

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20061204  
Docket: 23879  
Registry: Vancouver

**COPY**

**Regina**

v.

**Nathalie Gettliffe-Grant**

Before: The Honourable Madam Justice Koenigsberg

**Oral Reasons for Sentence**

December 4, 2006

Counsel for Crown

G.M. Dickson, Q.C.

Counsel for Accused

R.S. Fowler

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** Nathalie Jeanne Josephine Grant has pleaded guilty to two counts of child abduction contrary to s. 282 of the **Criminal Code**. At the outset, I note that the range of sentences for this type of offence is very broad. It ranges from a conditional discharge to two years incarceration with three months probation. Obviously, all of these cases are fact driven. In this case, the Crown seeks two years with 10 months credit for time in custody and three years probation. The defence says a fit sentence would be 16 to 18 months with 16 months credit for time in custody and three years probation.

[2] In 1996, in **Dawson v. The Queen** (1996), 111 C.C.C. (3d) 1 (S.C.C.), the Supreme Court of Canada considered s. 283 of the **Criminal Code** in relation to a very similar crime to that with which Ms. Gettliffe is charged. At para. 84 of that judgment, the court described what Parliament was targeting when criminalizing what many see as family law civil misconduct.

At the same time, the evil targeted by Parliament -- the taking or keeping of children from those who have the right and responsibility to contribute to their care and upbringing -- must not be minimized. Unlike more trivial defalcations of custodial obligations, child abduction constitutes an immediate injury against not only the other parent, but more importantly against the child, who is deprived of that parent's care and control. This is misconduct of the most serious order. Where it is done with intent, criminal sanctions properly lie. The line between wrongful but non-criminal failure to respect parental rights on the one hand, and child abduction under s. 283(1) on the other, lies at the point where the wrongdoer takes the child with intent to thwart the established right (by court order or agreement) of control and care of the other parent. On one side of the line the remedies are civil, on the other criminal. Section 283(1) draws the line at this point by requiring intent to deprive the other parent of possession of the child, a concept that goes beyond mere interference with access rights or a hypothetical possibility of a future right to possession. While arguments can be raised for an interpretation of s. 283(1) that would criminalize virtually any interference with access rights or future custody rights, I

see no reason to strain to accept them. Given the severity of the criminal sanction, reserved for the most reprehensible conduct in our society, there is no reason to interpret the section more broadly. Less serious breaches are better left to civil sanctions than to the ultimate sanction of conviction and imprisonment.

[3] I would add to this description of the evil of abducting children for the purpose of depriving an available and appropriate parent of a relationship with their children is denial of the child's right to the best possible relationship with both parents. It is a tenet of family law recognized, in my view, in the **Criminal Code** sections which criminalize the conduct which deprives a custodial or access parent of care and responsibility for children that it is children's rights that are at stake in custody and access issues.

[4] For most children, fundamental to their sense of identity is an ability to love and accept love from each available parent. Thus, the most profoundly aggravating factor in this case is the compelling evidence of persistent and deliberate alienation of these children from their father. The loss of their English language, and thus of their ability to easily communicate with their father, is one such factor. The exaggeration of his shortcomings as a parent to the point of untruth, these are also very aggravating factors. But perhaps the most egregious of all is the responsibility for hostility toward their father, by words and deeds, which must lie at the feet of their mother who took them from their home with the intent of depriving their father of his custodial rights. And, she then, placed them in an environment in France where the mother's family, friends, and ultimately apparently an entire village, as well as the wider French public, came to believe untruths about the father's conduct toward the children and the role of his religion in his and their lives.

[5] If the mother did not always directly participate in the spreading of these untruths, she did nothing to disavow the exaggerations and untruths or to shield her children from their effects. Only a few months ago when the children were at the ages of 11 and almost 13, the children expressed in writing for a court proceeding that they never wanted to see their father again, that they blamed him for putting their mother in prison, and that he was guilty of abusive behaviour toward them. These feelings and thoughts by a child for a father who does not merit such thoughts and feelings, are a terrible burden for any child to bear and may mark them for life. This is the consequence of Ms. Gettliffe's prolonged five-year offence and this is the context in which this court must consider an appropriate and fit sentence.

