COURT OF APPEAL OF ALBERTA

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REGISTRY OFFICE:	CALGARY
PLAINTIFF/APPLICANT:	ANNE RENSONNET
STATUS ON APPEAL:	RESPONDENT
DEFENDANT/RESPONDENT:	JAN UTTL
STATUS ON APPEAL:	APPELLANT
DOCUMENT	FACTUM

Appeal from the Decision of
The Honourable Madam Justice G. Marriott

Dated the 3rd day of May, 2017
Not yet filed

FACTUM OF THE APPELLANT

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PART 1: FACTS

OVERVIEW

1. Rensonnet (Mother) wanted numerous changes to the Trial Justice's Order as pronounced on February 18, 2016, but the Trial Justice rejected them and did not incorporate them into the Judgment Roll filed on June 24, 2016. Rensonnet appealed but the Court of Appeal ended her appeal as (a) out of time, (b) res judicata, and (c) having no reasonable chance of success. Even before her appeal was ended by the Court of Appeal, Rensonnet proceeded to litigate the matters by instalments in the morning chambers, one change at a time. On May 3, 2017, the Justice Marriott granted Rensonnet's Application to vary parenting by adding weekends to Christmas, Spring and Easter breaks even though this matter was already denied several times, res judicata, and litigated by instalments. Equally critically, Justice Marriott did not examine evidence, did not allow Uttl to present her with evidence, and did not allow Uttl to present his argument in full. Uttl also cross-applied (1) to obtain compensatory parenting time due to Rensonnet's denial of access for 10 days, and (2) to vary parenting parenting arrangements because of the material changes in circumstances since the time the trial was held (November and December of 2015). Justice Marriott prejudged the case at the outset of the hearing, did not allow Uttl to present evidence nor his argument, ignored the evidence before her, refused to adjourn the matters to a domestic special, and dismissed Uttl's Cross Application. Moreover, Justice Marriott failed to recuse herself for a conflict of interest as she was Uttl's first lawyer in this action. Uttl appeals.

FACTS

2. **Rensonnet commenced this litigation by first unilaterally and surreptitiously moving the children's residence to a different municipality more than 50km away and then proceeding ex parte, without any notice to Uttl, to obtain day to day control of the children** and reduced Uttl's parenting time down to 19% from pre-separation 50% (**EKE A1**, para 1)
3. **The 9-day Trial was held from November 23, 2015, to December 3, 2015**. Justice Poelman (the Trial Justice) found that Mother made all significant decisions about the children – including where the children would live and where they would go to school – unilaterally, surreptitiously and preemptively. Justice Poelman further found that both parents were excellent parents, nevertheless, he yielded in part to post Ex Parte Order status quo established unilaterally and preemptively by Rensonnet. The Judgment on merits (**Merits Judgment**) was pronounced on February 18, 2016; the Merits Judgment increased Uttl's parenting time to 43% (or 46% depending on precise method of calculation); ordered that the children spend 30 continuous days with Uttl during summers; removed restrictions on Uttl's travel with the children; etc.. but gave parenting decision making primarily to

Rensonnet with religious decision making to Uttl. The Judgment on costs (**Costs Judgment**) was pronounced on June 23, 2016. Although Rensonnet was seeking costs, Justice Poelman ordered that each party bears its own costs. Pursuant to the Rule 10.33, he specifically cited Rensonnet's unilateral decisions about the children as well as Rensonnet's failure to obey no less than three specific court orders to disclose as factors in his decision to deny Rensonnet's demand for costs (**EKE A1**, para 2; **EKE A9-A10**).

