

## ONTARIO COURT OF JUSTICE

**B E T W E E N :**

**J.D.,**  
*Applicant,*

— AND —

**P.D.,**  
*Respondent.*

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Before Justice George J. Brophy  
Heard on 17 and 20 August 2010; and 3 September 2010  
Reasons for Judgment released on 9 September 2010

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**CONFLICT OF LAWS — Custody of or access to child — Return of wrongfully removed child — Declining return of child — Grave risk of harm to child — Parents of triplets (1 boy and 2 girls, now 8 years old, born in Toronto) had dual U.K. and Canadian citizenship — About 5 years ago, father retired and family moved to his native Scotland — Parents eventually separated — Father moved into nearby apartment and kept in constant contact with children — About 18 months ago, one girl alleged that father had touched her inappropriately on several occasions — Father complied with request by local child protection authorities not to have any contact with children — Mother did secure from Scottish court type of restraining order (called “Interdict”) that barred father from having contact with her and children but otherwise seemed to have no bearing on parental custodial rights — While matter was still under investigation, father went on brief European holiday during which mother and children returned to Ontario without father’s consent and without any authorizing court order — Father promptly filed claim for children’s return to Scotland under (Hague) *Convention on Civil Aspects of International Child Abduction* — Ontario court found that, under law of Scotland, father had custodial rights that were not affected by ongoing investigation by Scottish child protection authority and that mother had wrongfully removed children to Ontario — Court dismissed mother’s attempt to invoke Article 13 of Convention — Mother had filed set of reports from Glasgow child protection agency that recorded its preliminary investigation but comprehensive nature of those reports only confirmed professionalism of agency — Scotland was civil society that offered no risk to**

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children and had services available that would meet their needs — Admittedly, issue of allegations against father was still outstanding and not yet been proven, but Scottish justice system was proper forum to determine that issue — Subject to certain undertakings that father was prepared to assume, Ontario court directed children’s return to Scotland.

**CONFLICT OF LAWS — Custody of or access to child — Return of wrongfully retained child — Jurisdiction — Whether claimant enjoys custodial rights under law of child’s habitual residence — Parents of triplets (1 boy and 2 girls, now 8 years old, born in Toronto) had dual U.K. and Canadian citizenship — About 5 years ago, father retired and family moved to his native Scotland — Parents eventually separated — Father moved into nearby apartment and kept in constant contact with children — About 18 months ago, one girl alleged that father had touched her inappropriately on several occasions — Father complied with request by local child protection authorities not to have any contact with children — Mother did secure from Scottish court type of restraining order (called “Interdict”) that barred father from having contact with her and children but otherwise seemed to have no bearing on parental custodial rights — While matter was still under investigation, father went on brief European holiday during which mother and children returned to Ontario without father’s consent and without any authorizing court order — Father promptly filed claim for children’s return to Scotland under (Hague) *Convention on Civil Aspects of International Child Abduction* — Convention treats access rights differently from custodial rights and violation of access right need not necessarily result in order for child’s return — In this case, however, father claimed that he had custodial rights under Scottish law that mother had breached — Ontario judge admitted that, in this case, he had limited factual information and was not provided with any expert evidence about law of Scotland on custody and access — Lawyers could only point judge to *Children (Scotland) Act 1995*, generous reading of which showed that both parents have significant concurrent rights and responsibilities with respect to children and that each parent can exercise those rights without consent of other unless court order states otherwise — In this case, aside from dubious effect of “Interdict”, there was no such court order that affected father’s parental rights — Father therefore had custodial rights under law of Scotland that entitled him to invoke Convention to secure children’s return.**

