

2021 ONSC 6396  
Ontario Superior Court of Justice

L.D. v. K.A.

2021 CarswellOnt 13359, 2021 ONSC 6396

**L.D. (Applicant) and K.A. (Respondent)**

Price J.

Heard: September 23, 2021

Judgment: September 27, 2021

Docket: Brampton FS-21-00000072-0000

Counsel: Michael Stangarone, Meghan Melito, for Applicant  
Judith Birchall, for Respondent

Subject: Family

**Headnote**

Family law

**Price J.:**

**NATURE OF MOTION**

1 In these motions, brought by L.D. and K.A., the parties seek directions as to what school or schools their two daughters, who are now 4 and 6 years old respectively, will attend this academic year. The motions require the Court to consider the effect of the parties' separation on the education plan they had previously formed for their children.

2 L.D., in her motion dated September 3, 2021, seeks:

1. An Order that the child, H.J.A., born [Date Omitted] age 6 attend Grade 1 in the 50/50 French Immersion program at Herb Campbell Public School located at 3749 King St, Caledon, ON L0N 1K0 for the 2021/2022 academic year;
2. An Order that the child, G.D.A., born [Date Omitted] age 4 attend Junior Kindergarten at the Ecole Elementaire des Quatre-Rivieres located at 60 Century Dr, Orangeville, ON L9W 3K4 for the 2021/2022 academic year;
3. An Order that H.J.A. and G.D.A. be bussed to and from their respective schools from the bus stop(s) in proximity to the family residence located at 37 Elite Road, Caledon Village, Ontario, L7K 0L2;

3 K.A., in her motion dated September 22, 2021, seeks:

1. An Order that the child, H.J.A., born [Date Omitted] age 6, attend Grade One at Princess Elizabeth Public School located at 51 Elizabeth Street in Orangeville, Ontario L9W 1C5 for the 2021/2022 academic year,
2. An Order that the child, G.D.A., born [Date Omitted] age 4, attend Junior Kindergarten at Princess Elizabeth Public School located at 51 Elizabeth Street in Orangeville, Ontario L9W 1CS for the 2021/2022 academic year, Or in the alternative
3. An Order that the child, H.J.A., born [Date Omitted] age 6, attend Grade One at Ecole Elementaire des Quatre-Rivieres located at 60 Century Drive in Orangeville, ON L9W 3K4 for the 2021/2022 academic year.

4. An Order that the child, G.D.A., born [Date Omitted] age 4, attend Junior Kindergarten at Ecole Elementaire des Quatre-Rivieres located at 60 Century Drive in Orangeville, ON L9W 3K4 for the 2021/2022 academic year.

## **BACKGROUND FACTS**

4 The parties began co-habiting on May 12, 2012 and separated in January 2021. They were not married. L.D. is a mortgage agent and K.A. is a firefighter working for the City of Brampton.

5 L.D., who speaks French fluently, and K.A., whose primary language is English and who does not speak French fluently, moved to Caledon, Ontario in 2016, with an education plan for their two daughters, H.J.A., who is now 8, and G.D.A., who is now 6.

6 The couple's plan was to have their children attend the full French school, École Elementaire des Quatre-Rivieres, located at 60 Century Drive in Orangeville ("Quatre Rivieres") in Junior and Senior Kindergarten, which would ensure a place for them in the French Immersion program at Herb Campbell Public School in Caledon ("Herb Campbell"), by-passing the wait list and lottery system that they would otherwise face to gain admission to that program ("The Education Plan").

7 Herb Campbell offers a 50/50 French and English program from grade 1 to grade 8, in which the children learn for half the day in French and half the day in English. Communication from the school is in English. L.D. and K.A. agreed that the program at Herb Campbell would be best suited to the children's needs and their own ability to support them in their education. K.A. does not dispute that she and L.D. agreed on the Education Plan before she bought the property for herself in Orangeville.

8 Herb Campbell has 850 students, with 535 attending French Immersion and 655 riding the bus to school. The number of students being bussed to the school ensures that there is a diverse mix of students and families. The parties were a same-sex couple, for whom diversity was very important. Students are taught to respect and accept all by celebrating 2SLGBTQ+ and the school is committed to teaching anti-racism and anti-oppression of minorities.

9 Herb Campbell's large enrollment allows for more specialist courses, including physical education, music, and art. It has a music specialist and offers Drama and Art. It has more programs, giving the children an opportunity to participate in plays, concerts, bands, and a choir, math and science programs, including STEM (Science, Technology, Engineering and Math) and a Robotics Team, and fewer split-grade classrooms, to which L.D. attributes higher test scores that the Fraser Institute has assigned the school in its ranking of schools across Canada.