4. **Rensonnet made numerous submissions asking Justice Poelman to modify his Merits Judgment (Rensonnet's List of Changes)**. Rensonnet's List of Changes included (a) addition of the adjacent weekends to the Christmas, Spring, and Easter breaks, and (2) changes to the parenting schedule outside the school year schedule. On June 23, 2016, Justice Poelman deemed the changes more than minor, declined to modify his order to accommodate Rensonnet's List of Changes, and on June 25, 2016, filed the Judgment Roll closely reflecting his order as pronounced on February 18, 2016 (**EKE A48**, para 9-12).
5. **On July 22, 2016, Rensonnet filed a Notice of Appeal of Justice Poelman's Merits Judgment asking for Rensonnet's List of Changes to be incorporated into Justice Poelman's Order.** On September 5, 2016, the Court of Appeal dismissed Rensonnet's appeal of the Merits Judgment as (a) out of time, (b) res judicata, and (c) having no chance of success (**EKE A48**, para 14; **EKE A69**).
6. **On July 28, 2016, while her Appeal was pending, Rensonnet commenced parallel proceedings in the morning chambers asking for "A clarification or interpretation of our Judgment Roll..." in her attempt to implement the Rensonnet's List of Changes one by one, by instalments.** (**EKE A87**, para 1) Rensonnet gave only a few hours notice to Uttl and in a hearing where Presiding Justice did not have time to familiarize herself with the evidence nor hear the arguments in full, the Presiding Justice granted one of the items on the Rensonnet's List of Changes not apprehending that (a) the matter was res judicata by Justice Poelman and (b) was under appeal in pending proceedings (**EKE A49**, para 16) (the Court of Appeal later denied the change).
7. **On April 20, 2017, Uttl filed an Application (EKE A89) and one-page Affidavit (EKE A91) to set a date for a 1-hour domestic special because Rensonnet refused to agree on the date.** Uttl simply followed instructions in Family Law Practice Note 2 ("PN2", **AUTH TAB 1,** page 2) and associated "Information" (**AUTH TAB 2,** page 2), dated September 2015. Rensonnet filed nothing. On April 24, 2017, the Justice in the family law chambers refused to set the date, because he decided, without any evidence, that there was no material change in circumstances, and thus, no need for a domestic special. In so doing, the Justice decided an Application that no one put before him, no one had a notice of, and no one submitted any relevant evidence for.

8. **On April 24, 2017, Rensonnet filed another morning chambers application seeking yet again "A clarification or interpretation of our Judgment Roll...".** This time, Rensonnet asked to vary parenting time by adding adjacent weekends to Christmas, Spring, and Easter breaks, and to declare Uttl and Rensonnet's Agreement from March 2016 valid despite the Judgment Roll from June 24, 2016, contradicting it (**AR P1, EKE A92**, para 4)
9. **On May 2, 2017, Uttl filed a Cross-Application (1) to obtain compensatory time for 10 days of missed parenting time because Rensonnet denied access, and (2) vary parenting time and decision making because of material changes in circumstances since the Trial ended on December 3, 2015**, or in alternative, simpler parenting time order and determination of parenting time percentage by the Court. In his Cross Application, Uttl asked for a small change in parenting arrangement: an order for simpler 50/50 percent parenting time arrangement (small change from the current 43/57 or 46/54 percent split, depending on the method of calculation) and other relief. (**AR P4, para 1-5**). Rensonnet did not file any Reply Affidavit and refused to adjourn.
10. **On May 3, 3017, Justice Marriott granted Rensonnet's Application to vary parenting time by adding adjacent weekends to Christmas, Spring and Easter breaks, and dismissed Uttl's Cross-Application in its entirety.** The Justice made these orders even though Rensonnet's Application was res judicata and even though she did not have time to read the evidence, did not have evidence before her, and refused to hear evidence and Uttl's argument. (**AR F17-F19**)

PART 2: GROUNDS OF APPEAL

GROUND A: Justice erred in law by prejudging the matters without hearing from either party

GROUND B: Justice erred in law by ignoring the evidence and refusing to hear Uttl's argument

GROUND C: Justice erred in principle by failing to adjourn and to recuse herself

GROUND D: Justice erred in law by relying on Rensonnet's submissions as if they were evidence

GROUND E: Justice erred in law by granting Rensonnet's Application to vary parenting arrangements by adding weekends to Christmas, Spring, and Easter break as the matters were *res judicata*

GROUND F: Justice erred in law by applying incorrect test for change in circumstances

GROUND G: Justice erred in law by refusing to hear Uttl's Cross Application in the morning chambers and refusing to adjourn the matters to a domestic special.

