

LEGAL BULLETIN

Issue No. #21

Determining the Best Interests of the Child in Relocation Cases: *CLT v DTT*, [2022] NBJ No 309

Introduction

One of the more significant amendments to Canada's Divorce Act in 2021 was a broadened definition of "family violence," inclusive of coercive and manipulative behaviours. Section 2(1) of the Divorce Act defines family violence as:

"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."

Courts and police have shown a growing awareness of family violence as a pattern of controlling and abusive behaviours that can take place over a long period, often serving as the backdrop for reports of incident-specific violence.

Several recent Supreme Court of Canada cases have reaffirmed the importance of this expanded understanding of family violence to assessments of the best interests of the child. This is even more critical in the context of family violence. A recent case from the New Brunswick Court of King's Bench provides an apt example, where the Respondent (father)'s reliance "on a very narrow definition of family violence" was viewed by the court as demonstrating a lack of awareness and consideration of his child's best interests.



Background of the Case

In June 2022, an Emergency Intervention Order (EIO) was granted for a period of 30 days against the Respondent (the father) for domestic violence allegations made by the Applicant (the mother) (para 1). Shortly before the expiry of the EIO, the Applicant relocated herself and her child (A.V.T.) to a women's shelter in a different rural New Brunswick community than the one they had been living in with the Respondent (para 1). A couple of months later, the Applicant made an application to gain primary care of A.V.T. along with sole decision-making authority, child support and a non-harassment order (para 2).

A case conference in October 2022 placed the child in the Applicant's primary care and granted her final decision-making authority pursuant to sections 52(2), 52(4) and 54 of the *Family Law Act*. The father maintained that the child should remain with him in their original community as they are both Indigenous, and this would allow the child to remain connected to their cultural roots (para 5). The mother states that she also wishes to keep her child connected to her Indigenous heritage, and also does not wish to keep the child from her father (para 6). However, she maintained the child should be permitted to relocate with her and that she should be given sole

decision-making authority (para 6). The mother stated that the relocation was motivated by her fear of the Respondent, which was fueled by the abuse subjected to during their relationship (para 6).

The Court identified their primary issue as deciding what interim parenting order is best for A.V.T.'s best interests.

Questions for the Court

The King's Bench of New Brunswick (Family Division) was tasked with analyzing the following issue in this case:

1. Whether it was in the child's best interest to relocate back to their original home (as the Respondent wishes), or remain in the new location with the Applicant (while granting as much parenting time/ decision-making authority as possible to the Respondent, despite the distance?

Judge's Reasoning

The Applicant's request to permanently relocate A.V.T. was granted and the child will primarily live with them. The Applicant received majority of parenting time and sole decision-making authority. The Respondent was allotted some parenting time with an increase over the summer months.

"The difficulties inherent to the best interests principle are amplified in the relocation context. Untangling family relationships may have profound consequences, especially when children are involved. A child's welfare remains at the heart of the relocation inquiry". – CLT v DTT, 2022, para 98

Citing paragraph 147 of the *Barendregt v Grebliunas*, 2022 SCC 22 decision, Justice Delaquis highlighted the importance of considering family violence in relocation cases. *"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"* (CLT v DTT, 2022, para 99).

The Court determined there was family violence present between the two parties, and that this motivated the Applicant's relocation (para 100). Despite the fact that the child was not the primary victim, it was acknowledged that the child still

sustained psychological harm from being subjected to the conflict between the parents (para 101). Justice Delaquis affirmed that the Applicant made the correct decision to relocate because, based on the circumstances, she was acting on a reasonable belief that this was in A.V.T.'s best interests (para 100). This reasoning highlights the fact that the Respondent's violent-centric definition of family violence is closely linked to his inability to care for his kids' needs. This is noted at paragraph 102: *"a lack of insight and ability to care an to meet the needs of A.V.T. because he does not believe it happened"*.

Further, the court referenced how harmful the father's lack of accountability regarding the ramifications of his actions was for the parties' child. The judge noted that this reflected that this exhibited a lack of insight and care for the needs of the child as he does not believe that he was ever a perpetrator of abuse (para 102). This is reinforced by *Barendregt* where the court stated...

"His focus has been on trying to cut into little pieces the Applicant's version of events rather than looking at the big picture and recognizing that what was happening between them was not in A.V.T.'s best interests. In my view, the only way to protect A.V.T.'s emotional, psychological and physical well-being in the context of this case is to make a parenting order that reflects this reality" (para 102).

Justice Delaquis stated that the relocation was in the child's best interest in this case. He note that he would

have typically considered a joint decision-making arrangement, however, “it is not appropriate because of the highly conflictual nature of the relationship and

the significant trust and communication issues these parties currently have, with no light at the end of the tunnel, yet” (para 119).

Key Takeaways

The New Brunswick case of *CLT v DTT* (2022) offers key insights pertaining to the discussion of the intersecting issues of family violence and the best interest of the child analysis in relocation decisions. In sum, the most pertinent conclusions held by the New Brunswick Court of King’s Bench in this case are as follows :

- The definition of family violence is broad, encompassing various forms of violence that can impact a child’s well-being. Therefore, the best interest of the child analysis in relocation cases must take into account the diverse manifestations of family violence.
- The best interest of the child should be central to relocation decisions, with an acknowledgment that family violence is a part of a child’s reality, regardless of whether or not it is acknowledged by the parents.
- Failure by a parent to recognize the impact of family violence on a child’s well-being can reflect negatively on their ability to meet the child’s needs, potentially influencing the court’s assessment of custody and relocation arrangements.

References

Barendregt v. Grebliunas, 2022 SCC 22.

CLT v DTT, [2022] NBJ No 309.

[Family Law Act, SNB 2020, c 23, s. 52\(2\), s. 52\(4\) and s. 54.](#)

Gill, C. and Aspinall, M. (2020). Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system? Research Paper for the Federal Ombudsman for Victims of Crime. Department of Justice. Ottawa, ON. <https://www.victimfirst.gc.ca/res/cor/UCC-CCC/index.html>

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