

Action No.: FL03-63940  
E-File Name: EVQ21BOMJ  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF EDMONTON

BETWEEN:

DR. JEANSEOK BOM

Applicant

and

YUNE HEE KIM also known as AUDREY KIM

Respondent

---

PROCEEDINGS

---

Edmonton, Alberta  
May 31, 2021

Transcript Management Services  
Suite 1901-N, 601-5th Street SW  
Calgary, Alberta T2P 5P7  
Phone: (403) 297-7392  
Email: TMS.Calgary@csadm.just.gov.ab.ca

This transcript may be subject to a publication ban or other restriction on use, prohibiting the publication or disclosure of the transcript or certain information in the transcript such as the identity of a party, witness, or victim. Persons who order or use transcripts are responsible to know and comply with all publication bans and restrictions. Misuse of the contents of a transcript may result in civil or criminal liability.

TABLE OF CONTENTS

Description	Page
May 31, 2021 Afternoon Session	1
Decision	3
Certificate of Record	18
Certificate of Transcript	19

1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Edmonton,  
2 Alberta

---

3  
4  
5 May 31, 2021 Afternoon Session

6  
7 The Honourable Madam Justice Burns Court of Queen's Bench of Alberta  
8 (remote appearance)

9  
10 M. Blitt, QC (remote appearance) For Dr. J. Bom (remote appearance)

11 K. Lee (remote appearance) For Dr. J. Bom (remote appearance)

12 E. Madu (remote appearance) For Y. Kim (remote appearance)

13 J. A. Fiorini (remote appearance) For the Minister of Justice

14 A. Suresh Court Clerk

---

15  
16  
17 THE COURT: Good afternoon, everyone. Do we have  
18 everyone present, madam clerk?

19  
20 THE COURT CLERK: Yes, we do, Justice. The court is now in  
21 session.

22  
23 THE COURT: Thank you. Thank you. Thank you, all, for  
24 your patience. I decided it was important that I go to St. Paul for a sentencing this  
25 morning and so getting there and back, it's a 2 hour drive. So it was nip and tuck. All  
26 right. So I just want to make sure everybody can hear me. Ms. Madu, you have yellow --  
27 a little yellow triangle. Can you hear me?

28  
29 THE COURT CLERK: Justice, it might be looking like she's have  
30 some technical difficulties so she may not have heard you.

31  
32 THE COURT: Yeah. So I think we need to wait until she's  
33 online. Ms. Kim, can you hear me?

34  
35 THE COURT CLERK: Ms. Madu should be able to hear you now. She  
36 has signed in with another -- with another device.

37  
38 THE COURT: Thank you.

39  
40 MS. MADU: (INDISCERNIBLE). I'm sorry about that.

41

1 THE COURT: No problem at all. Thank you. I was just  
2 apologizing or thanking you for your patience for me coming. So I can hear you now,  
3 which is great. Ms. Kim, can you hear me? Ms. Kim? Can you hear me, Ms. Kim?  
4 How about Dr. Bom? Can you hear me?  
5

6 DR. BOM: Yes, I can.  
7

8 THE COURT: Thank you. Okay. Ms. Madu, your client  
9 you're expecting?  
10

11 MS. MADU: Yes. She -- she was here when I logged in the  
12 first time.  
13

14 THE COURT: Yeah. I see her name, but I cannot hear her.  
15 Ms. Fiorini, I can see you taking water. I assume you can hear me and, Mr. Blitt, I take it  
16 you can hear me as well. Perfect.  
17

18 MS. FIORINI: I can hear you.  
19

20 THE COURT: Thank you. So it's just Ms. Kim we're waiting  
21 for. Ms. Kim, I just need to know that you're hearing me before I go through this.  
22

23 MS. MADU: I'm calling her.  
24

25 THE COURT: Okay. Thank you.  
26

27 MR. BLITT: My Lady, counsel in South Korea, Ms. Lee, is  
28 not able to enter the -- the website. She's waiting to be let in.  
29

30 THE COURT: Oh, madam clerk, can you see her waiting?  
31

32 THE COURT CLERK: No, Justice. I'm not seeing anyone waiting. If  
33 you can provide me with an email, I can definitely send her an invite directly again.  
34

35 THE COURT: Mr. Blitt, can you make sure that she also is  
36 trying courtroom 87 today?  
37

38 MR. BLITT: Yes, I will, My Lady.  
39

40 MS. MADU: I got across to my client. She says she's  
41 working on the connection right now.

1  
2 THE COURT: Thank you. So, Mr. Blitt, we are expecting Ms.  
3 Lee then?  
4

