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The editors-in-chief of the Ontario Family Law Monthly (OFLM) are David Frenkel and David Tobin.

Various authors contribute to the text of the OFLM.

The articles in the OFLM are offered to educate, engage and inspire.

Legal Notice

The writers of the Ontario Family Law Monthly have contributed to this publication in lieu of spending more time with their family and friends. Depending on the family member or friend, the choice sometimes was purposeful. The writers have tried to provide the reader with enough legal information to help them understand the subject matter, but hopefully not too much as to put them to sleep. Regardless of the reader's conscious state during or after reading the article(s), **the OFLM is not a substitute in any way for legal or other professional advice, and no action should be taken by the reader without the advice of a lawyer** (and sometimes even if the reader is a lawyer themselves). Therefore, **if the reader requires legal or other expert advice, they should seek the services of a competent lawyer or other professional** (keyword is "competent").

Interim Orders For Preservation: A Brief Reminder of the Law

David Tobin

Overview

Obtaining orders for the payment of an equalization payment or the payment of support are great, but of little use if the party against whom the order is made has dissipated all of their assets prior to enforcing the orders.

The manner in which parties can dissipate assets are varied. So to are the tools available to prevent such dissipation.

Preservation orders are helpful tools to ensure a party will have assets available to them to satisfy an equalization payment or a support order. However, attention must be given to the critical questions of whose property are you seeking to preserve and for what purpose

Depending on the facts, a party may have to seek remedies under Sections 12 or 40 of the *Family Law Act,* the *Courts of Justice Act, Rules of Civil Procedure or* the *Fraudulent Conveyance Act*.

This article only addresses orders under Sections 12 or 40 of the *Family Law Act*.

First, it discusses the object of the order (or against whom an order can be made). Next, this article discusses the onus and test to obtain a preservation order. Lastly it provides examples of when an order will or will not be made.

Family Law Act Preservation orders – Against whom can they be made?

Although it may seem obvious, the object of an order under sections 12 or 40 of the *Family Law Act* must be the other (former) spouse or party.
Section 12 of the Family Law Act provides that the court has the jurisdiction to order the preservation of property if it is necessary for the protection of a spouse's interest

under section 7 of the *Family Law Act* – namely the receipt of an equalization payment. Section 12 of the *Family Law Act* reads as follows:

> **12. Orders for preservation**
> In an application under section 7 or 10, if the court considers it necessary for the protection of the other spouse's interests under this Part, the court may make an interim or final order,
>
> (a) restraining the depletion of a spouse's property; and
>
> (b) for the possession, delivering up, safekeeping and preservation of the property.

Section 40 of the *Family Law Act* reads as follows:

> **40.Restraining orders**
> The court may, on application, make an interim or final order restraining the depletion of a spouse's property that would impair or defeat a claim under this Part. R.S.O. 1990, c. F.3, s. 40; 1999, c. 6, s. 25 (18); 2005, c. 5, s. 27 (21

It is clear from the wording of the *Act* that sections 12 and 40 only permits a preservation order to be made against a **spouse** or a **former spouse**.

Case law has interpreted sections 12 and 40 to be limited to spouses and not applicable to third parties. In practice, this means that if your client thinks (but the fact has not yet been found) that a spouse's family member is holding property intrust for the spouse, sections 12 or 40 cannot be engaged to preserve the asset/property in question.

Justice Charney in *Dimartino v. Dimartino* (2016 ONSC 7461) considered whether a wife could obtain an order pursuant to Section 12 of the *Act* against her son, who she alleged conspired with the husband to dissipate real estate holdings. At paragraph 29

of his decision, His Honour found he lacked the jurisdiction to make such an order because the "language of s. 12 of the FLA is directed to the property owned by the spouse, and not property owned by a third party, even if that property were formerly owned by the spouse."

If the property in questioned is owned by a non-spouse, the request for preservation must be via a *Mareva Injunction,* which has a difference legal test and "presents a higher hurdle than the test for a non-dissipation order under s. 12 of the FLA" (*Newcastle v. Newcastle*, 2018 ONSC 5121 at para. 24*)*.

As such, prior to considering the merits and/or necessity of the order, the moving party must ensure the property is owned by the other spouse. Without an ownership interest by a spouse (or former spouse) then no order can be made under sections 12 or 40.

When will a section 12 order be made?

An order will only be made pursuant to section 12, if it is **necessary** to protect an equalization claim. If the property in question **is** owned by the spouse, then the moving party has the onus to demonstrate that an order is necessary to ensure the payment of the equalization payment. (*Schaefer v. Richards* et al., 2023 ONSC 4733 at para. 48).