[6] I will deal briefly with the background to these offences. Ms. Gettliffe and Mr. Grant were married July 29, 1989, when Ms. Gettliffe was 18 years of age and Mr. Grant 24. Two children of the marriage were born, M. (the son), December 29, 1993, and J. (the daughter), May 23, 1995. During the early part of the marriage, among other activities, Ms. Gettliffe completed a bachelor's degree in 1992 and, while her children were small, she also completed her master's degree in July of 1998. She then commenced a PhD program at the University of British Columbia in 1998. The parties moved to Vancouver from Surrey to ease the time necessary to commute to the University of British Columbia for Ms. Gettliffe. Both children had some learning difficulties. M.'s is the most pronounced. These difficulties appear to stem mostly from regular severe ear infections involving periods of time of total hearing loss. M. requires special learning programs, tutoring, and speech therapy, all of which was provided to him in Vancouver and then in France.

[7] Increasing difficulties in the marriage ensued after the move to Vancouver. One very significant strain appeared to be Mr. Grant's increasing involvement after 1999 with his church and his desire to include Ms. Gettliffe and the children, and her lack of interest in participating. After almost a year of separation, still living in the same house, finally in July of 2000, Ms. Gettliffe physically moved from the home with the children into a townhouse at UBC. Further strains in their parenting roles developed with this total separation. It essentially involved a tug of war between the parents as to who was most responsible for any of the problems they encountered. One problem which was developed during the time that the parties still lived together, J. would climb into the marriage bed regularly. When strains in the marriage caused Ms. Gettliffe to sleep on the couch and Mr. Grant to remain in the marriage bed, J. would still climb into the marriage bed. In addition, while the parties still lived together and J. was three or four, Mr. Grant would often bathe with the children. After an incident in which J. expressed an alarming interest in Mr. Grant's penis, Mr. Grant and Ms. Gettliffe together agreed to cease such bathing.

[8] After Ms. Gettliffe moved out of the home, Mr. Grant, in order to facilitate overnight access and the concerns of Ms. Gettliffe that J. continued to insist on getting into the marriage bed with Mr. Grant at night, Mr. Grant got rid of his double bed and installed a single one and separate cots for the two children in his room. Also, at this time he had on occasion one or two male boarders affiliated with his church in his home who slept in the other two bedrooms.

[9] In the late Spring of 2001, Ms. Gettliffe applied to court to allow her to take the two children with her to France for a 10 month academic term. Before the

hearing of this application, Ms. Gettliffe swore in an affidavit that her concerns about inappropriate activities with J. had stopped and, in any event, she swore that she never threatened Mr. Grant with sexual abuse allegations or anything of the sort, and the tenor of all of her affidavits before the courts was that the issues with J. revolved around Mr. Grant being unwilling to impose appropriate gender boundaries for J. She explicitly denied any sexual impropriety or motivation on Mr. Grant's part.

[10] In addition, Ms. Gettliffe, in her affidavit evidence before several court hearings before August of 2001, made allusion to money going to Mr. Grant's church. She stated either he spent \$200 a month giving to the church or \$200 a month buying motivational tapes and other supports for his developing business as a financial advisor. There were no allegations of any other monies being given to his church.

[11] There were many complaints about the time which he spent and his interest in the church. Of most interest in the period leading up to the court order of August 2001 in which the judge declined to allow the children to go to France for 10 months, Ms. Gettliffe swore in her final affidavit put before the court the following, affidavit sworn June 1<sup>st</sup>, 2001, at para. 85:

If the court decides it is not best for the children to live in France for 10 months, I will remain in Vancouver to care for them and finish my PhD at UBC.

And at para. 90 in that same affidavit, she swore:

Our home is in Canada. I believe the children have a right to a strong relationship with their father and regular contact with him. Although I do not expect to resolve the issue of my proposed move at this time, I believe that some accommodation can be made which allows me to

work in my field close to Vancouver, but which maintains the children's relationship with the plaintiff.