GROUND H: Justice erred in law by refusing to hear Uttl's Application for compensatory time.

PART 3: STANDARD OF REVIEW

11. The standard of review on a question of law is correctness. The findings of facts are not be reversed unless the justice made a palpable and overriding error. The application of a legal standard to a set

of facts is a question of mixed law and fact, subject to a standard of palpable and overriding error, unless there is an extricable error of law that will be subject to a standard of correctness. Housen v Nikolaisen, 2002 SCC 33 (CanLII) at paras 26 – 37.

12. Furthermore, the failure to allow a party to make an argument nullifies the proceedings:

> "...In our view, it is fundamental to the concept of a fair hearing that parties be given an opportunity to complete the evidence and to make arguments before judgment is delivered ... the failure to allow a party to make argument is enough to nullify a proceeding." (N.M.C. v. B.M., 2010 ABCA 143, para 17)

PART 4: ARGUMENT

GROUND A: Justice erred in law by prejudging the matters without hearing from either party

13. The Justice prejudged the matters, and lost her objectivity by yelling at the parties at the outset of the hearing. The duty counsel – Ms. Le Quere – mis-represented and biased the facts in favor of Rensonnet, (**AR F8-F9**). She failed to make it clear that (a) Rensonnet brought application to vary parenting arrangements, (b) Uttl Cross Applied to obtain compensatory time for 10 days which Rensonnet's denied access and to vary parenting due to material changes in circumstances.

14. Immediately thereafter, the Court proceeded to lecture the parties, to yell at them (**AR F14, line 39**), to refer to parties in condescending language ("a reasonably intelligent adults", **AR F10, line 16**), and to state that the Court is not going to vary a decision of the Trial Justice (**AR F10, line 20-31**):

> *"This matter was set it had – had a 10 day trial, there's no basis, no reason, to keep coming back and – to court to try and finetune and get what you want out of it. The Court is not going to vary a – decision made by a justice of this court after 10 days in trial without there being a significant change in circumstances, especially when that trial was a mere – was just last year [the trial was in 2015 rather then in 2016]. It's not going to happen... especially if it was just appealed and dismissed and was brought last week and Justice Yamauchi dismissed it."*

15. The Court made findings of "no basis, no reason, to keep coming back" and stated that "it's not going to happen..." without hearing anything at all from either party. In so doing, the Court prejudged the matters at the outset of the hearing.

GROUND B: Justice erred in law by ignoring the evidence and refusing to hear Uttl's argument

16. It is a trite law that parties have a right to be fully heard, present their evidence, and to present their argument in full before judgment is pronounced. As noted in the Standard for Review, it is a fatal error when a judge makes up his mind and pronounces a judgment without having given the parties an opportunity to be heard.

17. The justice ignored the evidence before her, interrupted Uttl's submissions, and prevented Uttl form making his argument in full:

    a) **First, the Justice conceded that she did not even have Uttl's Reply Affidavit sworn May 1, 2017 (AR F11**, p. 4, lines 8-12), and that she did not have time to read Uttl's Affidavit sworn May 2, 2017 in support of his Cross Application (**AR F11**, p.4, line 22-32).

    b) **Second, the Justice interrupted Uttl's submissions as to what the material changes in circumstances were and did not let him continue beyond the first two items** (i.e., the denials of access for a total of 10 days) of the long list of the material changes in circumstances (**AR F11**, p. 4, line 34-38).