5 MR. BLITT: Yes, My Lady.  
6

7 THE COURT: Okay. So we'll wait then. Technology.  
8 Madam clerk, can you tell if we're making progress?  
9

10 THE COURT CLERK: No, Justice. I'm not able to see anyone. I do  
11 not have this meeting locked, so she should be able to log in just with the website.  
12

13 THE COURT: Okay. Did you send Mr. Blitt the link?  
14

15 THE COURT CLERK: I have sent him -- sent the link to him, Madam  
16 Justice.  
17

18 THE COURT: Okay. Thank you.  
19

20 MR. BLITT: My Lady, I think she's here.  
21

22 THE COURT: Thank you. All right. Thank you. So, Ms.  
23 Kim, can you confirm you can hear me? Just nodding is good. Thank you. Ms. Lee, can  
24 you hear me? That was a yes, Ms. Lee?  
25

26 MS. LEE: Yes. I can hear you.  
27

28 **Decision**  
29

30 THE COURT: Thank you. Okay. Well, thank you, everybody,  
31 for your patience. I have my decision. It's not too lengthy.  
32

33 So Dr. Bom and Ms. Kim are the biological parents of Sehyun, who was born April 11th,  
34 2012, in South Korea. The parties were never married and there is no court order  
35 addressing custody. There is a May 18th, 2012, agreement where the parties agreed that  
36 Dr. Bom would have custody of Sehyun and that is what happened until at least February  
37 6th, 2020, when Dr. Bom agreed that Sehyun could come to Canada for a period of time  
38 to learn English at school and live with his mother.  
39

40 Dr. Bom brings an application alleging that Ms. Lee (sic) has wrongfully retained Sehyun  
41 in Canada contrary to the *Hague Convention*. I have affidavit evidence from Dr. Bom

1 from February 5th, 2021, March 26th, 2021, April 26th, 2021, an affidavit of Ms. Kim  
2 from April 12th, 2021, an affidavit of Ms. Jiyoung Bom (phonetic) from March 19th,  
3 2021, and the affidavit of (INDISCERNIBLE) dated February 5th, 2021, and I also have  
4 the transcript of the examination of Ms. Kim on her affidavit.  
5

6 South Korea and Canada are parties to the *Hague Convention* on the civil aspects of the  
7 *International Child Abduction*. Article 3 of the Convention states that:

8  
9 The removal or the retention of a child is considered to be  
10 wrongful where

11  
12 (a) it is in breach of rights of custody attributed to a person, an  
13 institution or any other body, either jointly or alone, under the  
14 law of the state in which the child was habitually resident  
15 immediately before the removal or retention; and

16  
17 (b) at the time of the removal or retention those rights were  
18 actually exercised, either jointly or alone, or would have been  
19 so exercised but for the removal or retention.  
20

21 And:

22  
23 The rights of custody mentioned in subparagraph (a) above, may  
24 arise in particular by the operation of law, by reason of a judicial  
25 or administrative decision, or by reason of an agreement having  
26 legal effect under the law of that state.  
27

28 As noted by the Ontario Court of Appeal in *Ellis v. Wentzell-Ellis*, which is 2010 Ontario  
29 Court of Appeal 347, at paragraph 17:

30  
31 The objects of the Convention are listed in Article 1. They are to  
32 secure the prompt return of children wrongfully removed or  
33 retained in any contracting state, and to ensure respect for rights  
34 of access and custody. Implicit in the language of the  
35 Convention is that each contracting state acknowledges that it is  
36 the courts of the country in which the child was habitually  
37 resident before his or her wrongful retention -- or wrongful  
38 removal or retention that are, in principal, the best place to decide  
39 questions of custody and access.  
40

41 So the issues before me are, (a) has Sehyun been retained in Canada and, if so, what is

1 the date of detention; (b) if Sehyun has been retained, immediately prior to retention was  
2 Sehyun a habitual resident of South Korea or Alberta; and (c) was Dr. Bom exercising  
3 custody rights to Sehyun in South Korea; and (d) has an exception under article 13 been  
4 established?

5  
6 While addressing the above issues, I will also address whether Ms. Kim has attorned to  
7 the South Korean courts' jurisdiction. Now, to be clear, what is not before me is a  
8 determination of custody. That will be left to another day. Many of the paragraphs  
9 which Dr. Bom seeks to strike from Ms. Kim's affidavit relate to custody and I will not  
10 consider them for that purpose, but to the extent they relate to other issues, I will be  
11 considering them. I will remove the cat. Go away.

12  
13 Okay. So, first, has Sehyun been retained in Canada and, if so, what is the date of the  
14 retention? The question of if, and if, when, Sehyun has been retained is the first step in  
15 the analysis. The Convention itself has not defined retention or the date of retention.  
16 However, the *Sami Abou-Haidar* case from the US Court of Appeal for the District of  
17 Columbia helpfully identifies that: (as read)

18  
19 Retention starts when a non-custodial parent attempts to take  
20 custody or where a custody holder no longer consents to the  
21 other's custody.