**CONFLICT OF LAWS — Custody of or access to child — Return of wrongfully removed child — Whether removal wrongful — Parents of triplets (1 boy and 2 girls, now 8 years old, born in Toronto) had dual U.K. and Canadian citizenship — About 5 years ago, father retired and family moved to his native Scotland — Parents eventually separated — Father moved into nearby apartment and kept in constant contact with children — About 18 months ago, one girl alleged that father had touched her inappropriately on several occasions — Father complied with request by local child protection authorities not to have any contact with children — Mother did secure from Scottish court type of restraining order (called “Interdict”) that barred father from having contact with her and children but otherwise seemed to have no bearing on parental custodial rights — While matter was still under investigation, father went on brief European holiday during which mother and children returned to Ontario without father’s consent and without any authorizing court order — Father promptly filed claim for children’s return to Scotland under (Hague) *Convention on Civil Aspects of International Child Abduction* — Ontario court found that, under**

**Children (Scotland) Act 1995**, father enjoyed custodial rights that had been breached by mother’s removal of children to Ontario — Mere fact that Scottish child protection investigation was in its initial stages did not eliminate or suspend father’s parental rights and responsibilities — He had not consented or acquiesced to children’s removal — Moreover, by securing “Interdict”, mother had initially sought out help from Scottish court system over her concerns — Having chosen to engage Scottish justice system, it was improper for her now to try to avoid that jurisdiction by moving to Canada.

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**STATUTES AND REGULATIONS CITED**

[Children \(Scotland\) Act 1995](#), c. 36 (U.K.) [as amended], section 1 and section 2.  
*Children’s Law Reform Act*, R.S.O. 1990, c. C-12 [as amended], section 46.  
*Convention on Civil Aspects of International Child Abduction*, [1983] Can. T.S. No. 35, 1343 U.N.T.S. 89, 99 U.S.T. 11, 19 I.L.M. 1501, Article 4, Article 5, Article 12 and Article 16.

**CASES CITED**

[Finizio v. Scoppio-Finizio](#), [1999 CanLII 1722](#), 46 O.R. (3d) 226, 124 O.A.C. 308, 179 D.L.R. (4th) 15, 1 R.F.L. (5th) 222, [1999] O.J. No. 3579, 1999 CarswellOnt 3018 (Ont. C.A.).  
[Jackson v. Graczyk](#), [2007 ONCA 388](#), 86 O.R. (3d) 183, 283 D.L.R. (4th) 755, [2007] O.J. No. 2035, 2007 CarswellOnt 3216 (Ont. C.A.).  
[Lombardi v. Mehnert](#), 2008 ONCJ 164, 50 R.F.L. (6th) 305, [2008] O.J. No. 1413, 2008 CarswellOnt 2075 (Ont. C.J.).  
[Maletic v Dini](#), 2008 ONCJ 798, [2008] O.J. No. 4539, 2008 CarswellOnt 9574 (Ont. C.J.).  
[Thomson v. Thomson](#), [1994] 3 S.C.R. 551, 173 N.R. 83, 97 Man. R. (2d) 81, [1994] 10 W.W.R. 513, 79 W.A.C. 81, 119 D.L.R. (4th) 253, 6 R.F.L. (4th) 290, [1994 CanLII 26](#), [1994] S.C.J. No. 6, 1994 CarswellMan 91.  
[Wedig v. Gaukel](#), 2007 CanLII 13522, 38 R.F.L. (6th) 60, [2007] O.J. No. 1547, 2007 CarswellOnt 2479 (Ont. S.C.).

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William S. Mathers ..... counsel for the applicant father  
Karl McNamara ..... counsel for the respondent mother

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**JUSTICE G.J. BROPHY:—**

**1: INTRODUCTION**

[1] This is an application commenced on 30 July 2010 under the (Hague) *Convention on Civil Aspects of International Child Abduction*, [1983] Can. T.S. No. 35, 1343 U.N.T.S. 89, 99 U.S.T. 11, 19 I.L.M. 1501 (herein “the Hague Convention” or “Convention”) as incorporated into Ontario law pursuant to section 46 of the *Children’s Law Reform Act*, R.S.O. 1990, c. C-12, as amended, seeking the return of three children to Scotland.

**2: BACKGROUND**

[2] The parents are J.D., born on [...] November 1945 in Glasgow, Scotland, and P.D.,

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born on [...] July 1970 in Toronto. The parents have dual United Kingdom and Canadian citizenship.