    c) **Third, the Justice dismissed Uttl's Application for compensatory time while ignoring the evidence and without making any findings of facts**, and stated: *"Well, it's over now so it's not – we're not going to worry about it."* (**AR F12**, p. 5, lines 27-28)

    d) **Fourth, the Justice ended Uttl's next attempt to continue with his submission** (**AR F12**, p. 5 lines 30 to 41)

    e) **Fifth, the Justice again admitted that she did not have Uttl's Affidavit sworn on May 1, 2017** even though it was filed (**AR F17**, p.10, lines 21-31).

    f) **Sixth, the Justice again ends Uttl's attempt to present facts and his submissions** (**AR F17**, p.10, line 41 onwards).

    g) **Seventh, Uttl is again trying to present his argument but is denied the opportunity by the Justice because of her ignorance of and misapprehension of the evidence before her (AR F19,** at p. 12, line 6 **).** At this time in the hearing, the Justice continued to believe erroneously that the change in circumstances put forward by Uttl are only access issues.

> *MR. UTTL: So I can't present my argument?*
> *THE COURT: I understand that you're taking the position that parenting should change because there has been an issue with respect to access. What I'm saying is the issue with respect to access is not significant enough to change a decision of a judge that gives sole custody and sole decision making power to a mother. Okay?*

18. On any fair reading of the transcript, it is clear that the Justice made up her mind and decided to dismiss Uttl's Cross Application at the outset of the hearing and then repeatedly barred Uttl from fully presenting his evidence and his argument.

GROUND C: Justice erred in principle by failing to adjourn and to recuse herself

19. Gillian Marriott, as she then was, was Uttl's first lawyer in this action. Uttl fired Gillian Marriott as his lawyer when she failed to proceed swiftly (1) to reverse Rensonnet's unilateral, pre-emptive, and surreptitious move of the children to a different municipality (**EKE A9-A10**, line 38-3) and (2) to

set aside the Ex Parte Order that Rensonnet obtained without any emergency and through misrepresentations.

20. About one third way through the proceedings, the Justice became aware that she might know both parties: *"I actually feel like I know both of you and have either of you dealt with Widdowson Kachur or Dumphy Best Bloksom as law firms?"* (**AR F13**, p. 6, lines 4-5).
21. Neither party was sure; neither party recognized her. Ms. Rensonnet replied: *"Doesn't ring any bell to me. Sorry."* (**AR F13**, line 11) Similarly, Uttl replied: *"Um... I don't believe so."* (**AR F13**, line 15). Neither party recognized the Justice as Gillian Marriott from KW Family Lawyers even though (1) Gillian Marriott was Uttl's first lawyer in this action, and (2) both parties - Rensonnet and Uttl - spent several hours in the same room with her during the early mediation in this action.
22. It was an error in principle for the Justice not to disqualify herself. The case law is clear. As Justice C.A. Kent stated in Schwartz Estate v. Kwinter, 2012 ABQB 389, para 5:

> *"While it is dangerous to attempt to create a complete list [of judges with obvious conflict of interest], some categories are obvious. Included would be recently appointed judges who do not hear cases from their former firm,... In this case, the ones who are obviously disqualified are ... Poelman (recently appointed) from the law firm representing the Defendants..."*

23. Canadian Judicial Council's Ethical Principles for Judges are also clear (p. 51, Article E.19):

> *".... First, the judge should not deal with cases concerning which the judge actually has a conflict of interest, for example, as a result of having had confidential information concerning the matter prior to appointment... (a) A judge who was in private practice should not sit on any case in which the judge or the judge's former firm was directly involved as either counsel of record or in any other capacity before the judge's appointment."*

24. The Justice Marriott previously acted for Uttl, was fired by Uttl for her failure to proceed swiftly and allowing Rensonnet to establish new status quo, and had confidential information concerning the matter prior to appointment. She was required to either disqualify herself or to adjourn.