22  
23 The decision notes: (as read)

24  
25 Various courts have found the date of retention may be, (1) the  
26 date consent was revoked, or (2) (INDISCERNIBLE) the  
27 petitioning parent learned the true nature of the situation, or (3)  
28 the date when the returning -- or the retaining parent advised the  
29 other that the child will not be returned as originally planned, or  
30 (4) the date beyond which the non-custodial parent no longer  
31 consents to the child's continued habitation with the custodial  
32 parent and seeks to re-assert custody rights.

33  
34 The Court notes that the above definitions find support in the official commentary to the  
35 Convention which provides that the date of retention is when a: (as read)

36  
37 Holder of the right of custody refuse to agree to an extension of  
38 the child's stay in a place other than that of its habitual residence.

39  
40 The case law is also clear that the communication of the parties' positions must be clear  
41 and unequivocal, but can be through words, actions or some combination thereof. Here,

1 the evidence is that Sehyun lived in his dad's custody since just after his birth. Both  
2 parties acknowledge that they entered into an agreement dated May 18, 2012, agreeing  
3 that Dr. Bom would have the sole custody of Sehyun. Ms. Kim moved to Canada when  
4 Sehyun was 11 months old. Sehyun lived with his dad and aunt and extended family in  
5 South Korea.

6  
7 Dr. Bom's evidence is that he agreed to send Sehyun to live with Ms. Kim for 1 year with  
8 the understanding that the child would stay up to 2 years maximum only if the child  
9 strongly indicated he wanted to stay longer. Dr. Bom's sister corroborates this evidence,  
10 indicating she encouraged Dr. Bom to let the child go for the child and then a decision  
11 about the second year could be made.

12  
13 Ms. Kim's evidence is that it was agreed that Sehyun would stay up to 2 years in Canada.  
14 She ties this time period to the residency requirements for Sehyun to get permanent  
15 residency status in Canada. During cross-examination, she says she and Dr. Bom talked  
16 about Sehyun staying in Canada to study 2 to 3 years. She argues that there can be no  
17 retention because Sehyun has not yet been in Canada for 2 years.

18  
19 I question if the driver for this arrangement was the 2 year permanent residency  
20 requirement, why would Dr. Bom say he had agreed only for 1 year and see how it went?  
21 If he was motivated by the residency requirement, he would have agreed to 2 years as a  
22 starting point. Thus, while Ms. Kim may have been motivated to obtain permanent  
23 residency for Sehyun, I find that Dr. Bom was motivated by giving his child an  
24 opportunity to learn English as a young -- at a young age by attending school for 1 year  
25 with the possibility of a second.

26  
27 Nonetheless, what the evidence unequivocally establishes is that Sehyun was in Canada  
28 with Dr. Bom's consent. Dr. Bom argues in the alternative that there are three times  
29 when I should find a date of -- a start of a date of a retention or the start of a retention  
30 period. The first proposed retention date is July 18th, 2020, when Ms. Kim and Dr. Bom  
31 exchanged electronic communication and Ms. Kim indicated that, "Sehyun doesn't want  
32 to go back," and, "I will do what Sehyun wants."

33  
34 I agree with counsel for Ms. Kim that the evidence of this conversation is just a snippet of  
35 the entire conversation without context. I don't find that is a clear and unequivocal  
36 statement of an intention to retain Sehyun. It is reiterating what the parties talked about  
37 when he first came to Canada. They would decide if he should -- or if he would stay,  
38 depending on what Sehyun wanted to do.

39  
40 The second proposed retention date is December 9th, 2020, when Ms. Kim  
41 communicated that if Dr. Bom did not pay child support, she would file a lawsuit in



1 Canada and: (as read)

2  
3 Failure to pay child support will result in the loss of parental  
4 authority in Canadian courts.  
5

6 The evidence here has the same failing as the evidence on the July 2020 communications.  
7 Context is slightly better, but saying Ms. Kim would go to court is not the same as saying  
8 she is going to court, particularly when what she was attempting to get some child  
9 support paid. I don't find this communication is a clear and unequivocal statement of an  
10 intention to retain Sehyun.

11  
12 The third deposed retention date is March 20, 2021, when Ms. Kim filed a defence and  
13 counterclaim to Dr. Bom's application for custody in South Korea. This point was  
14 argued in the context of whether Ms. Kim was attorning to the South Korean jurisdiction.  
15 I don't think I need to find that she did or did not attorn. What the pleading does do is  
16 communicate clearly and unequivocally that she wanted custody of Sehyun.