[12] Following the separation in July of 2000, the parties with the assistance of a Family Court counsellor, entered into an agreement providing for joint custody with primary residence to Ms. Gettliffe and generous access to Mr. Grant including, of course, overnight access, which if any of the allegations which subsequently surfaced in France were true would have been most inappropriate agreement. Ms. Gettliffe advised in emails sent in early May 2001 that she had obtained employment as an assistant professor at the University of Victoria in her chosen field - this would have been before she had actually completed her PhD - a position, the accomplishment of which she was rightly proud. One week later, she advised Mr. Grant in an email that she was considering moving to France with the children for 10 months to study in France to help with her PhD, a course of study desirable, but not necessary for her to obtain her PhD. Unbeknownst to Mr. Grant, Ms. Gettliffe had applied to a French university and been accepted for this 10-month course of study in March of that year. Further, she had delayed taking her position at the University of Victoria for one year, from July of 2001 to July of 2002.

[13] Previous to this announcement in May, Ms. Gettliffe had obtained agreement from Mr. Grant to take the children to France for a holiday for three weeks in July of 2001 for her sister's wedding. After the May 1st emails, Mr. Grant became alarmed and then refused his permission for the vacation, and applications to court ensued to allow her to go for the three-week holiday in July. Mr. Grant was very concerned that she might choose not to return to Canada, if she, in fact, went just for this

vacation. At Masters hearings of this court, orders were made that Ms. Gettliffe turn over her passports for the children to counsel for Mr. Grant. She turned over her Canadian passport but not her French one. Later when the court allowed the visit in July to France with the children, several safeguards were put in place for the return of the children.

[14] In the meantime, of significance, a s. 15 report relating to custody and access and specifically the proposed 10-month sojourn in France with the children was commenced with Dr. Elterman, a prominent psychologist. Ms. Gettliffe did return the children at the end of July 2001 and Dr. Elterman's report was completed and available to the judge on the application by Ms. Gettliffe to be allowed to take the children to France for 10 months commencing in August of 2001. Dr. Elterman recommended against the move for the children as he felt it was not in the children's best interest, primarily because of the recency of the separation, the learning difficulties of both children, but especially M., and because of the disruption of the close bond between the children and their father.

[15] Although Ms. Gettliffe's concerns as alluded to earlier in these reasons were before Dr. Elterman and he considered them, he concluded that both parents were capable, loving, appropriate parents. The summary to the judge's reasons for denying Ms. Gettliffe's application to be allowed to vary the custodial arrangements in place were set out in paras. 29 and 30 of her reasons for judgment of August 24th. Paragraph 29:

Dr. Elterman undertook a careful and detailed psychological assessment. He noted the special circumstances of the case which

are that Mrs. Grant wishes to take the children to France for 10 months. He interviewed the parents separately. He interviewed the children separately. He observed the children interacting with both parents and he discussed the parenting relationships with six collateral witnesses other than family members, three suggested by each of Mr. and Mrs. Grant.

In considering the children's best interests, Dr. Elterman stated that he ignored the parents' wishes. Dr. Elterman recommended that Mrs. Grant reconsider her intention to go to France for the year. His opinion is that the children are very close to their father and, given that the parents' separation was only one year ago, the dislocation would not be in their best interests. Dr. Elterman noted the importance to the children of their relationship with both parents. He noted M.'s special needs. He noted that the children were still adjusting to the separation. He concluded that the dislocation by moving to France even for 10 months and a separation from their father would not be in their best interests.

It is to be noted that it was in the context of the affidavit sworn evidence of Ms. Gettliffe that I have alluded to, as well as Dr. Elterman's careful assessment and recommendation, that Judge Garson declined to allow Ms. Gettliffe to take the children to France for 10 months in 2001 and 2002.

[16] Having kept her French passport contrary to the orders of the court that she turn in her passports for the children, approximately two days following the judgment and the court order, Ms. Gettliffe left for France with the children. She did not contact Mr. Grant until several days after arrival in France. Several phone calls later and increasingly heated exchanges between the two parents, I find that Ms. Gettliffe did assert to Mr. Grant that if he did not agree to her staying in France for 10 months with the children and not pursue any remedies for her breach of the court order, he would never see the children again.