[3] The children are triplets: B.D., M.D. and D.D., all born on [...] February 2002 in Toronto, one boy and two girls. They are presently 8 years old.

[4] The family moved to Scotland in February of 2005. J.D. states that he had retired after working in Canada since 1968 and it was decided that Glasgow was the place to retire. P.D. found work in Falkirk, Scotland with an organization called CVS.

[5] The material suggests that the family was experiencing financial problems. It is unclear why the move was made to Scotland. The father had a brother residing in Glasgow but the mother has numerous family members back in Ontario.

[6] The children were placed in school and took part in normal community activities. Both parents attended to the children's needs. J.D. says that he stayed at home while the mother went to work.

[7] The couple separated on 27 December 2008. The father left the family home and moved into an apartment not far from the family residence.

[8] The material says that the father continued to have ample contact with the children, seeing them most days and having them stay overnight at his residence two or three times per week.

[9] On 17 March 2009, the child M.D. made an allegation that J.D. had touched her vagina inappropriately on a number of occasions. An investigation was commenced by the child protection services in Glasgow and J.D. was told not to have any contact with the children. This was not pursuant to a court order, but was simply advice from the government services charged with the responsibility of investigating the matter.

[10] For the most part, the father complied with the request that there be no contact, although he did see the children and indeed speak to them on perhaps three occasions.

[11] The mother consulted a lawyer — but the only court process was a form of restraining order called an “Interdict” issued on 10 June 2009, which I am told prevented the father from having contact with the mother and the children while it remained outstanding. There is no clear statement before this court as to the nature of the “Interdict” and its meaning.

[12] The father says in his material that his counsel has advised him that the Interdict is a civil restraining order related to the parties and is not a child custody or access order. The father also says that the police advised him that there would be no criminal charges arising from the allegations.

[13] Sometime between 14 and 21 August 2009, while the father was in Spain with his brother on a vacation, the mother removed the children from Scotland, taking them to

Canada and specifically Ontario. This was without the consent of the father and without a court order authorizing their removal.

[14] The father reported the matter to the police and commenced a Hague Convention application on 20 October 2009. Notification was given to the Central Authority for Canada by notice dated 25 November 2009.

[15] There was a previous action brought by the respondent (Goderich file number 99/09) on 8 September 2009 wherein the mother sought an Ontario custody order and other ancillary relief. There was no service on the father. The proceedings included an urgent “without notice” motion requesting interim custody order in favour of the respondent mother. Justice Robert S.G. M.D. decided on 8 September 2009 that the court did not have jurisdiction to grant the relief requested and dismissed the motion and application. This was without prejudice to a further application.

[16] In that court file, there appears a letter from the Central Authority for the Province of Ontario with respect to the Hague *Convention on the Civil Aspects of International Child Abduction* dated 10 February 2010 advising that an application under the Hague Convention was currently being processed and notifying the court that, pursuant to Article 16 of the Convention, the merits of custody should not be decided until the question of the return of the child to the foreign jurisdiction had been decided or an application is not lodged within a reasonable time.

[17] It is important to note that, in this case, there is limited factual information and there is no expert evidence with respect to the law of Scotland as it relates to custody and access.

### 3: DISCUSSION

[18] The first principle that must be acknowledged is that this is not a hearing with respect to the merits of any custody dispute. See Article 16 of the Convention and [Thomson v. Thomson](#), [1994] 3 S.C.R. 551, 173 N.R. 83, 97 Man. R. (2d) 81, [1994] 10 W.W.R. 513, 79 W.A.C. 81, 119 D.L.R. (4th) 253, 6 R.F.L. (4th) 290, [1994 CanLII 26](#), [1994] S.C.J. No. 6, 1994 CarswellMan 91, at paragraphs [42] and [94] and [Wedig v. Gaukel](#), 2007 CanLII 13522, 38 R.F.L. (6th) 60, [2007] O.J. No. 1547, 2007 CarswellOnt 2479 (Ont. S.C.), at paragraph [16].

