

(Name of court / Nom du tribunal)

**Endorsement Sheet /
Page d'inscription**

at / au **50 Eagle Street West, Newmarket On, L3Y 6B1**

(Municipality / Municipalité)

Date 5 November 2021	Applicant(s) / Requéran(t)e(s) : Yulia Kuzmicheva	<input type="checkbox"/> Present / Comparait
	Counsel / Avocat(e) : Matthew J. Armstrong	<input type="checkbox"/> Present / Comparait <input type="checkbox"/> Duty Counsel / Avocat de service
Urgent motion	Respondent(s) / Intimé(e)(s) : Vitaly Kuzmichev	<input type="checkbox"/> Present / Comparait
	Counsel / Avocat(e) : Olena Brustentova George van Hoogenhuize and Karen Kunopaski-Tsinonis	<input type="checkbox"/> Present / Comparait <input type="checkbox"/> Duty Counsel / Avocat de service
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed. / <i>Ordonnance conformément au procès-verbal de l'audience de transaction ou le consentement déposé.</i>		

On 5 February 2021 Bruhn J. made an Order for shared parenting of the parties' daughter, AK, born 20 June 2010. One of the terms of that Order (para.10) was that neither party leave the child alone/unattended. Bruhn J. noted that AK had confirmed through the OCL that the RF was leaving her alone at home.

The AM has brought an urgent motion to vary the Order of Bruhn J. to provide that the child primarily reside with her because the RF is leaving her home alone in the early mornings, contrary to the Court Order. She claims that the RF is leaving for work in the morning before and after he wakes up the child, leaving her to fend for herself (such as getting ready for school and getting there). In an email dated 14 October 2021 the RF's lawyer acknowledges that her client's work commitments require him to be absent in the mornings when AK is in his care. This is prefaced with the comment that the RF's schedule now is the same as it was when Bruhn J. made her Ruling, implying (somehow) that the very clear wording of paragraph 10 of the Court Order does not mean what it says.

There is **no** ambiguity in the Court Order.

Bruhn J.'s Ruling noted that the child was being caught in the middle of the conflict between her parents and further expressed the Court's concern about the RF's "willingness and ability to support [the child's] relationship with [her mother] based on the child's statements to the OCL" (para. 40(f)). The RF described these proceedings as high conflict.

The RF has filed an affidavit unresponsive to the AM's allegation, although he says that the child's older brother (14 ½ years old) lives with him too "so she is not "alone" there with her dad" (para. 9 of the RF's affidavit sworn 5 November 2021). Whatever that is supposed to mean. Parenting isn't a

“Lord of the Flies” experiment.

The RF is presumptively, if not factually, in breach of para. 10 of Bruhn J.’s Order. It wasn’t a suggestion.

Of equal concern is that, as part of his responding material, the RF appended an email from the child’s therapist (Sandor). The AM delivered an affidavit sworn 2 November asking that the Court disregard consideration of the contents of the therapist’s email. The reason is that Dr. Barbara Fidler who is involved with the family recommended that AK have individual closed/confidential therapy. Ms. Sandor was engaged by the parties to provide therapy. No therapeutic agreement was signed by the parties, but therapy did proceed.

Ms. Kunopaski-Tsinonis, who is the OCL representative for AK, objected to the therapist disclosing anything of a confidential nature arising from the child’s therapy, that the child was “entitled to privacy with her therapist and disclosure of information by her therapist would constitute betrayal of her trust and confidence in the therapeutic process” (email dated 29 October 2021 to the RF’s lawyer, copied to Dr. Fidler).

In a 30 October 2021 email to all counsel, Dr. Fidler expressed her great concern “about the current circumstances surrounding [the child’s] therapy and therapist’s report”. Dr. Fidler took exception to the therapist offering any opinion about parenting time or parental decision-making responsibility and that the therapist’s work was “therapeutic” not evaluative”. To describe Dr. Fidler as being unhappy and disappointed by the RF’s behaviour would be an understatement.

The father explains himself by saying that he never signed any confidentiality agreement with the therapist. In a 1 November 2021 email, Ms. Brusentsova states that she doesn’t think that the therapist’s email discloses any confidential information. Think again. Having reviewed the email, this Court finds that it most certainly does. The RF’s disclaimer of any confidentiality involving the child’s therapy is disingenuous and plainly contrary to the child’s best interests. His lawyer’s dismissal of the seriousness of the father’s improper behaviour is a matter of concern to the Court.

OTG:

- (1) Paragraphs 7 and 8 of the RF’s affidavit and Exhibit “B” are struck and to be expunged from the court record;
- (2) An urgent conference will proceed on 17 November 2021 (9:30 am) before Czutrin J. The parties are to file Case Conference briefs by 12 November 12, 2021 (4 pm). The **only** issue to be conferenced will be the child’s continued shared residency with the RF;
- (3) Leave is given to the parties to file their CCBs notwithstanding that the timing may not comply with the *Family Law Rules*. All other CC rules are to be followed;

(4) The CC is peremptory to each party.

The RF should provide as an attachment to his CCB a brief affidavit explaining why he has chosen to breach para. 10 of the Order of Bruhn J.

If the parties cannot resolve the issue(s) raised in the AM's motion at the CC the conference judge may return this motion to me or another judge for determination on the merits, and costs.

There is a SC now scheduled for 8 February 2022. The concerns expressed by the AM cannot wait until then.

A handwritten signature in black ink, appearing to read 'Jarvis', with a stylized flourish at the end.

Justice D.A. Jarvis