[17] I pause to note that it is not unusual in heated circumstances for parents to say things they do not mean. The problem here was that Ms. Gettliffe had already the means to carry out that particular threat and had the means to continue it. In fact, the children were not brought back to Canada until July of this year and then only after intervention of the French police who assisted Mr. Grant and his mother in locating the children who had been removed from their residence and school after their mother was first detained and then placed in custody in Vancouver and denied bail. She was arrested in Vancouver upon her return in late April for the purpose of defending her thesis.

[18] Over the years, beginning in 2001, in France, numerous proceedings were undertaken through the Hague Convention to enforce the Canadian court's orders. In summary, at least three separate French court hearings resulted in decisions ordering the return of the children to Canada. Ms. Gettliffe and her then common law husband, with whom she had one child in 2004 or 2005, petitioned to the Minister of Justice for intervention to prevent enforcement of the orders of the French courts. Ms. Gettliffe only permitted Mr. Grant three or four visits up through 2005 and then only for a few hours at a time with only one visit of any duration including an overnight. After the Minister of Justice's intervention, the French proceedings resulted in an order or direction that the parties engage in international mediation to resolve the custody and access issue, because, as it was stated, by 2004 or 2005, the enforcement in France of the order of the Canadian court could result in mass civil disobedience.

[19] It is important to note that this matter had become something of a *cause célèbre* in France, painting Mr. Grant as a cult-crazed, violent, abusive figure who gave his money to a cult or sect and from whom the courageous Ms. Gettliffe had fled to save herself and her children. This picture was known to Ms. Gettliffe to be untrue. Ms. Gettliffe had taken up residence in her home in a small village and she and others on her behalf had obtained thousands of signatures on a petition to be sent to the courts or government officials asking them for protection of the children from their father. Ms. Gettliffe, if she did not herself directly vilify the children's father publicly, at least encouraged others to do so and at no time ever disavowed statements made about him publicly that she knew were either absolute lies or at least such exaggerations of his conduct and interests that they bore no relationship to the truth.

[20] Thus, on June 3, 2005, during the mediation process in France one result of which was to allow Mr. Grant to visit the children in France for several days with his mother, Ms. Gettliffe sent a letter to Mr. Grant's family lawyer in Vancouver. It read, in part:

I am currently living in France with my two children and, after proceedings under the Hague Convention, a mediation has been set up with my ex-husband so he could come and visit his children in France. I have asked as a condition that he return my Canadian passport which he is unable to do since, according to him, your office still has my Canadian passport. Mr. Grant is coming to France on Monday, June 6th, 2005, and will be unable to see his children if my Canadian passport is not given back to me.

[21] In addition, on or about June 3rd, 2005, Ms. Gettliffe sent the following letter to authorities regarding her passport:

Dear Sir.

I received your fax dated June 1st concerning the cancellation and revocation of my former passport number ...

Please find enclosed the Form PPT203 which I completed or filled out at the police station in Annonay. I am also sending you a copy by mail and I await your confirmation as soon as possible. If the cancelled passport cannot be used other than by me, barring which I will not be able to guarantee the security or safety of Scott Grant or that of his mother as of this Monday, June 6th, the 1,100 residents of Satillieu who ensure the safety of the children being already determined to lynch the father.

[22] Mr. Grant, among other things, in order to regain some relationship with his children and in the face of costly legal proceedings which, although uniformly successful for him legally, seemed to get him no closer to a relationship with his children or to their return to Canada, agreed to apply to the Canadian court to have the judge revoke the warrant for Ms. Gettliffe's arrest for contempt of the court order. Negotiations continued in this mediation, but no final agreement was made, including that Mr. Grant was not able to obtain access to his children.

[23] In April of 2006, Ms. Gettliffe, having persuaded Mr. Grant to obtain this revocation of the civil contempt arrest warrant, decided to return to Vancouver to defend her thesis. She did not tell Mr. Grant that she was going to be coming to Vancouver in April. She apparently felt that because the civil contempt warrant had been revoked that she was not at risk of being arrested, having failed to remember that she was the subject of criminal proceedings over which Mr. Grant had no control. She did return and, thus, was arrested, as I have already alluded to. Mr. Grant, advised by the RCMP to watch the university website for notice of her

possible return to defend her thesis, saw it and notified the RCMP and that is the basis upon which Ms. Gettliffe was arrested on April 10th, 2006.