17  
18 As in the *Abou-Haidar v. Vazquez* case, this action asserts a claim for custody amounting  
19 to a declaration that she will not return Sehyun. The effort to change custody, even in the  
20 context of filing a counterclaim, signals the intention of Ms. Kim not to continue with the  
21 former custody arrangement. Defending an application is one thing. Counterclaiming is  
22 an assertion of rights that did not have to be asserted, but in this case were.

23  
24 Nonetheless, I find that the retention date is before March 2021. The question is what  
25 was the agreed period that Sehyun would be in Canada and has that period passed or is it  
26 yet to come? On this point, I believe Dr. Bom and his sister that the agreement was that  
27 Sehyun would come for a year and then would be reassessed in the context of what  
28 Sehyun wanted to do.

29  
30 The 1 year period was the only agreed upon period and any further period was nothing  
31 more than an agreement to agree in the future. Any future agreement was to reference  
32 Sehyun's preferences, but evidence of his intention is not required. The question is  
33 whether there was an agreement he would stay past the original 1 year. And I find as a  
34 fact that no further agreement was reached and the period of agreed consent expired  
35 February 2021, 1 year after Sehyun arrived in Canada. Ms. Kim's continued custody  
36 of Sehyun after that date was a retention.

37  
38 To determine if the retention is wrongful under the Convention, I must determine the  
39 habitual residence of Sehyun immediately before the retention, considering all  
40 circumstances up to the point of the date of retention. As noted before, Article 3 of the  
41 Convention provides that a retention is wrongful where the retention is in breach of

1 custody rights of a person under the law of a state in which the child was habitually a  
2 resident immediately before retention.

3  
4 Thus, I must determine Sehyun's habitual residence and whether custody rights were  
5 being exercised. So if Sehyun has been retained, immediately prior to retention what was  
6 his habitual residence? The question of habitual residence is a question of fact to be  
7 decided based on all of the circumstances. The Supreme Court of Canada in *Balev* gave  
8 guidance on how to apply the hybrid approach to the determination.

9  
10 To start, I must determine the focal point of the child's life, i.e. the family and social  
11 environment in which Sehyun's life has developed immediately prior to the retention.  
12 Sehyun spent the first 8 years of his life in South Korea with his extended family. Dr.  
13 Bom was sold custodial parent and guardian. Sehyun lived in a family atmosphere with  
14 his cousins. Dr. Bom's sister, Sehyun's aunt, was effectively co-raising him. Sehyun  
15 had little or no contact with Ms. Kim or her family.

16  
17 Sehyun's move from South Korea for 1 year was intended to be for a limited purpose and  
18 for the purpose of allowing him to learn English while he was young. He had an  
19 opportunity that was seized upon. Ms. Kim's assertion that the move was to have Sehyun  
20 become a permanent resident of Canada is not supported by the evidence of Dr. Bom or  
21 his sister. I prefer their evidence. Ms. Kim on cross-examination was evasive and  
22 appeared to change her evidence on key points such as stating that she and Dr. Bom  
23 talked about 2 to 3 years, not the 2 years she averred to in her affidavit evidence. The  
24 evidence of Dr. Bom and Ms. Bom was unchallenged.

25  
26 I find that the reason for Sehyun coming to Canada was to attend school and learn  
27 English while he was still young. He was to keep in touch with his father and his South  
28 Korean family through regular contact via FaceTime and other electronic means. While  
29 that contact did not go as planned, it was the plan. Sehyun was not cutting his ties with  
30 South Korea when he was taking advantage of a learning opportunity. It appears Dr.  
31 Bom's intention was that Sehyun would be away from home for a while, but would be  
32 returning home.

33  
34 Nonetheless, Sehyun does have ties to Canada. He has been here for over a year now,  
35 learning the language and attending school. He has developed some social network and  
36 is involved in extracurricular activities. He lives with his mom and his maternal  
37 grandmother, and his maternal grandmother has come from South Korea to look after  
38 him.

39  
40 However, there is no question that Canada is Ms. Kim's habitual residence. I suspect that  
41 she was hoping it would become Sehyun's habitual residence too, but at this point in

1 time, I find that the trip to Canada was only intended to be a trip and Sehyun's ties and  
2 focal point of his life remain in South Korea with the family he has grown up with. I find  
3 that Sehyun's habitual residence remains South Korea.

4  
5 The parties entered into -- so having determined that, was Dr. Bom exercising custody  
6 rights to Sehyun in South Korea? The parties entered into an agreement dated May 18,  
7 2012, agreeing that Dr. Bom would have sole custody of Sehyun. In her South Korean  
8 pleadings, Ms. Kim states that she acceded to the agreement because it was the right  
9 thing to do for Sehyun's future.