[19] The question before the court is whether the children were wrongfully removed from Scotland and, if so, should they be returned to Scotland so that the Scottish courts can adjudicate on the matter.

### 4: CONDITIONS PRECEDENT

[20] Article 4 of the Convention states that it applies to any child who was habitually resident in a contracting state immediately before any breach of custody or access rights and that the Convention applies until the child reaches the age of 16 years.

[21] Scotland as part of the United Kingdom and Canada are both contracting states and bound by the Hague Convention. Further in this case all of the children are under 16. They are in fact 8 years of age. Finally, the parents agree that the children were habitually resident in Scotland at the time of removal.

[22] Article 12 states that, where less than one year has elapsed from the date of removal, the court shall order the return of the child forthwith. In this case, the application was started on 30 July 2010, which was inside the one-year time line, with the removal having occurred between 14 and 21 August 2009.

## 5: DID THE FATHER HAVE RIGHTS OF CUSTODY?

[23] The next consideration is whether the father had rights of custody. Rights of custody and access in the Convention are defined in Article 5 as follows:

### **Article 5**

For the purposes of this Convention:

- (a) “rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;
- (b) “rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

[24] Rights of access are treated differently than rights of custody. They are dealt with in Chapter IV of the Convention and do not necessarily result in an order for the return of a child. The father in this case, however, asserts that he has rights of custody that have been breached.

[25] To determine rights of custody, the court is directed to look at the law in the place where the children were habitually resident. See [Finizio v. Scoppio-Finizio](#), [1999 CanLII 1722](#), 46 O.R. (3d) 226, 124 O.A.C. 308, 179 D.L.R. (4th) 15, 1 R.F.L. (5th) 222, [1999] O.J. No. 3579, 1999 CarswellOnt 3018 (Ont. C.A.). Further, the court should interpret the exercise of custody rights broadly and, in particular, determine whether the person is maintaining the stance and attitude of a parent. See [Jackson v. Graczyk](#), [2007 ONCA 388](#), 86 O.R. (3d) 183, 283 D.L.R. (4th) 755, [2007] O.J. No. 2035, 2007 CarswellOnt 3216 (Ont. C.A.).

[26] The law of Scotland with respect to custody and access appears to be set out in the [Children \(Scotland\) Act 1995](#), c. 36 (U.K.). The relevant sections of the legislation are as follows (my emphasis added):

### **PART I — PARENTS, CHILDREN AND GUARDIANS**

#### Parental responsibilities and parental rights

- 1. Parental responsibilities.**—(1) Subject to section 3(1)(b) and (3) of this Act, *a parent has in relation to his child the responsibility—*

- (a) *to safeguard and promote the child's health, development and welfare;*
- (b) *to provide, in a manner appropriate to the stage of development of the child—*
  - (i) *direction;*
  - (ii) *guidance,**to the child;*
- (c) *if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and*
- (d) *to act as the child's legal representative,*

but only in so far as compliance with this section is practicable and in the interests of the child.

(2) "Child" means for the purposes of—

- (a) paragraphs (a), (b)(i), (c) and (d) of subsection (1) above, a person under the age of sixteen years;
- (b) paragraph (b)(ii) of that subsection, a person under the age of eighteen years.

(3) The responsibilities mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental responsibilities"; and the child, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those responsibilities.

(4) The parental responsibilities supersede any analogous duties imposed on a parent at common law; but this section is without prejudice to any other duty so imposed on him or to any duty imposed on him by, under or by virtue of any other provision of this Act or of any other enactment.

**2. Parental rights.**—(1) Subject to section 3(1)(b) and (3) of this Act, *a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—*

- (a) *to have the child living with him or otherwise to regulate the child's residence;*
- (b) *to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;*
- (c) *if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and*
- (d) *to act as the child's legal representative.*

(2) *Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any decree or deed conferring the right, or regulating its exercise, otherwise provides.*

(3) *Without prejudice to any court order, no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith, the United Kingdom without the consent of a person described in subsection (6) below.*

(4) The rights mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as “parental rights”; and a parent, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those rights.