[24] On May 11th, there was a hearing in Provincial Court seeking her release. At paras. 20 and 32 of the reasons for further detention, the Provincial Court judge sets out her findings, which provide further relevant factors for this sentencing.

Paragraph 20:

There is very little motivation for the accused to remain in British Columbia. She has a partner in France who lives with the children at issue here and an eight-month-old child of that relationship. She is four-and-one-half months pregnant. She is facing a very serious charge. She has shown that she is capable of leaving the jurisdiction to avoid the unpleasant consequences of court orders. Her removal of the children in 2001 would have involved a high degree of premeditation in either obtaining alternate travel documents or failing to disclose to the court that she had alternate travel documents. She left the jurisdiction with the children within three days of being told she could not do so, and she managed to do this in spite of significant precautions being in place to prevent it from happening. She has breached an undertaking given to the British Columbia courts and invoked the jurisdiction of a foreign court. She has failed to return the children to British Columbia in spite of being ordered to do so by the French courts. She is only here today because she took the risk that she could secretly enter the country and leave it again without being detected. She has initiated further custody proceedings in the French courts and there is a hearing set for late June on those proceedings.

And at para. 32:

When I put on my Family Court judge hat, I can see here a golden opportunity for these parties to work on a resolution of their civil dispute and I urge them to use this time to put in place a plan to do so. Had such a plan been in place, including the return of the children to British Columbia pending a final outcome of the civil matter and some measures put in place to prevent their departure, I may have been persuaded that there was little likelihood that the accused was a significant flight risk. It will undoubtedly be awkward to do this at present with the accused in custody, but there may be some creative way to put such a plan in place. The accused has indicated she has

means and I would urge her to use some of those means to get some legal advice on the family issues. In the long run, the accused has nothing to lose and everything to gain given the difficult position she has found herself in by addressing those issues.

I note that was in May of this last year.

[25] In other words, Ms. Gettliffe either directed that her children be hidden from their father so he could not find them and return them to British Columbia after her detention and after hearing these reasons from the Provincial Court judge, or she was complicit in such actions. If she did not direct the actions of her relatives, it is clear and uncontradicted in the evidence before me that she did nothing to countermand the actions of her relatives in taking these children from their school and home in France to an undisclosed location so that they could not be found and returned to British Columbia. She failed to so act even though she was pregnant, in custody, and warned by the judge who detained her that her continuing detention was related to her failure to ensure the return of the children. At no time did Ms. Gettliffe provide any cooperation to authorities or Mr. Grant for the return of the children to Canada.

[26] As I set out at the beginning of these reasons, what makes this case one of severe aggravation of a criminal act is the deliberate and knowing alienation of these children from their father. I find that Ms. Gettliffe told or encouraged the telling of untruths or gross exaggerations to the children of their father's conduct toward them and herself. She also told or encouraged the telling of these untruths to others. The result of this is such that the children gave depositions through a form of child advocate in France following their mother's arrest in April. Each child, then aged 11

and almost 13, stated that she and he no longer wished to see their father because he put their mother in prison. J. made allegations of forms of abusive conduct toward herself which could only have been taught her while in France and bear no relationship to the evidence sworn to by her mother before she abducted the children to France. M. used such words in these depositions as being "terrorized" by members of his father's "sect."

[27] The prolonged stay of the children in France of over five years caused them to lose all of their English, their major means of communication with their father and his family, even though their mother's specialization in her brilliant career of applied linguistics, is acquisition and maintenance of language. She is, of course, fluently bilingual. Thus, the allegations of the Crown that the alienation of the children from their father and his family in Canada, with whom the children had a close and loving relationship before they were taken to France, was deliberate and prolonged to ensure that they would never have to leave France and be in their father's custody are well founded in the evidence.