10  
11 The only evidence I have on the legal effect of the agreement comes from the evidence of  
12 Ye Shu Lee (phonetic). Ms. Lee, a lawyer in South Korea, advises that the custody of a  
13 child born out of wedlock may be determined by the parents making their own decision  
14 regarding the raising of their child and the exercise of parental authority. Such an  
15 agreement is recognized by South Korean courts.

16  
17 The evidence establishes on the balance of probability that the agreement executed May  
18 18, 2021 (sic), gave custody to Dr. Bom. The question is whether Dr. Bom failed to  
19 exercise his custody when Sehyun came to Canada. I note that Dr. Bom exercised his  
20 rights when he consented in writing to Sehyun travelling to Canada. He also exercised  
21 his rights when he contacted Sehyun via electronic means over the beginning of Sehyun's  
22 stay with his mother.

23  
24 Ms. Kim thwarted Dr. Bom's attempts to exercise his rights by tying them to the re-  
25 payment -- or to the payment of support and cutting off Dr. Bom's contact. See for  
26 example in paragraph 16 of Ms. Kim's affidavit, where she states that: (as read)

27  
28 I concede that there were times when the applicant demanded to  
29 talk to Sehyun, but did not say anything about the outstanding  
30 financial support and so I did not respond.

31  
32 I note the US decision in *Friedrich*, which suggests that the test is not high to establish  
33 the exercise of custodial rights. That Court found that an exercise of rights is any attempt  
34 to maintain a somewhat regular relationship with the child and a failure to exercise rights  
35 would have to be a clear and unequivocal abandonment of the child. In this case, I find  
36 that Dr. Bom has exercised his custodial rights while Sehyun was living in Canada and  
37 before he was -- before the child was retained by Ms. Kim.

38  
39 So has an exception under Article 13 been established? In addition to the question of  
40 consent and not exercising custodial rights as discussed above, Ms. Kim argues that the  
41 Court should exercise its discretion to not be bound to order the return of the child

1 because of the grave risk of serious harm under Article 13 of the Convention. The onus  
2 is on Ms. Kim to establish this exception. The exception as stated in Article 13 provides  
3 that:

4  
5 ... there is a grave risk that his or her return would expose the  
6 child to physical or psychological harm or otherwise place the  
7 child in an intolerable situation.

8  
9 The Supreme Court of Canada has equated the word grave with intolerable in its 1994  
10 decision in *Thomson*. In the US decision of *Friedrich*, that Court noted that: (as read)

11  
12 Grave risk of harm occurs when return of the child puts the child  
13 in imminent danger prior to the resolution of the child custody  
14 dispute and serious abuse or neglect or extraordinary emotional  
15 dependence.

16  
17 In this case, Ms. Kim cites Ms. Bom's, Sehyun's aunt, reference to one incident of abuse  
18 while in Ms. Bom's care as imminent danger. Ms. Kim alleges more incidences through  
19 hearsay from Sehyun, but offers no other proof. In her affidavit, Ms. Bom describes  
20 some concerning behaviour by Sehyun that resulted in corporal punishment of the child.  
21 She reported that Sehyun's behaviour was repeated and unsafe. She asked her husband to  
22 administer the punishment which was done over clothes and only at one time. Her  
23 husband and Sehyun later talked about the punishment to ensure he was not hurt and that  
24 appears to have resolved the situation.

25  
26 This evidence was not challenged on cross-examination. I do not find that the  
27 punishment to Sehyun established a "grave risk of harm." On the balance of probability,  
28 I do not find there is an imminent risk to the child if he is returned to the care of his  
29 family in South Korea. I find that the child, Sehyun Bom, is to be returned to his father's  
30 custody in South Korea. Do the parties need any assistance in making that happen?

31  
32 MR. BLITT: I believe we will, My Lady. Ms. Lee, do you  
33 have an update as to what is going to happen on the return of the child?

34  
35 MS. LEE: So we still figuring out. I recently checked.  
36 There is no other restriction than just being in quarantine for 2 weeks and Dr. Bom here,  
37 he is scheduling -- he's trying to schedule and -- but we haven't (INDISCERNIBLE) yet.

38  
39 THE COURT: Okay. Mr. Blitt, I was also wondering -- I don't  
40 know what school year -- it's suggested the Korean school year -- the evidence suggested  
41 it starts in February. I'm wondering if it makes sense for him to stay until the end of June

1 or whether there's some other considerations with respect to what's in his best interest. If  
2 school started in February and it goes until August, then maybe he should go home right  
3 away, but -- you know, so I was just curious if people had considered any of that, what's  
4 in his interest.