GROUND D: Justice erred in law by relying on Rensonnet's submissions as if they were evidence

25. It is a trite law that submissions are not evidence and thus no order relying on those submissions should be made (R v Barros, 2014 ABCA 367, para 87 and 91; Crown Life Insurance Company v. A.E. LePage (Ontario) Ltd., 1989 ABCA 245).
26. Rensonnet mischaracterized and misrepresented facts to the Justice in her submissions. **First, Rensonnet misrepresented the facts** when she submitted to the Court that Uttl's basis for asking for a domestic special were *"these two instances and tried to call that a denial of access and that was the basis for why we need a domestic special. What these two things were was a minor disagreement on what exactly our parenting schedule should be."* (**AR F13**, p. 6, lines 27-29)

27. Uttl's Cross Application clearly states the grounds for making the application: "a) Mother denials of access on January 7 and March 27, 2017 for 10 days in total; b) The children spending 40% or more time with the Father; c) Mother's failure and refusal to follow the Trial Justice's Order; d) Mother's unwillingness and refusal to comply with her responsibilities as primary caregiver, including her failure to translate and to provide for the children; and e) Mother's attempts to alienate the children from their Father and their Father's family (**AR P4**, para 8). Uttl's Affidavit supported each of these grounds and Uttl's Affidavit was not opposed by any evidence submitted by Rensonnet.
28. **Second, Rensonnet falsely claimed that Uttl's own evidence contradicted his submissions** that Rensonnet was not following the order, alienating the kids, etc. (**AR F14**, lines 15-17):

> *"Even his own – his own exhibits and his own evidence that he's presenting when he claims I don't do translations [as she was ordered], when he claims that I'm alienating the kids, all those things, even his own evidence in his affidavit prove to the contrary."*

29. These submissions were patently false, supported by no evidence. Uttl's Affidavit supports each and every ground and Uttl's evidence was not conflicting with Rensonnet's evidence as she did not file any evidence in reply to Uttl's Affidavit. For example, noting that Rensonnet enrolled the children in 100% Francophone school unilaterally and surreptitiously even though Uttl does not speak nor understand French, the Trial Justice ordered Rensonnet to translate all school documents and all school materials relevant to the children (**EKE A14**, para 18). Uttl's Affidavit included Rensonnet's own written admissions that she did not translate the documents (**EKE A3**, para 19(b), **EKE A40**).
30. For another example, Uttl's Affidavit lists no less than seven alienating parent behaviours engaged in by Rensonnet, in addition to Rensonnet's long standing efforts to reduce the children's time with their Father (both before and after the Trial), repeated denial of access (2 times for a total of 10 days after the Trial). These alienating behaviours correspond well with the list of Alienating Parent Behaviours in A.G.L v. K.B.D., 2009 CanLII 943 (ON SC). They continue the pre-Trial pattern of Rensonnet's alienating behaviours: unilateral surreptitious move of the children to a different municipality over 50km away, four applications to reduce the Father's access down to supervised visits that were all denied, etc.. (**EKE A9-10**, lines 38-13)

GROUND E: Justice erred in law by granting Rensonnet's Application to vary parenting arrangements by adding weekends to Christmas, Spring, and Easter break as the matters were res judicata and Rensonnet's Application is litigation by instalments

31. This Court reviewed the doctrine of res judicata in Hill v. Hill, 2016 ABCA 49, at para 27:

> *"... Public policy dictates that, once the right of appeal has been exhausted, judicial decisions should be conclusive. The law requires that parties to litigation put forward their entire and best case once. Parties should not be called upon a second time to*

answer the same claim because legal ingenuity has revealed a new or revised version of the case.