10 There is continuous fundraising at the school to improve its resources to buy such equipment as skis and snowshoes for the school's education program, which is operated on the school's property. H.J.A. and G.D.A. are active children who love sports. Herb Campbell has a Physical Education specialist whose department offers a wide range of sports teams and intramurals, including soccer, cross-country running, volleyball, flag football, softball, track and field, lacrosse, basketball, snowshoeing, gaga ball, and badminton.

11 Herb Campbell has, at least in pre-Pandemic times, organized a variety of field trips that support the students' learning, including trips to Niagara Falls, Fort Erie, the Laura Secord Homestead, and Ottawa and Montreal.

12 Herb Campbell provides a 30-minute bus ride for the children and their schoolmates from the home where the parties and their children lived to the school. Its Library Learning Commons has an active library program and the Librarian provides reading clubs and other supportive learning materials.

13 In May 2021, K.A. separated from L.D. and after moving to her parents' home in Orangeville, signed an Agreement to Purchase a home of her own in Orangeville for herself and the couple's two children. That purchase closes on October 1st.

14 K.A. corresponded with Herb Campbell School until February 4, 2021, stating that she wanted to enroll H.J.A. in grade 1 at that school, and H.J.A. is therefore currently enrolled in Grade 1 at that school. However, while negotiating a resolution of the issues arising from her separation from L.D., and unbeknownst to L.D., K.A. enrolled both children in Princess Elizabeth

Public School ("Princess Elizabeth"), in Orangeville, which is a six minute drive from the home she has bought in that city. The school is a fifteen or twenty-minute drive to the couple's former home in Caledon, which is outside the school's catchment area.

15 The French immersion program at Princess Elizabeth is 100% French until Grade 2, 80% French in Grades 3 and 4, and 75% French in Grade 5. L.D. argues that K.A., who is not fluent in French, would struggle to support the children through their French program at Princess Elizabeth. K.A. argues that she has and would continue to acquire the necessary resources to do so. I make no finding in that regard, other than to make the obvious observation that it would be easier for K.A. to support the children's studies in a 50/50 French/English program at Herb Campbell, where the communication from the school is in English.

16 K.A. does not dispute that if the children continue attending Princess Elizabeth, and wished to continue in the French immersion program, they would have to transfer at the end of grade 5 to Mono Amaranth Public School, as Princess Elizabeth's French immersion program ends in Grade 5.

17 While the issue of whether bussing is available from Princess Elizabeth to the former family home in Caledon is disputed, I find, on a balance of probabilities, based on the fact that the home is not in the catchment area of Princess Elizabeth, that bussing is likely not available to the former family home.

## ISSUES

18 The only issue to be decided is which school(s) the children should attend for the current academic year.

## PARTIES' POSITIONS

19 K.A. seeks an Order directing that the children shall attend Princess Elizabeth for the remainder of this academic year or, in the alternative, that they should continue attending Quatre Rivières.

20 L.D. seeks an Order directing that the previous education plan be implemented, which would entail G.D.A. attending Quatre Rivières for Junior and Senior Kindergarten, as her older sister did, and H.J.A. attending Herb Campbell in Caledon. L.D. proposes that the children take the bus from their respective schools (Quatre Rivières for G.D.A. and Herb Campbell for H.J.A.) to the former family home in Caledon, where L.D. continues to reside pending the resolution of the issue of whether she will buy K.A.'s interest in the property, or whether the property will be sold.

21 L.D. proposes that K.A. drop the children off at the former family home in the morning and pick them up at the end of the day. She says that the bus stop at the family home is a 15-minute drive from K.A.'s new home. K.A. says that it is a 20-minute drive. I have no evidence that would enable me to resolve that factual dispute, but I find that the difference in time is a minor one and that a 20-minute drive would not impose a hardship on K.A.

22 K.A. argues that the couple's education plan is no longer appropriate, having regard to her separation from L.D., and that it will be logistically more convenient for the girls to attend Princess Elizabeth.

23 She also argues that L.D. cannot afford to buy her interest in the home they formerly shared and remain in Caledon and that if the Court does not agree that the children should attend Princess Elizabeth, it is best for them to continue attending Quatre Rivières until L.D. has found a new residence. She notes that if L.D. settles outside Caledon, the children will no longer be eligible to attend Herb Campbell anyway.