The test to be applied on a motion for preservation order was set out by Justice Timms J. in *Price v. Price* (2016 ONSC 728). At paragraph 6 he states:

> The correct standard is the same one to be applied when determining whether to grant an interim injunction:
>
> 1. Is there a serious issue to be tried?

> 2. Will the moving party suffer irreparable harm if relief is not granted? and
> 3. Which party will suffer the greater harm from granting or refusing the remedy pending a decision of the merits?

The '**serious issue to be tried**' relates to the likelihood of an equalization payment being ordered in the moving party's favour. (*Gorog v. Gorog*, 2019 ONSC 5510 at para. 10).

The question of whether the moving party will suffer irreparable harm if not granted, asks the question "what risk is there of dissipation?" A moving party can demonstrate this by demonstrating that the other party has already began dissipating assets. However, Papageorgiou J. notes that "past dissipation is not required to demonstrate future risk". (*Elham v. Kasra* et al, 2021 ONSC 6433 at para. 37).

In *Elham,* Papageorgiou J. granted a preservation order where the responding party: 1) held back important disclosure related to property; 2) renewed the mortgage for the property on a five-year closed basis, despite the moving party's intention to bring a motion to sell the property; 3) relied on fraudulent documents during questioning; and 4) provided inconsistent explanations as to the whereabouts of $150,000.00 which belonged to him.

Papageorgiou J. relied on Justice Emery's reasoning in *Barbini v. Edwards*, 2014 ONSC 6762, at para. 91 and found the preservation order was:

> …warranted given the complexity of the issues yet to be determined by the court in this application, questions of credibility on those issues and the ever present risk that . . . assets could be dissipated to defeat the rights of another without it.

In *Brkljac v. Todorovic*, 2022 ONSC 6653, Faieta J. ordered the continuation of a preservation order where the responding party: 1) failed to provide full and frank disclosure; 2) previously swore a false document in order to obtain a mortgage on a property which he subsequently sold and did not disclose the whereabouts of the sale proceeds; and 3) held a Serbian passport, had undisclosed Serbian bank accounts and admitted to transferring money to Serbia from Canada. Faieta J. found a serious issue to be tried where the responding party was likely to owe an equalization payment of roughly $660,000.00.

Without a basis for a party being concerned about dissipation, an order under section 12 should not be made. Kraft J., in *Zadeh v. Zamani* (2023 ONSC 522), refused to grant such an order where there was no evidence that the responding party was a flight risk or that she would hide or deplete assets, especially in the circumstances where the Responding party had delivered financial statements and disclosure (at para. 44).

When bringing a motion for a preservation order, a party must be specific about what property they hope to preserve. A court may not grant broad or ill defined preservation requests because of harm it may cause to the responding party.

An early leading case interpreting s. 12 is *Lasch v. Lasch* (1988), 64 O.R. (2d) 464, 1988 CanLII 4581 (ON SC). *Lasch* was recently adopted in *Conforti v. Conforti* (2021 ONSC 1767 at paragraph 28- 29). In Lasch, Granger J. holds that:

> A restraining order should be restricted to specific assets and there should be an onus on the party seeking the restraining order to prima

> facie show that he or she is likely to receive an equalization payment equal to the value of the specific assets.
>
> *Conforti v. Conforti*, 2021 ONSC 1767 at paras. 28-29.

Sah J., in *Schaefer v. Richards et al*. (2023 ONSC 4733), refused to grant a section 12 order where the "requested orders in the case at bar [were] too broad" (at para. 60). In that case, the moving party sought "a non-depletion order against the Respondent Richards and a freezing of any of his bank accounts or investments, under ss. 12 and 40 of the FLA" (at para. 1). No specific accounts or assets were noted. Consequently Sah J. could not know the 'amount' an order would actually tie up.

An order should not preserve an amount greater than the payment it is seeking to secure. In fact, Kraft J. specifically held that a "spouse is not entitled to security dollar for dollar of what he/she says is his/her best day in terms of property division." (*Zadeh v. Zamani*, 2023 ONSC 522 at para. 44.)

When will a section 40 Order be made?

