An Overview of General Mobility Principles

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In the seminal case on mobility, ***Gordon v. Goertz***[i], which arose in the context of an application for variation of an existing custody and access order under the *Divorce Act*, McLachlin CJ set out the following guidelines:

> "49 The law can be summarized as follows:
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> 1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
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> 2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
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> 3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
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> 4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
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> 5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
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> 6. The focus is on the best interests of the child, not the interests and rights of the parents.
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> 7. More particularly the judge should consider, *inter alia*:
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>   (a) the existing custody arrangement and relationship between the child and the custodial parent;
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>   (b) the existing access arrangement and the relationship between the child and the access parent;

(c) the desirability of maximizing contact between the child and both parents;

(d) the views of the child;

(e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;

(f) disruption to the child of a change in custody;

(g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.

50 In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?"

Although ***Gordon v. Goertz*** was decided in the context of an application under the *Divorce Act*, it is also applied by courts in cases involving common law couples, where the application is governed by provincial legislation rather than the *Divorce Act*.[ii]

In addition, courts have also applied the criteria set out in ***Gordon v. Goertz*** even where there is no prior order as to custody and access. In such cases, courts have approved the use of a blended approach, which allows the decision concerning relocation to be made in conjunction with the determination as to custody and access of the child. Thus, where there is no prior order as to custody/access, courts should disregard the "material change" portion of the ***Gordon v. Goertz*** test, but otherwise apply the criteria set out by McLachlin CJ concerning the child's best interests.[iii]

For example, the British Columbia Court of Appeal in ***Nunweiler v. Nunweiler*** approved the trial judge's reliance on the ***Gordon v. Goertz*** criteria in the following terms:

> "27 On behalf of Mr. Nunweiler, it is argued that *Gordon v. Goertz* is not applicable to these circumstances because it concerned a variation application, not an initial custody determination such as this case. I do not agree. While the first stage inquiry (requirement of a material change in circumstances) clearly is not applicable to a case of an initial custody order, the discussion of the second stage determination of custody and access is, in my view, instructive, and the factors enunciated by Madam Justice McLachlin should be considered, with the appropriate modifications.
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> 28 The significance of the reasoning in *Gordon v. Goertz* in an initial determination of custody is, I consider, three-fold. First, the decision directs the court to consider the motive for a parent's relocation only in the context of assessing the parent's ability to meet the needs of the child. This, in my view, is as relevant a direction on an initial custody hearing as on a variation hearing. Second, the decision confirms the significance of the instruction, found in s. 16(10), to consider the willingness of a parent to facilitate contact, but notes that this consideration is subordinate to over-all consideration of the best interests of the child. Third, and more broadly, it approaches the issue of a relocation of residence from a perspective of respect for a parent's decision to live and work where he or she chooses, barring an improper motive.[iv]

Similarly, in ***J.A.D. v. L.D.D.***, the New Brunswick Court of Appeal stated:

> "[10] It is the father's position that this matter was not a variation application, as no final custody order was in place. Therefore, in dealing with the question of custody from the mobility perspective solely, the judge erred by applying the two-part test discussed in *Gordon v. Goertz*. The father argues the test is to be utilized only in situations where a variation is being sought, not on an initial custody application. I cannot agree. [...]
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> [...]
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> [24] In my respectful judgment, the judge considered the best interests of the child when awarding joint custody with primary care to the mother. Although

he appears to focus upon the criteria set out in paras. 49 and 50 of *Gordon v. Goertz*, the ultimate result is a determination of the best interests of the child.
[25] The proper approach might well be for judges to refer more extensively to the *Divorce Act*, and to analyze the definition of "best interests of the child" as found in s. 1 of the *Family Services Act.* However, the judge, in the present case, based his decision expressly and implicitly on the "best interests of the child". While speaking to the criteria set out in *Gordon v. Goertz*, the trial judge included an analysis of the "best interests of the child" by evaluating the child's needs, condition, means, and other circumstances. The judge's decision illustrates that he appreciated the factors to be considered. He employed the factors to be identified in *Gordon v. Goertz* as headings in his decision, and expanded upon each factor using the evidence at his disposal. The trial judge devoted considerable effort to detailing his assessment of the situation, and the conclusion he reached is supported by the record. [...]