(5) The parental rights supersede any analogous rights enjoyed by a parent at common law; but this section is without prejudice to any other right so enjoyed by him or to any right enjoyed by him by, under or by virtue of any other provision of this Act or of any other enactment.

(6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above; except that, where both the child’s parents are persons so described, the consent required for his removal or retention shall be that of them both.

(7) In this section, “child” means a person under the age of sixteen years.

[27] Counsel have not advised of any other provisions dealing with custody and access matters in Scotland.

[28] A generous reading of the above sections reveals that both parents have significant concurrent responsibilities with respect to their children and that, as provided for in section 2, each of the parents in order to fulfill those responsibilities has the right to have the child living with him or her and, if that is not the case, then to maintain personal relations and direct contact with the child on a regular basis.

[29] Further subsection 2(2) specifically states that, where two or more persons have parental rights, each of them may exercise those rights without the consent of the other unless there is a court order saying otherwise. In this case, there was no court order outstanding save and except the Interdict, which gave no obvious direction with respect to parental rights.

[30] At best the Interdict was a court order that prevented contact with the mother. It certainly came out of the child protection and marital relation issues — but it does not speak directly to the issues provided for in the above legislation dealing with responsibilities and rights. In addition, it was at best an interim or preliminary statement that in no way was determinative of the rights of either of the parties.

[31] It is also useful to note that subsection 2(3), read in conjunction with subsection 2(6), specifically provides that no person is entitled to remove children from the United Kingdom without the consent of the other parent.

[32] The applicant father then had the right to have the child living with him or to maintain personal relations and have direct contact with the child. There was no court order restricting his rights as a parent, save and except what can only be described as an interim order not yet fully litigated. The facts suggest that, prior to the complaint made by the child M.D., the father had in fact been an active parent with the child spending considerable time in his presence and in his residence, including overnight stays.

[33] Any fair and broad reading of these provisions results in the conclusion that the applicant father had rights of custody with respect to the subject children.

**6: WERE THE CHILDREN WRONGFULLY REMOVED FROM SCOTLAND?**

[34] The next issue is whether the children were wrongfully removed from Scotland as contemplated by Article 3 of the Convention.

[35] First, the children were removed in breach of the rights of custody of the father in that, because of the breach, he could no longer exercise those rights as understood under the laws of Scotland.

[36] Second, at the time of the removal, those rights were still being exercised by him in that he was continuing his interest in the children, attempting to see them and waiting until the appropriate authority had concluded its preliminary investigation. It is not reasonable to hold that, because a child protection investigation was in its initial stages, the father's rights and responsibilities under sections 1 and 2 of the *Children (Scotland) Act 1995* were therefore eliminated or were of no force and effect.

[37] Finally, the children were removed from Scotland without the consent or acquiescence of the father in breach of subsection 2(3) of the said Act.

[38] Moreover the respondent mother had in fact started a court proceeding in the context of issues related to the children. Although the Interdict was not a formal order dealing with child custody matters, it is evidence that the mother was seeking help from the Scottish court system with respect to her concerns. Having chosen to engage the justice system in Scotland, it is now improper for her to wish to avoid that jurisdiction by moving to Canada. See *Lombardi v. Mehnert*, 2008 ONCJ 164, 50 R.F.L. (6th) 305, [2008] O.J. No. 1413, 2008 CarswellOnt 2075 (Ont. C.J.).

**7: IS THERE A GRAVE RISK OF HARM TO THE CHILDREN IN RETURNING THEM TO SCOTLAND THAT WOULD EXPOSE THEM TO PHYSICAL OR PSYCHOLOGICAL HARM OR OTHERWISE PLACE THEM IN AN INTOLERABLE SITUATION?**

[39] Article 13 of the Convention states:

***Article 13***

Despite the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body that opposes its return establishes that:

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable

situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

[40] The concern is then whether a return of the children to Scotland as required under Article 12 would create “a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”

[41] The mother's material filed with the court included a set of reports from the Glasgow City Council Social Work Services Child Protection division that provided a record of the preliminary investigation undertaken by that agency with respect to the allegations reported by the child M.D.. The review included a discussion of the concerns expressed by all three children about their father's behaviour generally and it observed that they had varying degrees of discomfort in spending time with him. The reports also listed the numerous professional persons who participated in the review and meetings. These were comprehensive reports and spoke well of the agencies conducting them. It allows this court to conclude that the appropriate child protection services are available in Scotland.