While the language of section 40 is different from that in section 12, the considerations are similar. A moving party must demonstrate 1) a triable issue; 2) that they will suffer irreparable harm if the order is not granted; and 3) their harm will be greater than the other party's. (*Taus v. Harry*, 2016 ONSC 219, at para. 34)

A non-depletion order may be made pending trial where a party has not complied with previous orders for support and the recipient is in need. A moving party will need to adduce proof of non-compliance or blameworthy conduct. (Keyes v. Keyes, 2015 ONSC 1660 at paras. 74 & 76)

Where there is only a concern of dissipation and no evidence of non-compliance with a support order, a section 40 order will likely not be made. (*Gerges v. Gerges*, 2023 ONSC 2662 at para. 11)

Given that the weight of the case law states that there needs to be evidence of non-compliance with a support order or some other blameworthy conduct, it may not pay for your client to bring a motion in circumstances of a party's compliance with a support order.

Other circumstances

At times, a party may need to preserve property for reasons other than an equalization payment or support. For example, where a moving party is not a married spouse and is advancing an unjust enrichment claim. In such a case, sections 12 or 40 of the *Family Law Act* may not be available and the moving party may have to seek a *Mareva Injunction*.

Similarly, if property has already been dissipated, sections 12 or 40 of the *Family Law Act* will be of little value and as such, an application under the *Fraudulent Conveyance Act* may be necessary.

Conclusion

Family lawyers work hard as it is obtaining favourable results for their clients. It therefore would be a shame if such positive orders become useless in situations where the opposing party depletes their assets and leaves their former spouse high and dry.

Accordingly, counsel should be mindful of the tools that the *Family Law Act* offers to protect clients from such injustices. Counsel should also not only screen for such risks in the beginning of a file, but also assess for them throughout the course of the negotiations and/or litigation.

And if the tools are used properly, a client will not only be happy with their lawyer's services, but also the results.

***Interjurisdictional Support Orders Act*: Setting aside and confirming foreign support orders**

Christina Hinds

Overview

Part III of the *Interjurisdictional Support Orders Act* ("ISOA") allows for the registration and enforcement of support orders made outside of Ontario in reciprocating jurisdictions. Registered orders can be confirmed or set aside under subsection 20(4)(b) of the ISOA.

In *Blackiston v. Newman* (2024 ONCJ 349), Justice Sherr confirmed a child support order made in California and registered in Ontario.

Facts

In November 2023, the mother registered an April 2001 California child support order in the Ontario Court of Justice. The mother sought arrears from the date of the order until 2005 (when the children were adopted by the mother's husband). At the time of the hearing in Ontario, the children were 31, 33, and 34 years old. The father had no relationship with the children and had not seen the children since 2000.

The father's pay was garnished in Texas for approximately 2 months in 2001 before he moved to Canada. The Director of the Family Responsibility Office, Interjurisdictional Support Orders Unit ("ISO Unit") participated in the proceeding and filed a statement of arrears accrued pursuant to the California child support order.

The father brought a motion seeking to set aside the California child support order on the basis that he did not receive proper notice of the proceeding in California and did not have a reasonable opportunity to be heard in the California proceeding.

The father also argued that the order was contrary to public policy because: (a) his income was much lower than the income attributed to him for support purposes; (b)

he disputes the paternity of one of the three children; and (c) the order was not enforced for the 22 years, and it was unfair to enforce the order now.

The mother argued that the father had notice of the proceeding, took no steps to set aside or change the California order, did not previously challenge the paternity of the child, and that she had spent the last several years trying to locate him while he avoided his child support obligations.

Setting aside registered support orders

A support order that is registered under the ISOA can be set aside under subsection 20(4)(b) of the ISOA which sets out that:

> On a motion under subsection (2), the Ontario court may,
>
> . . .
>
> (b) set aside the registration if the Ontario court determines that,
>
> (i) in the proceeding in which the order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,
>
> (ii) the order is contrary to public policy in Ontario, or
>
> (iii) the court that made the order did not have jurisdiction to make it.

Proper notice/reasonable opportunity to be heard

The decision to set aside an order is a decision of judicial discretion and the onus is on the party seeking to set aside the order (at para. 35). Justice Sherr determined that on a balance of probabilities, the father received notice of the California proceeding and that he had a reasonable opportunity to be heard (at para. 34).

Evidence of Proper Notice

The mother submitted evidence to support that the father received notice of the California proceeding, including that the California court was satisfied that the father

received notice and documents from the California court file confirming that the father was served by mail (at para. 37).