[...]

[27] In my view, the judge did not err in his application of the criteria as set out in *Gordon v. Goertz*. Although he did not discuss specifically the application of s.16 (8) of the *Divorce Act* or the *Family Services A*ct, it is apparent the judge had their requirements in mind and did incorporate the relevant criteria to determine the best interests of the child. The judge provided a complete analysis regarding the parenting roles of the parties, both during cohabitation and after separation. He discussed the lack of evidence regarding the parties' extended families and the mother's new relationship. The trial judge focused on the existing custody and access arrangements, and went into great detail in reviewing the relationship between the child and both parents.

[...]

[29] In this case, the judge discusses the desirability of promoting maximum contact between the child and his father, and is clearly mindful of the disruption to the child and the consequences of removing him from his community and extended family. The judge properly gives limited consideration to the mother's reasons for relocating from New Brunswick to Newfoundland and Labrador. In sum, he considered the factors that properly go into the determination of the "best interests of the child"."[v]

In ***Falvai v. Falvai***, the trial decision refusing the mother's application for sole custody and permission to relocate with the child was overturned precisely because the trial judge failed to use a blended approach, and consequently made a decision based on the wrong considerations:

> "20 With respect, however, I am unable to reach the same conclusion in regard to the application of the law by the trial judge. In my view, the trial judge's principal error was in failing to adopt a blended approach in determining the issue of the appellant's proposed move with the child in the context of the parties' competing custody claims. This was a significant factor to be balanced with the other relevant factors in deciding what was in the best interests of this child. The error was compounded when, after awarding the appellant custody of the child, the trial judge evaluated the reasons for the appellant's proposed relocation in deciding whether to permit her to move with the child. Her reasons for wanting to move, absent an improper motive, were unrelated to her ability to meet the needs of the child and, as was stated in *Gordon*, were irrelevant to the analysis. Similarly, had the trial judge weighed the "maximum contact" principle in s. 16(10) of the *Divorce Act* with the other relevant factors in his assessment of the custody issue, he may not have concluded that it was the "determining factor" for imposing a prohibition on the appellant from relocating with the child. As was noted in *Gordon*, maximum contact is an important but not absolute principle. Based on these latter two considerations, the trial judge concluded that it was in the best interests of the child to remain in the community in which the respondent resided, albeit with the appellant as his sole custodian. The effect of this "condition" was to impose a restriction on the appellant's legal authority as the child's sole custodian that was inconsistent with the rights of a custodial parent. The combination of these errors resulted in an order which, in my view, would have been different had the trial judge undertaken the correct analysis."[vi]

Thus, as the above authorities indicate, decisions concerning the right of a parent to relocate with a child, where no prior custody/access order exists, should take account of the ***Gordon v. Goertz*** criteria in reaching a combined decision as to custody and relocation.

A critical element of the analysis is to identify the current parenting arrangement, and the level of involvement each parent has assumed in caring for the child prior to the application. Where one parent has assumed a greater role in caring for the child, courts should consider the impact on the child of making changes to that arrangement.

The Alberta Court of Appeal has emphasized the significance of the bond between parent and child in two recent decisions, ***R.J.F. v. C.M.F.***[vii] and ***Milton v. Letch***[viii]. In ***R.J.F. v. C.M.F.*** the mother appealed from an order granting the father day-to-day primary care of the parties' eight-year-old son. The parties separated in 2006 when the child was one year old. They agreed that the mother would be the child's primary caregiver and that the father would have access on alternate weekends. They also agreed neither would change the child's permanent residence without the consent of the other. The mother entered into a new relationship in 2008 and the father agreed that she could relocate temporarily to British Columbia with the child in 2011 so she and her new partner could fix up a house he owned and then sell it. The mother and her new partner then had a son. The mother requested the father's permission for a permanent move to British Columbia. He did not consent and moved for an order requiring the mother to return the child to Alberta. The father exercised regular access to the child in British Columbia at the mother's expense and in fact saw more of the child in British Columbia than he had when the mother was living in Alberta. The mother sought permission to live with the child in British Columbia because the cost of living in British Columbia was lower and she could therefore afford to be a stay-at-home mother to her two children. The trial judge found that the mother's move to British Columbia was motivated by bad faith, or at least by poor judgment, and that Calgary was a better place for the child to be raised.

