Matters Affecting the Children (s. 16(1)(i) of the *DA*)

[167] Since separation, the father at times has demonstrated an ability and willingness to communicate and cooperate with the mother on matters affecting the children. This includes sending the mother emails with pertinent information about the children and updating the mother when children are ill. He sends updates about what they have eaten and whether they have showered when they are going into her care. Further, the father over the long term cooperated in a schedule allowing their younger son to be breastfed following separation and napping in her care during his parenting time. He has cooperated in the children's passport applications, and her and the children visiting MN, apart from the August 2023 family reunion incident described above.

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[168] Despite positive actions by the father, concerns remain regarding his long-term ability to communicate and cooperate effectively with the mother when considering the totality of the evidence. This includes the specific examples of his difficulty communicating and cooperating, as outlined previously and additionally below, the concerns for his continuing animus towards the mother, and the findings in the credibility section regarding his trustworthiness, reliability and forthrightness. Collectively, they diminish confidence of the Court in his ability to consistently exercise the flexibility and cooperation required for a successful long-distance parenting arrangement.

[169] In relocation cases, the Court's consideration must extend beyond simply assessing a parent's likelihood of future compliance with a Court order. A central consideration is the degree of confidence the Court has that a party will implement the parenting provisions of the order to navigate the realities associated with a long-distance parenting arrangement. This is particularly important because the successful implementation of parenting time for the parent living away from the children is critical to maintaining that parent's relationship with them. Where relocation would result in parents living approximately seven to eight hours apart by car, across an international border, circumstances outside of their control will inevitably arise that require flexibility, including adjustments to exchange times, travel arrangements, and scheduled parenting time due to traffic, weather, illness or other unforeseen events. The Court has more confidence in the mother's capacity to maintain the flexibility and cooperation essential to deal with these cross-border complexities required for a successful long distance parenting arrangement.

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[170] The father has had difficulty communicating and cooperating with respect to the parenting schedule. In September 2023 it had been confirmed through counsel that the mother was picking up their older son from the father's home at 8:00 p.m. However, the father was not home at 8:00 p.m. when she attended to pick up their son. The father did not contact the mother to explain where he was, and when he arrived home at 8:35 p.m. he shut the door in her face. Rather than causing a conflict, the mother left and let their son stay with the father overnight. Their son called the mother that evening and said he was never coming home, which was corroborated by the paternal grandfather who was at the mother's house at the time.

[171] In June 2024, the parties had a dispute over when and how their younger son was to transition to the mother after overnights with the father. The mother reasonably believed based on the terms of their Agreement that the father was dropping him of at 9:00 a.m. When the mother reached out to the father after their son was not dropped off, the father refused to drop him off and insisted the mother could come and "remove" him. He then sent a two-page email (Exhibit #35) containing a detailed minute-by-minute chronology of their text message exchange, defending his actions, picking apart and criticizing her language, copying her words and highlighting them. The father's email does not promote respectful communication as he alleged but reflects a degree of rigidity in his approach which is further reflected by his position regarding the mother's video calls with the children.

[172] Both parties have agreed on the children having evening FaceTime video calls with the other parent. This is not something solely insisted on by the mother.

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The mother facilitates the father's calls during her parenting time, and she generally accommodates him if he is late. The father allots the mother ten minutes from 7: 20 p.m. to 7:30 p.m., and at 7:35 p.m. the iPad used by the children for the video calls automatically shuts off even if they are in the middle of a conversation. His justification at trial was that the mother tends to draw out her conversation with the children which impedes into his bedtime routine with them. He further explained that the mother also gets a notification on her end before the iPad shuts off and automatically ends the video call.

[173] The concern about the father's ability to be flexible and cooperative is further compounded by him not answering the mother's call if she is a few minutes late. On one occasion she called four minutes outside of her allotted window, at 7:34 p.m., and her call was not answered, and continued not to be answered when she tried again at 7:35 p.m. and 7:40 p.m. He stated that he did not see her calls as he did not keep his phone with him.