Justice Sherr found the mother to be a credible witness while noting "significant concerns with the reliability and credibility" of the father's evidence (at para. 39). His Honour found that that the mother's evidence supported her position that the father avoided his child support obligations, including (at para. 42):

- He moved from California to Texas shortly after the California child support order and did not tell the mother.
- After his income was garnished in Texas, he quit his job and moved to Canada and did not tell the mother.
- The mother described her extensive efforts to locate the father.
- The father did not voluntarily pay any child support for the children since moving to Canada in 2001.
- The father did not previously question the paternity of the children.
- The father provided no evidence of his financial circumstances at the time of the California child support order.

Public Policy

The father argued that the California child support order was against public policy because he was only earning $1,500 USD per month and the order set his income at $2,850 USD per month. He further argued that did not have the opportunity to challenge the paternity of one of the children.

Justic Sherr disagreed that the order was against public policy. His Honour stated at paragraph 48 that there is narrow application to setting aside a foreign order on the grounds of public policy:

> The court should give careful consideration before deciding that something is contrary to public policy, particularly in the area of conflict of laws […] Setting aside a foreign order on a public policy basis should be given a narrow application. This defence is not meant to bar enforcement of a judgment rendered by a foreign court with a real and substantial connection to the cause of action for the sole reason that the foreign jurisdiction would not yield the same result as in Canada.

In *Beals v. Saldanha* (2003 SCC 72), the Supreme Court of Canada stated at paragraph 75 that the defence of policy is not a remedy to be used lightly:

> The use of the defence of public policy to challenge the enforcement of a foreign judgment involves impeachment of that judgment by condemning the foreign law on which the judgment is based. It is not a remedy to be used lightly. The expansion of this defence to include perceived injustices that do not offend our sense of morality is unwarranted. The defence of public policy should continue to have a narrow application.

At paragraph 49, Justice Sherr referred to cases that the court has found foreign support orders contrary to Ontario public policy "because the foreign jurisdiction's methodology for calculating child support results in much higher support orders than would be ordered in Ontario."

In *Hastings v. Deacon* (2014 ONCJ 618), the Florida Child Support Guidelines resulted in a substantially higher amount of monthly child support than what would have been ordered pursuant to the Ontario Child Support Guidelines. Justice O'Connell held that "the objectives of fairness, efficiency and consistent treatment required by the Guidelines" were not met by the Florida child support order or the objectives of the ISOA (at para. 53). Justice O'Connell set aside the order after finding it contrary to public policy as the support amount was "excessively higher" than what would have been ordered in Ontario. While the order was set aside, Justice O'Connell stated that the public policy defence is not meant to interfere with the findings of fact of a foreign jurisdiction.

In *Blackiston v. Newman,* the father did not argue that the methodology for calculating child support in California was contrary to Ontario public policy. Rather, he argued that his income was improperly assessed and that he did not have a chance to challenge paternity. At paragraph 52, Justice Sherr stated that, "the public policy defence is not meant to interfere with findings of fact by foreign jurisdictions when proper process has been followed. To find otherwise would undermine the integrity of the interjurisdictional scheme."

Justice Sherr determined that proper process was followed in California and that the determination of the father's income in California was a finding of fact.

Conclusion

Child support orders from reciprocating jurisdictions can be registered in Ontario under the ISOA. A registered support order can be set aside by the Ontario court if it is found that a party did not receive proper notice of the foreign proceeding or have an opportunity to be heard. A registered support order can also be set aside if it is found to be contrary to public policy in Ontario.

However, there is narrow application to setting aside a foreign order on the grounds of public policy and the defence is not meant to interfere with findings of facts by foreign jurisdictions.

Seeking an order disposing of the other party's consent to travel? A "Hague Country" is not necessarily enough to dispel concerns

Lesley Singer

Overview

This article explores judicial considerations when making Orders permitting a parent to travel without the other parent's consent, with an eye to Justice Ramsay's decision in *Badar v. Danish*, (2024 ONSC 3942) and the *Hague Convention on the Civil Aspects of International Child Abduction*, Can. T.S. 1983 No, 35 ("the *Hague Convention*").

Introduction - overview of basic principles

While not a legal requirement, the federal government strongly recommends that a parent seeking to travel abroad with their child should obtain a travel consent letter from the other parent to avoid trouble at the airport. However, in situations when the non-travelling parent is unreasonably withholding their consent, a parent may be inclined to obtain an Order authorizing the travel.

Determination of whether a child can travel outside of Canada is ancillary to decision-making responsibility, and thus falls within the court's jurisdiction, as per s.16.1 of the *Divorce Act*, R.S.C. 1985, c.3 (2nd Supp.).