[28] The factors aggravating this offence are deep and serious. I do note, however, that throughout the five-year period, some contact with the father was allowed. Specifically, I note that although Mr. Grant was, in fact, and deliberately so, deprived of his children and the children of him, he did know where they were, he did know they were with family, he did know they were in school, and that they were being cared for. After the worst of the effective brain-washing of these children against their father was done, Ms. Gettliffe, succumbing to pressure by the French government and courts to negotiate with Mr. Grant, entered in a mediation so that for

about a year in 2005/2006, the parties negotiated together toward a resolution that had the potential on her part to allow the children to visit their father in Canada as long as Mr. Grant agreed to Ms. Gettliffe having custody in France.

[29] Although I find the evidence overwhelming that Ms. Gettliffe's flight with the children was premeditated, I find it was not based on fear of Mr. Grant or his church, but to pursue her legitimate career goals. I also find that initially she likely did not intend to stay in France beyond the 10 months which she thought she needed to complete her academic term. However, once faced with the consequences of her actions, both civil contempt and eventually criminal, she determined not to return the children, and instead, gradually found it increasingly necessary to justify her conduct by vilifying Mr. Grant to her family, her children, her friends, and eventually the public.

[30] I will now deal with the law.

[31] The purpose of s. 282(1) of the **Criminal Code** of Canada is the protection of children. Its violation is a serious criminal offence, the victims of which are the deprived parent, but particularly, the children who are abducted. This has been discussed in many decisions in the Supreme Court of Canada, and in many authorities in this jurisdiction, as well. The offence of child abduction also constitutes a serious attack on the stability of our system of justice. In a civilized society, one in which harmony is attempted to be promoted between parents and children even when deep wounds have been inflicted by parents on each other, the courts are a refuge, the place where an objective view of issues can assist more peaceful

resolutions of highly emotional issues. It is a place where power imbalances between parents can be addressed. Court proceedings can give litigants some time and distance on their emotional wounds. The imposition of a resolution by an impartial court to an important issue which two people cannot resolve themselves is essential to any possibility of future harmony. That is the importance of court orders and respect for them.

[32] The nature and circumstances of this offence of child abduction require the imposition of a severe sentence that is in the upper end of the range rather than the lower one. Where the period of deprivation is lengthy, the attitude of the offender is mainly defiant, and the victims are seriously harmed, a significant period of incarceration plus probation thereafter is most appropriate. It is important to note what Parliament has mandated with regard to sentencing. It is set out in s. 718, 718.1, and 718.2 of the **Criminal Code**:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Section 718.1 provides that:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

And then s. 718.2 has relevance also in this sentencing:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing ...
- (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child ...

This is not limited to physical abuse or sexual abuse. Psychological abuse can be just as damaging:

- (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim ...

shall be deemed to be aggravating circumstances ...

[33] When guilt has been established in a criminal proceeding, fundamental principles of justice dictate a focus on the most appropriate sentence for the guilty party and the interests of society are emphasized. The court should take into account, among other things, the circumstances of the offence, the character, conduct, and attitude of the offender in arriving at an appropriate sentence that addresses all of the sentencing objectives and principles outlined in s. 718 of the **Criminal Code**.

[34] One of the most vexing circumstances surrounding this offence is the absence of an explanation from the offender regarding the crime, not how she did it

or what exactly she did, but what is her attitude and understanding of what she did. Where an offender refuses to offer an explanation, it becomes especially difficult for a judge to put any emphasis on the things we as judges particularly wish to do, and in a case like this, I particularly would have wished to do it; that is emphasize responsibility, reparation, rehabilitation, rather than deterrence and separation from society. But deterrence and denunciation are, for such a crime as this, the most significant factors, but especially so in the absence of any explanation or sense from this offender that she has really come to grips with the harm she has caused and her full responsibility for it.

[35] I do consider Ms. Gettliffe's guilty plea in mitigation of her sentence and as some evidence of remorse. I do not know what it does mean in relation to remorse, however. I must place that in the context of an interview that she gave to French television sometime in November of this year while she was incarcerated, that in the same circumstances she would do the same thing again. What this tells me is that, at least as of the time of that interview and at least until the last day of the sentencing hearing, there was no grasp whatsoever of the harm done and the acknowledgement of responsibility for it by Ms. Gettliffe.