32. Côté J.A. was similarly clear at para 5 in Argentia Beach (Summer Village) v. Warshawski, 1991 ABCA 322 (see also Maynard v Maynard, 1950 CanLII 3 (SCC)):

> *"… Res judicata is not limited to what was argued and decided in the previous suit. It extends to what reasonably should have been raised. Litigation by instalments is interminable.."R v Barros, 2014 ABCA 367, para 87; Crown Life Insurance Company v. A.E. LePage (Ontario) Ltd., 1989 ABCA 245*

33. Shortly after the Trial Justice pronounced the judgment on February 18, 2016, Rensonnet made extensive submissions to the Trial Justice requesting numerous additions – including that adjacent weekends be added to the Christmas, Spring, and Easter breaks -- and other changes ("Rensonnet's List of Changes") to be incorporated into the Judgment Roll (**EKE A65** - underlined items). Uttl opposed those changes. The Trial Justice considered both parties submissions and refused to incorporate Rensonnet's List of Changes into the Judgment Roll because he considered them not to be minor changes, or clarifications, to his judgment (**EKE A55**, lines 9-22). Ergo, Rensonnet's Application to add adjacent weekends to the Christmas, Spring and Easter break is res judicata.

34. Uttl appealed the Merits Judgment as pronounced on February 18, 2016. Rensonnet opposed Uttl's appeal but did not cross-appeal. Shortly after this Court dismissed Uttl's Appeal, Rensonnet commenced her own appeal of the Merits Judgment, asking for the same relief – Rensonnet's List of Changes -- including addition of the adjacent weekends to the Christmas, Spring and Easter breaks (**EKE A67**, para 5). On September 14, 2016, the Court of Appeal ended Rensonnet's appeal of the Merits Judgment as out of time, res judicata, and not having any reasonable chance of success (**EKE A69**). Ergo, Rensonnet's appeal to modify the Trial Judgment to include Rensonnet's List of Changes was ruled to be res judicata by this Court nearly a year ago.

35. At the same time, on July 28, 2016, Rensonnet commenced parallel proceedings in the morning chambers, litigating items on her list by instalments. On July 28, 2016, Rensonnet filed an application that sought "A clarification or interpretation of our Judgment Roll as to the parenting schedule that should be in effect outside the regular school schedule." (**EKE A87**) On July 29, 2016, in similarly chaotic hearing, the Justice granted her application even though the very same relief was denied by the Trial Justice and subsequently by the Court of Appeal.

36. Rensonnet's Application granted by the Justice Marriott, sought again, verbatim, what Rensonnet sought a nearly year ago but this time taking the next item of the Rensonnet's List of Changes: "A clarification or interpretation of our Judgment Roll as to the definition of 'full Spring Break' and 'remainder of the Christmas Break' " (**AR P1**). The matter was res judicata for the third time as Rensonnet ought to have brought it forward nearly a year ago.

GROUND F: Justice erred in law by applying incorrect test for change in circumstances

37. Mislead by Rensonnet's submissions, the Justice dismissed Uttl's Cross-Applications on the grounds that the Judgment Roll was granted only "over a year ago" and believing, incorrectly, that the changes in circumstances were only the "access issues" (**AR F14**, lines 26-33):

> *"I'm dismissing the application for a domestic special on the basis that Justice Poelman's order is – was just granted over a year ago, that there's – appears from the evidence before me that the basis for the application appears to be too what I would consider to be minor access issues, one on January 7th and one on March 27th... This is not a change of circumstances that would warrant a domestic special to address the issue of parenting, which as only just been determined a year ago.'"*

38. The Justice applied a wrong test for the material changes in circumstances. First, the changes in circumstances may occur at any time and this Court was clear that there will always be access when the circumstances changed (Shwaykosky v. Pattison, 2015 ABCA 337, para 10). Second, the proper test for the material change in circumstances was stated in Gordon v. Goertz, 1996 CanLII 191 (SCC), as cited in Cheng v. Li, 2015 ABCA 322:

> [18] ***Gordon v Goertz***, 1996 CanLII 191 (SCC), [1996] 2 SCR 27, 196 NR 321 at para 13 sets out three branches of the test that must be met before a judge will consider the merits of an application to vary a custody order:
>
> 1. a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child;
> 2. which materially affects the child; and
> 3. which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

39. Having ignored the evidence and having applied a wrong test, the Justice's conclusion that there was no change of circumstances was clearly not justified.