5  
6 MR. BLITT: Ms. Lee, any comment on should he come back  
7 immediately or the end of June?  
8

9 MS. LEE: (INDISCERNIBLE) with Dr. Bom?  
10

11 THE COURT: Yes. Madam clerk, we don't have outbreaks  
12 room in this courtroom, do we?  
13

14 THE COURT CLERK: No.  
15

16 THE COURT: Because it's a courtroom. Yeah.  
17

18 THE COURT CLERK: Yes.  
19

20 THE COURT: Can you do that on a private chat? Or can you  
21 phone him? You can (INDISCERNIBLE) your mics and turn off your video so we can't  
22 see you? I don't know if you, Ms. Madu, want to talk to your client as well, perhaps?  
23

24 MS. MADU: Okay.  
25

26 THE COURT: Okay? Do you know what? Why don't we take  
27 -- it might be worthwhile to just take a 10 minute break so you each have the opportunity  
28 to do that and see if there's any way I can help you in making this happen in a way that  
29 will be in the best interests of Sehyun. Okay? So why don't we take a break and --  
30 madam clerk, if we can sign off and then sign back in?  
31

32 THE COURT CLERK: Yes. Yes, Justice. That should be fine.  
33

34 THE COURT: Yeah. Or you can turn off your mics and your  
35 video and just come back we'll say at 2:50. Okay? Thank you.  
36

37 (ADJOURNMENT)  
38

39 THE COURT: Are we ready to go?  
40

41 THE COURT CLERK: Court is now back in session and mics are live.

- 1  
2 THE COURT: Okay. Thank you. Okay. Mr. Blitt, what are  
3 you proposing?  
4
- 5 MR. BLITT: Ms. Lee, jump in if I am incorrect. I understand  
6 that Dr. Bom has to quarantine for 2 weeks. Then he would be able to pick up Sehyun  
7 June 21st.  
8
- 9 MS. LEE: At the earliest.  
10
- 11 MR. BLITT: At the earliest. So what they would then  
12 require, My Lady, is the delivery of -- of the child's passport to Dr. Bom when he arrives  
13 in Edmonton. And then, of course, his ability to go to Ms. Kim's residence, if that's the  
14 case, to pick up the child. What I'd find helpful, My Lady, is a police enforcement  
15 provision in the event there is any difficulty securing the child for the return.  
16
- 17 THE COURT: Okay. So what I'm hearing is that Dr. Bom is  
18 planning to come to Canada then to pick up Sehyun?  
19
- 20 MR. BLITT: Yes, My Lady.  
21
- 22 THE COURT: And that he's going to have to quarantine for 2  
23 weeks when he gets here and that the earliest he can do it is June 21st. Okay. Ms. Madu,  
24 what is your client's position on all of that?  
25
- 26 MS. MADU: Ideally, she would like him to finish his school  
27 year, which I think is the last week of June, somewhere about the 25th. There are two  
28 other issues she wanted me to bring to your attention unrelated to this. I have provided  
29 my opinion as counsel, but I think it's important that she hears it from you.  
30
- 31 THE COURT: Okay. Can we just -- you can tell me those  
32 things in a minute. The -- so June 25th is the Friday of the week that Dr. Bom says is the  
33 earliest that he could pick up Sehyun. So would Dr. Bom be okay waiting to pick him up  
34 until the 25th, which is the end of that school week and presumably the end of session?  
35
- 36 MR. BLITT: Ms. Lee, does that make sense?  
37
- 38 MS. LEE: (FOREIGN LANGUAGE SPOKEN). Yeah.  
39 That would work.  
40
- 41 THE COURT: Okay. So we can have -- the child will be

1 returned on June 25th. And, Ms. Madu, what is your view of the police enforcement  
2 clause?

3  
4 MS. MADU: I -- I don't think there'll be any issue with my --  
5 with my client handing over the child. I mean (INDISCERNIBLE) I think -- I don't  
6 think there's any need to involve the police. I don't think we need to involve the police.

7  
8 THE COURT: Okay. Well, I certainly would hope that that  
9 would not be necessary. On the other hand, if we have it in the order, he doesn't know  
10 that and if there is any issues, at least they can be dealt with without a return trip to court.  
11 So I think I will order it. Okay. So --

12  
13 MS. LEE: (INDISCERNIBLE).

14  
15 THE COURT: Yes?

16  
17 MS. LEE: (INDISCERNIBLE) but there is a small  
18 possibility that Dr. Bom couldn't make it because like he's been struggling to change his  
19 (INDISCERNIBLE). So there's a possibility that like auntie, like Sehyun's auntie might  
20 go. Is that allowed?

21  
22 THE COURT: That's -- Dr. Bom is the custodial parent and if  
23 he wants auntie to pick him up, I'm find with that.