[42] There is nothing in the material provided by the parties that suggests the material well being of the children will be diminished by a return to Scotland. The court has no evidence about the circumstances of the children in Canada other than general statements that they are in school, live with their mother and are settled. There is information that they have been attending some form of counselling to respond to the issues that arose with respect to their father. However, no professional reports have been filed and I have no idea of the depth or intensity of that counselling or its meaning or impact on the children.

[43] The only other information that the court has is that the mother has family in Ontario and has support from them. (In a similar vein, the court has been given very limited information about the father's family in Scotland.)

[44] There is nothing before the court that indicates that the children would be at a grave risk of exposure to physical or psychological harm in Scotland. The social service agencies that were previously involved will again act to protect the children. The court in Scotland will be able to sort out the various issues between the parties and put in place an appropriate plan to serve the needs of the children. Scotland is a civil society that offers no risk to the children. There are services available that will meet their needs.

[45] There is nothing before the court that indicates that the children would be placed in an intolerable situation if they were returned to Scotland. The only problem is the allegations made against the father that have not yet been proven in court. The justice system in Scotland is the proper forum to determine that issue — not Canada.

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## 8: CONCLUSION

[46] The court therefore makes the following findings:

- (a) The children were habitually resident in Scotland at the time of their removal.
- (b) The father has rights of custody under the law of Scotland.
- (c) The father was exercising his rights of custody at the time of the removal.
- (d) The children are being wrongfully detained in Canada in breach of the father's rights under Article 3 of the Convention.
- (e) Returning the children to Scotland would not expose the children to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation.

[47] This court can impose undertakings to assist the return and to protect the children in the transitional period before the court in Scotland takes over. See *Thomson v. Thomson*, *supra*, and *Maletic v Dini*, 2008 ONCJ 798, [2008] O.J. No. 4539, 2008 CarswellOnt 9574 (Ont. C.J.).

[48] The applicant father has undertaken through counsel in argument to arrange for and pay the air fare for the respondent mother and the three children and also to provide independent housing for the mother and children upon their return to Glasgow.

[49] The court therefore orders that:

- (a) The respondent mother and the three children shall return to Scotland on or before 31 October 2010 pursuant to Article 12 of the *Convention on Civil Aspects of International Child Abduction*.
- (b) The applicant father shall provide prepaid air tickets for the respondent mother and three children for travel to Glasgow, Scotland on or before 30 September 2010.
- (c) The respondent mother shall not move the children from the Province of Ontario prior to her return with them to Scotland.
- (d) The applicant father shall provide written confirmation to the respondent mother on or before 15 October 2010 that:
  - (1) He has obtained suitable residential housing for the respondent mother and the three children that will be immediately available upon her arrival in Glasgow.
  - (2) He has advised the Glasgow City Council Social Work Services Child Protection division that the respondent mother and three children are returning to Glasgow and that he has provided them with a copy of this decision and the address and contact information of the respondent mother in Canada and the new address for her in Glasgow.
- (e) The applicant father shall pay child support monthly to the respondent mother in the amount of £400 (U.K.) commencing on 15 October 2010 and on the 15th day of each month thereafter until superseded by an order made by a

court in Scotland.

(f) The motion brought by the applicant father for interim access is dismissed.

**[50]** In the event the parties wish to address costs and cannot settle that matter directly, they may provide brief written submissions not exceeding three pages in addition to a bill of costs. The applicant shall have until 21 September 2010 to serve and file same and the respondent shall have until 28 September to serve and file a reply.