As with any child-focused order, courts adhere to the 'best interests' test

When court makes any decision pertaining to the child, the test is what is in the child's best interests, pursuant to s. 24(2) of the *Children's Law Reform Act* and s. 16(2) of the *Divorce Act*. Again, per the statutory directives, the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being (the language in both statutes is the same).

Courts must additionally balance the benefits of the travel against any plausible risks. This weighing process is case specific, and, in some cases, the facts will require the court to refuse the travel request, whereas in others "the facts will lead to the opposite conclusion." (*Purushothaman v. Radhakrishnan*, 2014 ONCJ 300 at para. 18; *Saini v. Tuli*, 2021 ONSC 3413). While no one factor alone is determinative, a consistent set of factors and/or themes can be derived from the case law, to be discussed below.

Special, once-in-a-lifetime occasions are consistent with the child's best interests

The court in *Barritt v. Barritt* (2016 ONSC 4746) held that special occasions, like a family wedding (especially the wedding of a parent), will most likely be in the child's best interests. It should be noted, however, that in the facts of *Barritt*, there was no evidence that the party seeking to travel (the father) would not act responsibly ensuring that the child was properly and safely cared for both during the trip.

Opportunities for the child to foster a connection with his or her heritage

In *Karol v. Karol*, (2003 CanLII 2323) Justice Magda found that it was in the child's best interest to travel to Israel because the trip would be an opportunity for the child to foster a connection with his heritage.

Similarly, in *Yacoub v. Yacoub*, 2010 ONSC 4259, Justice McGee held that a trip to Egypt to visit family was a "remarkable, one-time opportunity for the girls to visit extended family, explore their heritage and enjoy the benefits of world travel" (at para. 21).

It is important to note, however, that the children in *Yacoub* were older and thus better able to appreciate the benefits of travelling, a factor the courts have taken into consideration. For example, in *Palterman v. Palterman*, (2015 ONSC 1823) the court refused to make an order to withdraw the mother's consent, in large part because of the child's young age and the unlikelihood that the child would "have any

appreciation of [certain forecasted cultural and outdoor experiences], nor is he likely to retain any meaningful memory of [the proposed] visit" (at para. 14).

Additionally, while the court is to promote family and cultural enrichment, the child's physical and emotional security remain of utmost priority (*Mahadevan v. Shankar*, 2010 ONSC 5608).

Consistent with the best interests test and the court's task of balancing the pros and cons of permitting the travel, the case law illustrates that courts place significant weight on identifiable risks in the country the parent wants to visit with the child.

Safety concerns - risk of abduction and the Hague Convention

There is a plethora of case law concerning the risk of abduction in the context of whether to make an Order to dispense one parent's consent for the child to travel. The starting point in discussions of international child abduction is the Hague Convention.

Albeit a case concerning the determination of a child's habitual residence, Justice Fairburn in *Zafar v. Azeem*, 2024 ONCA 15 captures the significance of a state being recognized as a signatory to the *Hague Convention*. Being a signatory sends a message to the world that the interests of children are of paramount concern. As put by Justice Fairburn, "[w]hen dealing with signatories to the *Hague Convention*, we take comfort from the fact that they, like Canada, are committed to making decisions based upon the best interests of children" (at para. 40).

With this in mind, courts are alert to the risks of bringing a child to a country that is not a not a signatory to the *Hague Convention*. As Justice Gray explained in *Venkatesh v. Venkatesh*, (2010 ONSC 1177) once in a non-Hague country, there is very little incentive to return the children to Ontario. Further, the legal recourse in the non-Hague country (e.g., availability of proceedings, their cost, length, and predictability of results) may be difficult to ascertain (at para. 21).

In *Mahadevan v. Shankar*, the father brought an urgent motion for an Order to take his four-year-old son to India for a month to visit his family and celebrate the major Hindu holiday, Diwali. The mother opposed the trip out of fear that the child may not be returned. There were a plausible set of concerns in allowing the travel, including the father's animosity towards the mother, the mother's allegations that the father had threatened to remove the child from Canada to raise him in India, and that the father had no financial or property ties to Canada. Significantly, India is not a signatory to the *Hague Convention*.

As Justice Pazaratz noted, "there are overwhelming reasons to be concerned that if the Respondent retained [the child] in India, there is very little the Applicant could do about it" (at para. 39). After weighing the pros and cons, Justice Pazaratz noted that the risks in permitting the travel were far too great and dismissed the father's motion.

Even if not a signatory to the *Hague Convention*, there must be evidence showing a risk of abduction

It must be noted that even if a country is not a signatory to the *Hague Convention*, in the absence of evidence indicating the possibility of the child being abducted, an Order preventing the travel would not be justified (*Hamid v. Mahmood*, 2012 ONCJ 474).