The appellate court overturned the trial judge on the basis of his failure to consider the relationship between the child and his primary caregiver, the mother, *inter alia*. The child had spent the bulk of his young life having his day-to-day needs met by his mother. She was his

primary caregiver in fact as well as law. It was incumbent on the trial judge to address the extent to which the child had bonded with his mother, and the effect separation might have upon the child if he awarded primary care to the father in Calgary. The trial judge was in error for not addressing this topic.

The Alberta Court of Appeal took a similar position in 2013 in ***Milton v. Letch.*** In this case the parties had a two-year-old daughter whom the mother had taken primary care of since birth. When the parties separated in October 2012, the mother moved to Manitoba with the child to live with her parents. The mother relied on her parents for financial support and help with childcare. She was upgrading her education and planned to become a paramedic. The trial judge ordered that the child be returned to Alberta to live with the father, with liberal and generous access to the mother. This was overturned on appeal and the matter remitted for consideration by a different judge. The child was to remain in the full-time residential care of the mother in Manitoba with generous access to the father pending a new decision. The trial judge had made his decision primarily on the desirability of increasing the child's contact with the father without first considering the effect of removing the child from the mother's care. This was an error in principle. The judge should have addressed the extent to which the child might have bonded with the mother and the effect separation would have upon the child as result of the mother becoming simply an access parent. The *per curiam* court stated at para. 11:

> "We find it necessary to address only the first ground. Among the applicable principles enunciated in ***Gordon v. Goertz*** is the maximum contact principle, which requires the court to balance the importance of the child residing in Virden with her mother who has been her primary caregiver since birth, with the importance of being with her father in Calgary. The appellant contends that the chambers judge failed to address the first part of the equation, and instead focused too greatly on giving the father the chance to become the primary caregiver. We agree."

In the recent Ontario Court of Appeal case of ***Arseneault v. Byck***, the larger parenting role assumed by the mother, despite the parties having joint custody, was an important factor in the court's decision to grant the mother's application to relocate with the child:

> "Ms. Arseneault and Mr. Byck have joint custody of Ryan. He has, since the separation been in his mother's principal care. She has assumed the role of primary caregiver in all areas: education, medical and dental care, and sporting and social activities. Mr. Byck has been, to varying degrees at various times, involved only peripherally in these areas. Mr. Byck asserts that any failure on his part to fully engage in such things as medical and dental care, school activities, parent-teacher sessions, and enrolment and participation in various activities for Ryan has been due to circumstances beyond his control. He cites work commitments, including the scheduling of meetings and business travel beyond his control, other unforeseeable obstacles, and what he describes as Ms. Arseneault's tendency to either not inform him of developments involving Ryan's activities and schedule or only doing so after the fact. I would agree that on certain occasions, Mr. Byck has been unable to perform an equally engaged role in Ryan's day-to-day activities. It is impossible and unnecessary to examine in minute detail the precise reasons for Mr. Byck's inability to fully engage in Ryan's activities. The weight of the evidence shows clearly however that Mr. Byck has permitted Ms. Arseneault to become the primary caregiver, not only in terms of how often Ryan is in her care, but also in terms of how the parenting responsibilities associated with caring for Ryan are managed on a daily basis. Ryan's mother has enrolled him in school and found daycare centers for him. She has enrolled him in such activities as hockey, and hockey camps, snowboard lessons, softball, jujitsu and tennis. For over a year now, she has paid for these activities. She has ensured that Ryan has suitable medical and dental care. She has never relied on Mr. Byck for any of these responsibilities. E-mails exchanged over a year ago on these and other subjects tend to show Ms. Arseneault's occasional frustration at Mr. Byck's failure to assume any meaningful role in the responsibilities associated with raising a young child. It is true that Mr. Byck has recently began a new job which has required some travel on dates and certain meetings at times beyond his control. Those are however recent development. The pattern of Ms. Arseneault taking on the major child raising role goes well beyond the past few months.