40. If the Justice read the evidence and/or allowed Uttl to place the evidence in full before her, she would have known that there were numerous material changes in circumstances including:

a) Rensonnet's repeated denial of access for a total of 10 days;

b) Rensonnet's failure and refusal to comply with the Judgment Roll including her failures to consult, refusal to provide information, and failures and refusal to traslate school materials;

c) Rensonnet's refusal to provide adequate clothing and other items for the children's time with their Father;

d) the Children spending over 43% or 46% of their time (depending on the method of calculation) with their Father (**EKE A28-A36** table and day-by-day calculation); Rensonnet herself has stated that according to her proposed parenting plan (**EKE A93**, para 7-28), identical in time, the children spend more than 40% parenting time with Uttl (**EKE A37**, para 161); and

e) Rensonnet's attempts to alienate the children from their Father, as well as from his family.

41. These changes meet all three branches of the proper test for the material changes in circumstances.
42. The Trial Justice was fully aware that prior to the Trial:
    a) Rensonnet and Uttl shared parenting of their children on approximately 50/50 percent time basis prior to Rensonnet's unilaterally and surreptitiously changing the children's residence to a different municipality (**EKE A10**, line 3) and prior to Rensonnet's inappropriate Ex Parte application without any emergency and without any notice to Uttl;
    b) Rensonnet established the new status quo by making all decisions about the children unilaterally, surreptitiously, and preemptively (**EKE A9-10, line 38-13**);
    c) Rensonnet made no less than four applications to the Court in an attempt to reduce Uttl's parenting time (all were denied), even down to the supervised visits only (**EKE A114**, 2nd para), also not granted (**EKE A115**);
    d) Rensonnet concealed existence of numerous material and relevant documents showing that she misrepresented facts to the Ex Parte Justice and disclosed them only just prior to the Trial;
    e) Rensonnet disobeyed no less than three specific court orders to disclose records (**EKE A9**, lines 13-28);
    f) Rensonnet attempted to delay the Trial, without proper application and evidence, and her application was dismissed (**EKE A9**, lines 28-32);
    g) Rensonnet firmly believes that the best interest of the children is what she herself believes it is (**EKE A64**, para 188); and
    h) Rensonnet believed that she must be in control of the children (**EKE A64**, para 187).
43. Nevertheless, having found that both parents were excellent parents, the Trial Justice yielded to the status quo unilaterally and preemptively established by Rensonnet in a hope that Rensonnet would consult with Uttl, follow the Court orders, and allow co-parenting.
44. If the Trial Justice knew that Rensonnet would not follow his order, that she would continue to: deny access; not to consult with Uttl; not translate school materials; would attempt to re-litigate what he already denied; would continue in her attempts to alienate the children from their Father; and in general, would continue in her attempts to assert her power and her belief that only she knows what is the best for the children, he would have likely issued a different order.

GROUND G: Justice erred in law by refusing to hear Uttl's Cross Application in the morning chambers and refusing to adjourn the matters to a domestic special.

45. The Family Practice Note 2 is clear that the morning chambers are limited to 20 minutes including submissions of both parties, the Court's deliberations, and the judgment. Accordingly, Uttl requested adjournment to a one hour domestic special because (a) the time required to consider Rensonnet's

Application and Uttl's Cross Application was clearly more than 20 minutes and (b) Rensonnet accumulated a record of false submissions to the Court (**EKE A47**, para 1-8) and the time was required to point to the Court evidence contradicting Rensonnet's unsworn submissions. The Family Practice Note 2 is similarly clear that substantial changes to parenting arrangements or changes to decision making are not to be made in the chambers but in domestic special hearings (**AUTH TAB 1**).