24  
25 MS. LEE: Thank you.

26  
27 MS. MADU: My Lady, I just noticed that -- I should know  
28 which school Sehyun's in, but the actual last day, official day of school, is June 28th.

29  
30 THE COURT: Monday?

31  
32 MS. MADU: Yes.

33  
34 THE COURT: (INDISCERNIBLE).

35  
36 MS. MADU: I'm looking at the Edmonton Public School  
37 calendar and it says June 28th. I don't know why that would be, but that's what I'm  
38 looking at. That's the last day of classes (INDISCERNIBLE).

39  
40 THE COURT: Okay. Well, again, I think that given we're so  
41 close to the end of the school year and he's been there all year, it would be unfair to pull

1 him out of school before the last day of school. So if we can confirm that the last day of  
2 school is in fact June 28th then I will make the day -- the exchange day on the 28th.

3  
4 MS. MADU: Thank you.

5  
6 THE COURT: So, Mr. Blitt, perhaps you can confirm that  
7 some way?

8  
9 MR. BLITT: Ms. Lee, it's 3 days later. Is that fine?

10  
11 MS. LEE: Yeah. I'll also ask Dr. Bom here.

12  
13 DR. BOM: It's fine. Yeah.

14  
15 MS. LEE: It's fine.

16  
17 THE COURT: I think it's important I try to do what's in his  
18 best interests. I understand that you, Dr. Bom, have his best interests at heart as well, but  
19 I think that he's been there for almost the whole year. It would be a shame if he missed  
20 the last fun day of school. Okay. So, Ms. Madu, what does your client want to raise?

21  
22 MS. MADU: Firstly, she had brought up the fact that even  
23 though Sehyun wants to go back, she was asking about visits to her and time with the --  
24 the family in Korea, being able to see the grandparents, and I had explained to her that  
25 it's my understanding that custody will be dealt with in South Korea, but she was  
26 wondering if you could put in terms that would allow family to see him and allow him to  
27 come visit her in Canada. (INDISCERNIBLE) --

28  
29 THE COURT: Okay. And --

30  
31 MS. MADU: -- question.

32  
33 THE COURT: Okay. So with respect to that, Ms. Kim, I  
34 cannot order that. Today is not about custody. It is about retention and removal and  
35 return, and so what I basically said was the South Korean courts have the jurisdiction to  
36 make those kinds of rulings and I'm not prepared to make those rulings when it's already  
37 before the South Korean court. So that will have to wait, but those are things you may  
38 raise at that time. Okay? Ms. Madu, what else?

39  
40 MS. MADU: She had also raised the issue of the outstanding  
41 child support that Dr. Bom was supposed to be paying, that he had agreed to and he had



1 stated in his affidavit that he had agreed to be paying that amount. She's wondering that  
2 if she goes to South Korea, she may not be able to claim that amount because child  
3 support will be payable in Canada and she's wondering if you can make an order for the  
4 10 months that he did not pay child support from August 2020 to May of this -- well,  
5 until when he goes back in June, if you (INDISCERNIBLE) to make a ruling on the  
6 outstanding child support or not.

7  
8 THE COURT: Mr. Blitt, what is your view of my being able to  
9 rule on that?

10  
11 MR. BLITT: It's outside the jurisdiction of the *Hague*  
12 *Convention*. The *Hague Convention* deals with return and no return. If she wishes to  
13 pursue child support, she could have filed a claim in Alberta for that. That would not  
14 have been precluded. We're going to be dealing with a pretty significant costs  
15 application in light of the Court's ruling, so I would say if she wants to pursue child  
16 support, she missed her opportunity. We're going to deal with costs in the *Hague*  
17 *Convention* matter, tremendous costs incurred here.

18  
19 THE COURT: Okay. So just with respect to then the child  
20 support matter, I do agree with Mr. Blitt that it is not before me. That is not an issue that  
21 was before me and I'm not prepared to determine it. You are going to have to talk to  
22 your counsel with respect to who might have jurisdiction over that issue. I am not ruling  
23 on that today. I wouldn't have the evidence to do it anyway. So I'm not ruling on it  
24 today. Okay? Were those the two issues, Ms. Madu?

25  
26 MS. MADU: Yes, they were.

27  
28 THE COURT: Thank you.

29  
30 MS. MADU: (INDISCERNIBLE) issues? Those were the  
31 two she -- she told me.

32  
33 THE COURT: Okay. Okay.

34  
35 MR. BLITT: So, My Lady, we need the direction to -- I  
36 believe Ms. Madu is holding the passport for Sehyun.

37  
38 MS. MADU: No. (INDISCERNIBLE).