> Accordingly, while custody, in the strict legal sense of parental authority is shared, parental responsibility in the practical sense of how it is managed is and has been assumed by Ms. Arseneault to a great extent. These observations are neither intended to denigrate nor punish Mr. Byck. Ryan spends most of his time with his mother. Mr. Byck has agreed to this since the separation. He can naturally expect that Ryan's mother will manage the bulk of the day-to-day concerns associated with raising a young child. Mr. Byck's involvement, over the past 3 years in his son's care, I have concluded, is in a secondary capacity. Mr. Byck must, objectively, recognize this."[ix]

This was similarly the case in ***Durham v. Durham***, where the parties again had joint custody, but in practice the child spent more time with his mother, who assumed the primary responsibility for his care. Day-to-day custody and permission to relocate were granted to the mother:

> "17 I find that the relationship James has with his mother is akin to being primarily resident with her, as she assumes, as articulated in *Gordon v. Goertz* at paragraph 48, the making of decisions in his interest on a day-to-day basis, including, particularly, her involvement and decisions in respect of James' educational needs. While not entitled to a legal presumption, Mrs. Durham's views are therefore entitled to great respect and serious consideration. This is not to take away from the respect and consideration to be given the views of Mr. Durham.
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> […]
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> 64 While James spends a significant part of each weekend with his father engaged in various family activities, it is clear that it is "fun" time. It is apparent, on all of the evidence that it is Mrs. Durham who deals with the day to day duties of caring for James in and around school and her own work schedule.
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> 65 It is clear that it is Mrs. Durham who is intricately involved with James' educational challenges and works hand in hand with James' educators to address those issues. Mr. Durham's view, in contrast, appears to be that James will outgrow his educational challenges as he and his other sons did."[x]

Similarly, where one parent has been more successful at establishing a structured environment for the child, resulting in improved performance at school and in the child's overall development, custody and permission to relocate may be granted to that parent, despite disadvantages for the other parent. This was the case in ***Mercredi v. Hawkins***:

> "16 The governing principle is the best interests of R. and where they may conflict with the interests of one of his parents or their wishes, it is his best interests that must prevail. Although R. is at an age where his own wishes should be taken into account, they are not determinative.
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> 17 On all the evidence it is clear to me that R. does better at school, both in attendance and performance, when he is living with his father. R. has just completed grade 7 and the information from the school attached to the father's affidavit indicates that his absentee rate at the beginning of the school year, when he lived with his mother, was 58%, which decreased to 4.6% for the period after he began living with his father.
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> 18 The coming years are important ones for R. as he moves toward highschool. Although, as his mother points out, other factors are also important for a child's well-being, education is one of the most important for his future. The counsellor noted that R. is a bright child; it will be tragic if he does not realize his full potential because of poor school attendance or not enough attention to his school work. Although it seems R. can appreciate that there are benefits for him in the rules he does not like at his father's home, the evidence does not suggest that he has yet reached a level of maturity where he can set and abide by rules by himself. He still needs the guidance and discipline that, on all the evidence, his father has been more successful at giving him."[xi]

The importance of maintaining continuity of the child's most supportive relationships, and the existence of concrete plans providing a stable, secure environment for the child in the new location, were also emphasized in ***I. (E.K.) v. S. (M.G.)***. In that case, interim custody and permission to relocate were granted to the mother:

> "16 […] In my view, the primary care giver of the children upon separation was most probably the mother. It was the mother who remained in the marital home with the children, it was the mother who, on either version given by the parents, spent the greater amount of time with the children in her custodial care post separation, and it was the mother who was initiating changes to the children's schedule (the father says wrongly).
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> 17 Moreover, it is the mother who appears to have taken the greater steps to plan for and prepare for the children being placed by the Court. She has registered them in school, arranged for day care, and obtained suitable accommodations closer to St. Andrews than her work area. As well, her employment terms do give her more flexibility to meet the exigencies of primary care. And, she has a network of family support close at hand.
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> […]
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> 20 It is true that removing children from their community should not be lightly done on an interim basis pending final resolution. But it is ameliorated here for four reasons. The distances between communities is not great; the children are at an age that their sense of community, their roots, are not developed to the extent comparative to an older child; beyond the father, there are no permanent family members in St. Andrews; and the mother is open to providing access to the father on three of four weekends per month until the trial, thereby maximizing contact (See: *Divorce Act*, s. 16 (10)).
>
> 21 On balance, a reasonably acceptable solution that accords with the children's short term best interests rests with day to day care being granted to the mother on an interim basis. I am satisfied that the children would have their physical, mental and emotional needs met, that the environment would be a secure one, continuity of care would be maintained and, through access, contact with the father would be maximized."[xii]