Purushothaman v. Radhakrishnan involved a mother seeking to travel to India without the consent of the father. In contrast to *Mahadevan*, Justice Spence held in favour of the mother, as the court found that she was likely to return with the child to Canada. In the facts of the case, the mother had lived in Canada for eight years, had been working the same full-time position for five years, owned a condo in Canada, and had recently applied for Canadian citizenship. These factors and the mother's behaviour did not "suggest [to the court] that she would suddenly, and for no apparent benefit, resort to abducting the child" (at para. 19).

Similarly in *Cook v. Cook*, 2019 ONSC 1859, the mother sought an Order permitting travel to Thailand – not a Hague country, and under military rule. The father indicated that the child had told him that the mother was planning to build a home in Thailand. The father claimed the child might get involved in the sex trade industry and that the mother had properties in Thailand.

The parties had met in Thailand, and the child was 10 years old, born in Thailand and had spent the first 5 years of her life there. There was a temporary consent order for joint custody as part of a motion to change a final Order.

Crucially, the final Order contained a provision allowing for travel to Thailand for up to four weeks per year. Going back to first principles, Justice Jain reasoned that all the father's stated concerns were known to him at the time of the Final Order, and that the Final Order "did contemplate that Sophie would return to visit Thailand with her mother sometimes" (at para. 14).

Justice Jain ultimately decided that Sophie could not travel to Thailand with her mother because the planned vacation was during the school year, she was not doing well academically, and would miss 3 weeks of school (Her Honour noted the Final Order did not state that Sophie could travel to Thailand during the school year). However, a reading of the case leaves the impression that Justice Jain would have permitted the travel to Thailand – not a signatory to the *Hague Convention* – had the trip been during the summer or Christmas Break.

A signatory, but not recognized by Canada as a party – not a good sign

A country being a signatory to the *Hague Convention* is only part of the picture, and that alone does not eliminate the court's concerns for the risk of abduction in travel consent cases. Justice Ramsay's recent decision, *Badar v. Danish*, (2024 ONSC 3942) touches on this.

In *Badar*, the mother was seeking an order to dispense of the father's consent so that she could travel with her seven-year-old son to Pakistan, a signatory to the Hague Convention to attend her sister's wedding. Despite Pakistan being a signatory, the court still had concerns that the Respondent mother could successfully abduct the child.

As explained by Justice Ramsay, Canada does not recognize Pakistan as a true party to the *Hague Convention*, referring to the Court of Appeal's succinct description in Zafar: "While Pakistan acceded to the Convention on March 1, 2017, Canada has not acknowledged its accession... *It means that the terms of the Convention do not apply*" (at para. 41, emphasis added).

The parenting arrangements in *Badar* were unsettled and there was great animus between the parties, including an allegation by the father that the mother's family had kidnapped him and held him at gunpoint.

Other plausible safety risks - beyond the *Hague Convention*

Her Honour also took judicial notice of the federal government's Travel Advisory for Pakistan, which warned against travelling to specific areas within Pakistan, though none of them were the regions where the mother was intending to travel. They were, however, listed on the General Advisory, which advised to exercise a 'high degree of caution' and notified of security situations and elections. The travel advisory indicated that the security risks in Pakistan were evolving and remained unpredictable (*Badar*, paras. 46-47).

Her Honour held that the plausible risks outweighed the benefits of the proposed travel, stating (at para 56):

> …the risks to the child's safety and security, coupled with the lack of assurances that if the child were not returned to Canada it would be difficult to return him, and in the context of a very contentious proceeding and parenting battle that has not yet been finalized, outweigh the possible benefit to a seven-year-old

> child… who would be essentially tagging along with his mother to her sister's wedding.

Therefore, not being a recognized party of the *Hague Convention*, together with contentious, unsettled parenting arrangements and government travel advisories warning of the serious risks in travelling to the country are strong factors against making an Order to permit the travel.

Conclusion

When determining whether authorizing travel abroad is in the child's best interests, courts look at a multitude of case-specific considerations. Whether the country has signed onto the *Hague Convention* is an important, but not determinative, consideration. Ultimately, there is a balancing act where the risk must surely weigh on the court's conscience in making a potentially life-altering decision to authorize the travel. If the objection is well-founded, with evidence of a parent's lack of a substantial connection to Canada, or where there is a high level of contention amongst the parties, the likelihood of a veto is increased.