[36] In summary, it is apparent from the foregoing that this is a seriously aggravated case of its kind. The offender intentionally, without lawful excuse, deprived her children and their father of their profoundly important need and right to share their daily lives with one another. This deprivation was continued for a period of five years. Scott Grant as well as the children and their grandmother here in Canada and I am sure other members of these children's extended family are the

victims of these offences. The egregious conduct of the accused in vilifying him in order to retain her illegal custody of the children is, of course, the most seriously aggravating factor in this case. In so doing, she has caused Scott Grant and her children immeasurable, perhaps irreparable, harm. She has also attacked the Canadian system of justice so essential to the stability of our society. She appears to remain generally without insight into the gravity of what she has done and this is most inexplicable given her brilliant career, her clear insight into learning and understanding children, and her clear love for her children. I say all of this acknowledging her tearful apology in this court to her children and their father. I can only hope it was not just sincere at the time she gave it, but sincere enough to last longer than at the end of this sentence.

[37] I also consider in imposing sentence that she has already undergone significant punishment by the circumstances of her incarceration. She was almost five months pregnant at the time of her detention and she gave birth to a son while still incarcerated. She has had to care for her newborn son in jail; has been deprived of proximity to her son in France and I expect it has been difficult for her to have to witness the devastation of her children when they have to visit her in jail. I can only hope that she realizes that it is not Scott Grant who is responsible for that devastation. It is her own continuing acts of defiance of court orders. This incarceration, however, has no doubt been especially difficult because of her health and her condition as a pregnant woman and mother of a newborn.

[38] Under such circumstances, I would usually give the normal two times the amount of time spent in incarceration awaiting trial and sentencing as credit toward

whatever the appropriate fit sentence would be. However, the circumstances of the children not being returned and the continuing vilification of their father throughout, in which Ms. Gettliffe was at least complicit, means that I cannot give full credit of two times the months that she has spent in incarceration, except following the return of the children in July. I do give two times the time spent toward her sentence from July to today. I impose a sentence of 16 months incarceration with 10 months credit. Thus, Ms. Gettliffe's sentence will be a further six months and thereafter three years probation.

[39] The **Criminal Code** sets out mandatory provisions for a probation order.

They are set out in s. 732.1 of the **Criminal Code**. It says:

- (2) The court shall prescribe, as conditions of a probation order, that the offender do all of the following:
  - (a) keep the peace and be of good behaviour;
  - (b) appear before the court when required to do so by the court; and
  - (c) notify the court or the probation officer ...

In this case the probation officer:

... in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

[40] Further, I do order as a condition, and that which will actually give meaning to (b) and (c) of the mandatory provisions of the probation order, that Ms. Gettliffe report within two working days to a probation officer at 275 Cordova Street, and thereafter she will report when required by the probation officer and in the manner

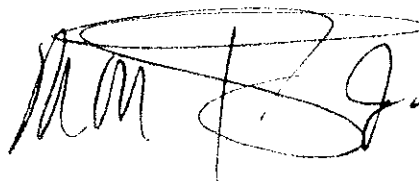
directed by the probation officer. She will remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the probation officer and unless the sentence or any part of it is transferred to France pursuant to the Convention/Treaty between France and Canada.

[41] I have been advised that this sentence including the probation order which is of three years duration can be carried out in France. I understand there is a Convention/Treaty which allows for this to happen. I do not know what is required of me, if anything further, other than to say that if my permission is required, I give it. That is, for this sentence to be carried out as necessary in France pursuant to the Convention/Treaty which exists between Canada and France.

[42] She will abide by all orders of any Canadian court made with regard to her and her children.

[43] I waive the victim surcharge.

[44] I wish to conclude by saying that the circumstances of this sentencing have dealt with some of the most tragic circumstances I have ever had to deal with in what is now a lengthy career on the bench. I think, however, that there is an opportunity for it not to end in total tragedy.

A handwritten signature in black ink, appearing to read 'J. Koenigsberg', with a large, sweeping flourish above the name.

Koenigsberg J.