Note in addition that the fact that the child has developed a close relationship with the new partner of the parent who is primarily responsible for his care is a relevant factor to be considered on an application for permission to relocate:

> "Still under the heading of Ryan's relationship with his mother, this now includes his mother's partner. Ryan's new family reality includes Mr. Ruel. This

> relationship serves him well. Ryan's affection for Mr. Ruel does not diminish the love he has for his father. […] This has not prevented Ryan from being able to see both adult males in his life as men who want what's best for him and who are prepared to teach them [sic] how to achieve that.
>
> Since the spring of 2012, Ryan has shared a home with his mother and Mr. Ruel. Mr. Ruel has been away since his posting to Gander in August of this year. Ryan has missed Mr. Ruel. His ability to function normally despite this speaks not of a limited affection for Mr. Ruel but rather of Ryan's resiliency.
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> In short, Ryan's relationship with his mother is strong, close and dependant. His relationship with his mother, at this stage, necessarily includes his relationship with his mother's partner. It is equally beneficial to him."[xiii]

Concerning the applicant parent's reasons for moving, case law has consistently held that this factor is irrelevant, unless there is some improper motive, such as an intention to frustrate the other parent's access to the child. In the absence of such a motive, the reason for moving is not a factor to be weighed in the analysis, and it should not be held against the applicant parent that he/she stands to gain some personal benefit from the move.

The inappropriateness of passing judgment on the applicant parent's reasons for seeking to relocate were most emphatically stated in ***McPhail v. Karasek***:

> "[43] The trial judge seemed to be operating under a misconception that every time a parent moves for her own personal reasons it could not be in the best interests of the child. Thus, he concluded:
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> > I find this move from Medicine Hat to Okotoks was to satisfy the personal needs of Marcy Marie Karasek and her compliant husband, Shawn Karasek.
> >
> > There is no credible evidence that this move was in the best interests of the children, Saylor and Venture. I find it was not in the children's best interests to move to Okotoks.

> [44] **According to this logic, parents cannot move unless the move is calculated to further the best interests of their children. Custodial parents cannot be limited in this way. Canadians are mobile and the courts are not the arbiters of the reasonableness of every decision a custodial parent makes. Custodial parents cannot be held hostage to the place the access parent lives.** Certainly access parents are not. Moreover, it is not an option to conclude that a child's best interests are best served by both parties living in the same place any more than it is an option to consider that it is in a child's best interest that their parents remain together.
>
> [45] Canadians have the right to choose to separate and divorce, and they have the right to relocate, and it is not for the courts to determine whether they like or agree with the reason for separating or moving. Custodial parents should not be faced with a potential loss of custody simply because they choose to move. Nor should a decision to move be seen automatically as a negative factor in the ability to parent."[xiv] [Emphasis added.]

This point was emphasized in ***Ligate v. Richardson***, with reference to the criteria set out in ***Gordon v. Goertz***. In ***Ligate***, the mother had applied for permission to relocate, along with her new partner, to a different city, where working arrangements would be easier for both of them. The trial decision, which refused permission to relocate on the basis that the mother had presented no compelling reason justifying the move, was overturned:

> "29 In sum, McLachlin J. was clear that the absence of a compelling reason for the move should not, in and of itself, count against the custodial parent in assessing whether the proposed move is in the child's best interests.
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> 30 In this case, there can be no suggestion that the reason for the move reflected adversely on Ligate's parenting ability. To the contrary, she testified that in her opinion, the move would enhance the quality of Ashley's life in many ways. Likewise, it cannot be said that the move was designed to frustrate Richardson's access. Ligate appreciated the importance of Ashley's relationship with her father and she was willing to make accommodations to reinforce their relationship and ensure that the move would impinge as little as possible on Richardson's existing access rights. To this end, she was prepared to share the task of driving Ashley between Cambridge and Toronto, allow Richardson reasonable access to Ashley in the Cambridge home, ensure