39  
40 MS. FIORINI: I -- I am holding the passport. Yes. I've been  
41 waiting to address that. So I have the passport in my care right now. I do need some

1 direction on who I'm releasing it to and when. I'm not sure if Dr. Bom is able to pick it  
2 up from my office. I understand Mr. Blitt is in Calgary, so there is a difficulty. Normally  
3 in this circumstance, I would provide it back to counsel, but I'm not sure that works as  
4 well. (INDISCERNIBLE). Oh.  
5

6 THE COURT: I was going to say as a suggestion because  
7 either Dr. Bom or Ms. Bom are going to be in isolation for 2 weeks, they will be at a  
8 fixed address and so you could presumably courier or send -- I'm not trying to cost you  
9 money, but send the passport to wherever it is that they're quarantining well before the  
10 date that he has to be picked up. So I think within that 2 weeks, you should be able to do  
11 that.  
12

13 MS. FIORINI: I am able to do that. If -- if counsel's able to  
14 provide me with a fixed address, I can send the passport via courier. As long as it's -- it's  
15 part of the order, that -- that shouldn't be an issue.  
16

17 THE COURT: Mr. Blitt, does that work?  
18

19 MR. BLITT: Yes, My Lady. I can undertake once I know  
20 who's coming and I can then give that to Ms. Fiorini. My Lady, could we have 30 days  
21 to provide you with, say, a two, three page submission on costs?  
22

23 THE COURT: Yes. I want it before then, quite frankly,  
24 because -- yeah. Can we do it -- can you each provide me with submissions on costs say  
25 by the 25th? So it's almost a month. By June 25th? I have a judgment week the next  
26 week so I can make my decision then.  
27

28 MR. BLITT: I'm good with that, My Lady.  
29

30 THE COURT: Sorry, Ms. Madu, can't hear you.  
31

32 MS. MADU: My apologies. I was wondering wouldn't I be  
33 responding to his submissions on costs or will I be making my submissions on costs?  
34

35 THE COURT: You know, Mr. Blitt, because you showed your  
36 hand that you're going to look for extensive costs, I think that I will make it so that she  
37 can reply. So can you have yours done by the 18th?  
38

39 MR. BLITT: My Lady, I'm going to be away for the next 2  
40 weeks. It might be a bit tight.  
41

1 THE COURT: What about the 21st?  
2  
3 MR. BLITT: (INDISCERNIBLE) I can -- I can do.  
4  
5 THE COURT: Yeah. That gives you the weekend then. Okay.  
6 And so then, Ms. Madu, can you do it by the 28th then? I'll give you a weekend as well.  
7  
8 MS. MADU: Okay, My Lady.  
9  
10 THE COURT: Okay. Again, three pages max. If you're going  
11 to refer to cases, give me the cites. You don't have to give me the cases. You're going to  
12 do it electronically anyway. Give me electronic cites and pinpoint references if you have  
13 any.  
14  
15 MS. MADU: (INDISCERNIBLE).  
16  
17 THE COURT: Thank you. Anything else then that needs to be  
18 dealt with at this moment? Okay. I want to thank you all. I want to thank counsel for  
19 their representations. They were very helpful to me. I found that I had what I needed and  
20 hopefully Sehyun will adjust his new life in -- or his resumption of life in South Korea  
21 and everything will go as planned. And I'm expecting then the application for costs by  
22 Mr. Blitt by the 21st of June, the reply by the 28th, and I will issue my decision probably  
23 by court endorsement, hopefully shortly thereafter. Okay?  
24  
25 MS. MADU: Thank you.  
26  
27 THE COURT: Thank you all very much. Thank you for your  
28 patience today.  
29  
30 MR. BLITT: Thank you, My Lady.  
31  
32 THE COURT: Thank you, madam clerk.  
33  
34

---

35  
36 PROCEEDINGS ADJOURNED  
37  
38  
39  
40  
41

---

1 **Certificate of Record**

2  
3 I, Anu Suresh, certify that this recording is the record made of the evidence in the  
4 proceedings in Court of Queen’s Bench, held in courtroom 612, on -- Edmonton, Alberta, on  
5 31st day of May, 2021, and that I, Anu Suresh, was the court official in charge of the sound-  
6 recording machine during the proceedings.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

1 **Certificate of Transcript**

2  
3 I, Michelle Hiebert, certify that

4  
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best of  
6 my skill and ability and the foregoing pages are a complete and accurate transcript of the  
7 contents of the record, and

8  
9 (b) the Certificate of Record for these proceedings was included orally on the record and is  
10 transcribed in this transcript.

11  
12  
13  
14  
15 Pro-to-type Word Processing

16 Order: AL15456

17 Dated: June 2, 2021

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41