46. The Justice refused to hear Uttl's facts because they were in the chambers and did not fit within 20 minutes limit but she also refused to adjourn the matters to domestic special (**AR F18**, lines 10-24):

> *THE COURT: "Yes, but you're seeking a domestic special to vary the parenting – a decision – a trial decision of 2016 -- ... -- and I'am not granting that because I don't see on the basis where – I have a situation where Ms. Rensonnet has sole custody -- ... -- that – and sole decision making and it appears there's a issue between your parenting and what you consider that to be and what she considers that to be, that's not something this Court – a trial judge has made a decision."*

47. The Justice (a) completely misapprehended the issues before her because she ignored the evidence before her, in fact declined several times to hear it, and (b) appeared to believed that once the Court grants sole custody and sole decision making to a person, the Court has no jurisdiction.

GROUND H: Justice erred in law by refusing to consider Uttl's Application for compensatory time.

48. When access is denied, the Section 40 of the Alberta Family Law Act provides for remedies. Section 40(1) specifically provides remedies when "there has been a denial of time within 12 months of the application" and one of those remedies is "compensatory time".

49. The Justice refused to consider Uttl's Cross Application for compensatory time. **First, the Justice dismissed Uttl's Application for compensatory time reasoning that the compensatory time for denied access is nothing to worry about**: "Well, it's over now so it's not – we're not going to worry about it." (**AR F12**, p. 5, lines 27-28). **Second, the Justice flatly refused to grant compensatory time again reasoning that it cannot be fixed:** *"I can't fix what happened, but spring break and Easter break are done in 2017. We're now looking at what's happening on a go forward basis."* (**AR F19**, p. 12, line 16-18) **Third, Uttl attempted again to speak to the compensatory time but was denied the opportunity again**. The Justice, without any consideration and without any reasons, denied Uttl's request again: *"No. I'm not dealing with make up time, ether."* (**AR F21**, p.14, line 25-28)

PART 5: RELIEF SOUGHT

50. An order setting aside Justice Marriott's order in its entirety;

51. An order dismissing Rensonnet's Application;

52. An order granting Uttl's Cross Application paragraphs 1, 2 and 3:
    a) An order for compensatory parenting time of 10 days.
    b) An order for parallel parenting schedule on 50/50 percent time basis -- slightly increasing Uttl's parenting time from 43% or 46% (depending on calculation) to 50% -- to eliminate Mother's repeated applications to the Court to re-litigate already determined issues, to dispose with Mother's unwillingness to comply with the current order, to dispose with Mother's unwillingness to fulfil her duties as primary caregiver, to reduce number of exchanges, to minimize a risk of the children's alienation from their Father by their Mother, and to simplify the schedule.
    c) An order that each party is responsible for day to day decision making during their parenting time.
53. In the alternate, an order granting Uttl's Cross Application paragraphs 4 and 5:
    a) Adequately detailed unambiguous parenting order easily understandable even to a person who must be in control and who - based on her immediate needs - mis-perceives the reality, and repeatedly attempts to re-litigate already determined issues based on her momentary views of the reality and what the Court Order says.
    b) A determination, by the Court, of the percentage parenting time allocated to each parent by the Trial Justice's Order/the Judgment Roll.
54. In the alternate, an order that the matter be returned to the Court of Queen's Bench to be determined in one hour domestic special, by a different Justice, preferably by the Trial Justice Poelman.
55. An order for costs, taking into account Rule 10.33 and (a) Rensonnet's repeated attempts to re-litigate already determined matters; (b) Rensonnet's repeated attempts to re-litigate already determined matters in a piece meal fashion, application by application rather than at the same time; and (c) Rensonnet's mischaracterization of facts and false submissions in the chambers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of May, 2017

Jan Uttl, pro se

Estimated length of oral argument: 45 minutes

LIST OF AUTHORITIES