> that Ashley received proper training in Judaism, increase Richardson's holiday access to compensate for the loss of his mid-week access and install a phone system which would enable Richardson to speak to Ashley whenever he wished at no cost.
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> 31 In the face of this evidence, I have difficulty accepting the trial judge's finding that the proposed move was designed solely to suit the convenience of Ligate and Hume and not Ashley. Be that as it may, even if the trial judge was correct in her assessment, she should not have taken the lack of compelling reason for the move into account in assessing the child's best interests. The error was particularly serious given the degree to which the trial judge emphasized this irrelevant consideration.
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> […]
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> 66 […] Unquestionably, Hume [the new partner] and Ligate considered the move to Cambridge to be advantageous in terms of their own personal and professional needs. Likewise, Ligate believed that the move would be advantageous to Ashley and would provide her with a host of benefits and amenities that Toronto could not provide.
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> 67 Ligate's views were entitled to great respect and the most serious consideration. The trial judge erred in failing to give them the weight they deserved."[xv]

The trial decision refusing permission to relocate with the child was also overturned in ***Nunweiler v. Nunweiler***, on the basis that the trial judge had erred in making the mother's reason for moving (to live with her new partner on property purchased together) an issue in the best interests analysis:

> "In the absence of an improper motive, the discussion should have started, according to *Gordon v. Goertz*, from a point of view respectful of Ms. Charlton's decision to make a new home in McBride. As logical as it may be to many people that she should wish to reside in the Fort St. John area where she had roots, **her choice to live elsewhere was entitled to respect in the absence of an improper motive**, in the same manner as would the

> respondent's decision to move should he choose to do so." [Emphasis added][xvi]

The Alberta Court of Appeal has also made it clear in ***Spencer v. Spencer***[xvii] that the parent is not to be asked if they would not move without the children. In an oft-quoted passage Paperny JA stated at para. 18:

> In conducting this inquiry, it is problematic to rely on representations by the custodial parent that he or she will not move without the children should the application to relocate be denied. The effect of such an inquiry places the parent seeking to relocate in a classic double bind. If the answer is that the parent is not willing to remain behind with the children, he or she raises the prospect of being regarded as self interested and discounting the children's best interests in favour of his or her own. On the other hand, advising the court that the parent is prepared to forgo the requested move if unsuccessful, undermines the submissions in favor of relocation by suggesting that such a move is not critical to the parent's well-being or to that of the children. If a judge mistakenly relies on a parent's willingness to stay behind "for the sake of the children," the status quo becomes an attractive option for a judge to favour because it avoids the difficult decision the application presents.

While the principle favouring maximum contact with both parents is important, it is not the overriding concern in deciding whether relocation is in the child's best interests. Thus, the fact that relocation will reduce the child's contact with the other parent will not necessarily justify refusing the application to relocate, particularly where accommodations can be made to facilitate reasonable access. This was the case, for example, in ***Luckhurst v. Luckhurst***:

> "3 With respect to the second ground of appeal, the judge at first instance considered all of the relevant factors in allowing the respondent's application for an order permitting her to move to Cobourg with the children. […] Pursuant to the terms of the separation agreement their twin sons, born in November 1986, were in the custody of both parents, although their principal residence was with the respondent. The respondent's partner, with whom she had a stable long-term relationship, was concerned about the security of his present employment. He made extensive efforts to obtain other employment

> in the London area, without success, but was able to obtain a secure position near Cobourg. The distance of the move would enable the children to continue to see their father regularly, although there is undoubtedly some inconvenience to him. To alleviate this inconvenience, the respondent is willing to make reasonable arrangements to assist in the preservation of the quality of the relationship that the children had with their father by driving them to meet him at a halfway point between the two centres. We are of the opinion that the trial judge did not err in the manner in which he exercised his discretion and in his consideration of the best interests of the children."[xviii]

Finally, courts have also acknowledged that a relocation which permits the applicant parent to increase his/her income and better provide for his/her family may be in the child's best interests.