[174] With respect to the mother, there are numerous examples of her appropriately communicating and being cooperative with the father on matters relating to the children. There have been times when the mother's communication could have improved, including when she was critical of the father's parenting in front of the children, and when she did not respond to the father's inquiries regarding the status of a gun stored at her parent's home in a timely manner. However, these instances are limited and the factors that diminish the Court's confidence in the father's long term ability to communicate and cooperate effectively in the context of a long distance parenting

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arrangement, including concerns for his continuing animus, trustworthiness, reliability and forthrightness, rigidity, and ability to exercise flexibility in a long-distance parenting arrangement do not exist with the mother. The Court has confidence that she will cooperate and communicate with the father over the long term if she were to relocate.

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VIII. CONCLUSION ON RELOCATION AND BEST INTERESTS

[175] In assessing all the best interest factors, the advantages to the mother of relocating are only considered insofar as they relate to the children and how the children would directly or indirectly benefit. Primary consideration is given to the children's physical, emotional, and psychological safety, security and well-being.

[176] There would be detriments to the children in relocating, including most importantly losing the benefit of the weekly in-person contact with their father and a corresponding change in their relationship with him. He and the children will miss each other by not having as much in-person contact as they are used to. However, relocation would not preclude the father from maintaining a relationship with the children and spending quality time with them.

[177] The father loves his children deeply and is a committed and involved parent. However, the legal test for relocation is not one of fairness between the parties, but what is in the children's overall best interests. As observed by Monnin J. in ***Morrill v. Morrill***, 2016 MBCA 66, relocation is:

> [57] a gut-wrenching situation for those involved in seeing loved ones moving away and their relationship forever changing. However, the law is that, in certain circumstances, relocation is to be permitted …

[178] The Court has confidence that the mother will support the father's relationship with the children now and in the future. Considering the entirety of the circumstances, and the unique and particular circumstances of the children, it is concluded that MN will be a location where they can thrive. This is an important aspect of determining whether relocation is in a child's best interests because the inquiry must be forward-looking, rather than simply an assessment of whether the current arrangements are functioning adequately. The Court accepts the mother's statement in Transcript Volume 3, May 14, 2026, p. T146, that:

> And I -- while I really want the kids to remain close with their dad and really value their relationship with him, I feel like it's made it -- I'm kind of in an impossible situation here, where I don't know how to improve, anytime soon, my -- my circumstances. Yeah, I just -- I want to be able -- I want my kids to be in a place where they can thrive, and where we can breathe, you know. It's been really hard.

[179] Pursuant to the ***DA*** the father's parenting time is one of several best interest factors the Court must consider in determining whether relocation is in the children's best interests. As the Supreme Court of Canada stated "a relocation may be appropriate even where there has been a historical pattern of co-parenting" (***Barendregt***, para. 123). Having considered all of the evidence and the statutory best interest factors holistically, notwithstanding the effect on the father's parenting time and his relationship with the children, relocation is in the children's best interests in the particular circumstances of this case.

[180] There are several significant benefits to the children of relocating, including providing the children with the opportunity to grow up surrounded by extended family,

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advancing their financial security and their mother's financial independence, and improving their mother's emotional and psychological well-being.

[181] On the whole, and considering the totality of the best interest factors, with not one factor being determinative, it is concluded that the benefits of relocating outweigh its detrimental impacts. Relocation will best promote the children's best interests now and in the future. The mother's request to relocate to MN with the children is authorized.

IX. DECISION MAKING

[182] The mother seeks final decision-making authority, with a duty to consult with the father, if relocation is authorized. The Court finds this is in the children's best interests, having regard to the general best interest factors set out in s. 16(3)(a)-(k) of the ***DA***.

[183] Final decision making to the mother makes sense for practical reasons given the mother will be living with the children in a different country than the father. However, in addition, the evidence shows that the parties have not agreed on important issues regarding the children such as play therapy and medical care for their older son when he had a suspected concussion. The father's coercive and controlling behaviour also favours the mother having final decision making.

[184] The Court has confidence that the mother will consult the father in a meaningful way. She acknowledges his background and expertise in education. She testified "I am hoping as much as possible, we'll be able to work it out and come to in agreement between the two of us".

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X. CONCLUSION

[185] Having received the Court's decision on relocation, counsel are directed to arrange a further appearance to address the issues of the father's parenting time and the outstanding support issues.

_____ J.

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