> "In this case the move is necessary for the mother's educational opportunities. She has gone as far as she can in her chosen field while living in Quesnel, and to pursue her goal of becoming employed as a school counsellor she needs to take further University education available only outside of Quesnel. The mother's goal is to become self-supporting and to earn enough income to enhance the quality of her life and the children's lives. She says she cannot do that by continuing to work as a waitress as she does now. […] I find that, given the mother is already well on her way in her education and has thereby proven she is serious about her education, that there is no reason to doubt she will successfully complete her education. When she completes her education it will likely result in an enhanced general quality of life for her and the children."[xix]

Thus, as stated in ***Gordon v. Goertz***, the decision as to whether relocation, and the consequent changes to custody/access arrangements, will be in a child's best interests requires a careful evaluation of the particular mix of circumstances in any given case. While each case is unique, granting day-to-day custody and permission to relocate may be in the child's best interests in circumstances where:

- The applicant parent is the primary caregiver and has provided a loving, stable, positive, environment fostering the child's development;

- The child has significant ties with the applicant parent's new partner and siblings within the new family;

- The applicant parent has concrete plans for where and how the family will live, demonstrating the ability to provide a secure, stable environment after the move;

- There are no improper motives behind the proposed move;

- The applicant parent appreciates the importance of the child's relationship with the other parent, and has proposed feasible arrangements for reasonable and generous access by the other parent;

- The move will permit the applicant parent to better provide for the child.

END

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[i] ***Gordon v. Goertz***, [1996] 2 S.C.R. 27, [1996] S.C.J. No. 52, paras. 49-50

[ii] *See e.g.,* ***Mercredi v. Hawkins***, 2008 NWTSC 57, [2008] N.W.T.J. No. 58, paras. 2 and 22

[iii] ***Nunweiler v. Nunweiler***, 2000 BCCA 300, 27 R.F.L. (6th) 254, paras. 27-28; ***J.A.D. v. L.D.D.***, 2010 NBCA 69, 92 R.F.L. (6th) 10, paras. 10, 24-25, 27, 29

[iv] ***Nunweiler v. Nunweiler***, *supra*, paras. 27-28

[v] ***J.A.D. v. L.D.D.***, *supra*, paras. 10, 24-25, 27, 29

[vi] ***Falvai v. Falvai***, 2008 BCCA 503, [2008] B.C.J. No. 2365, para. 20

[vii] ***R.J.F. v. C.M.F.***,2014,[2014] A.J. No. 509

[viii] ***Milton v. Letch***, 2013 ABCA 248, 32 R.F.L. (7th) 57

[ix] ***Arseneault v. Byck***, 2013 CarswellOnt 17327, 2013 ONSC 7585, para. 55

[x] ***Durham v. Durham***, 2012 ONSC 7023, 2012 CarswellOnt 16098, paras. 17, 64-65

[xi] ***Mercredi v. Hawkins***, 2008 NWTSC 57, [2008] N.W.T.J. No. 58, paras. 16-18

[xii] ***I. (E.K.) v. S. (M.G.)***, 2013 CarswellNB 424, 2013 NBQB 274, paras. 16-17, 20-21

[xiii] ***Arseneault v. Byck***, *supra*, para. 55

[xiv] ***MacPhail v. Karasek***, 2006 ABCA 238, 409 A.R. 170, leave to appeal refused [2006] S.C.C.A. No. 392, paras. 43-45

[xv] ***Ligate v. Richardson*****,** (1997), 34 O.R. (3d) 423, [1997] O.J. No. 2519 (C.A.), paras. 29-31, 66-67

[xvi] ***Nunweiler v. Nunweiler***, *supra*, paras. 27-28

[xvii] ***Spencer v. Spencer***, 2005 ABCA 262, 371 A.R. 78

[xviii] ***Luckhurst v. Luckhurst,*** (1996), 20 R.F.L. (4th) 373, [1996] O.J. No. 1972 (Ont. C.A.), para. 3

[xix] ***B. (S.) v. L. (N.)***, 2013 BCPC 233, 40 R.F.L. (7th) 242, para. 30