24 L.D. asserts that she will remain in Caledon whether or not she is able to buy out K.A.'s interest in their former home. She argues that the couple's education plan continues to be in the children's best interests and should not be trumped by the convenience of the parents. She further argues that K.A. should not be rewarded for unilaterally enrolling the children at Princess Elizabeth, and falsely asserting that the children resided with only one parent by directing that the children remain at that school and that H.J.A. should be permitted to begin grade 1 with the rest of her age group at Herb Campbell and that this will be less disruptive, having regard to the fact that the French Immersion Program at Princess Elizabeth ends at grade 5, which would require the children to attend a middle school in Mono Township in grades 6 to 8 before transitioning to high school.

## ANALYSIS

### *a. Jurisprudence*

25 As with any decision affecting the children, the test when making a choice among schools is the best interests of the children, and not the rights of the parents or what is in their interests. See: [Gordon v. Goertz](#), [1996] S.C.J. No. 52 (S.C.C.). The selection of a school must be determined based on which of the proposals is better for the children. See [Grey v. Grey](#), 2013 ONSC 5572, at para. 17.

26 In [Thomas v. Osika](#), 2018 ONSC 2712, at para. 37, Justice Audet articulated the following factors to be considered when determining what school program is in the children's best interests:

a) The parent's plan for the child's education and his or her capacity and commitment to carry out the plan, in accordance with the unique needs, circumstances, aptitudes and attributes of the child. See: [Bandas v. Demirdache](#), 2013 ONCJ 679 (Ont. C.J.);

b) The ability of the parent to help the child with homework and the degree to which the parent can participate in the child's educational program. See: [Deschenes v. Medwayosh](#), 2016 ONCJ 567 (Ont. C.J.);

c) The importance of a school placement or educational program will promote and maintain a child's cultural and linguistic heritage ([Perron v. Perron](#), 2012 ONCA 811 (Ont. C.A.);

d) Any decisions the parents made prior to separation or at the time of separation with respect to the children's schooling. See [Askalan v. Taleb](#), 2012 ONSC 4746 (Ont. S.C.J.); [Leclerc v Grace](#), 2020 ONSC 5556, at para. 34(g);

e) Any problems with the proposed schools. See: [Askalan v. Taleb](#), ;

f) Most cases are fact-driven. The courts are not pronouncing on what is best for all children in a general sense but what is in the best interests of this child before the court. See: [Deschenes v](#) (Ont. C.J.);

g) Third party ranking systems, such as the Fraser Institute's, if considered at all, must be viewed with reference to the best interest of the particular child in a family law context. See: [Wilson v. Wilson](#), 2015 ONSC 479 (Ont. S.C.J.);

27 Additional factors which the court may take into account in determining the best interests of the child include:

a. The impact on the stability of the child's life. This may include examining where the children were born and raised, whether there is any prospect of one of the parties moving in the near future, and whether a move will mean new child-care providers or other unsettling features. See [Askalan v. Taleb](#), 2012 ONSC 4746 (Ont. S.C.J.);

b. It is not in the interests of children to be tossed backward and forward pending determination of an application for interim custody, and the status quo ought not to be disturbed unless there is urgency or necessity that justifies it. See [Niel v. Niel](#), 1976 CanLII 1925 (ON CA), 28 R.F.L. 257 (Ont. C.A.); [Marcy v. Belmore](#), 2012 ONSC 4696, paras. 18-20 and 25.

28 In this regard, the habitual residence of the children is defined in s. 22(2) of the Children's Law Reform Act, R.S.O. 1990, c. C-12. It provides:

A child is habitually resident in the place where the child resided in whichever of the following circumstances last occurred:

1. With both parents;

2. If the parents are living separate and apart, with one parent under a separation agreement or with the consent, implied consent, or acquiescence of the other or under a court order;

3. With a person other than a parent on a permanent basis for a significant period of time.

***b. Evidence and reasoning***

29 For the reasons that follow, I find that it is in the children's best interest that they follow the education plan the parties conceived for them when they moved to Caledon in 2016, which will entail H.J.A. enrolling at Herb Campbell for the current academic year and for G.D.A. to attend kindergarten at Quatre Rivières until she can join her sibling at Herb Campbell.

***c. Stability of the children's learning environment***

30 The children have resided in Caledon for the past five years. It is their place of habitual residence. Their choice of schools must be based on what is in their best interests and must take account of the importance of maintaining stability in their lives at a time when their family is in transition.

31 If the children attend Herb Campbell, they can remain there until grade 8, with no further transitions away from their peers and familiar surroundings. If they attend Princess Elizabeth, their French Immersion program will end at the end of grade 5 and they will be required to change their school to Mono Amaranth Public School ("Mono Amaranth") for grades 6 to 8, before transitioning to high school.

32 While K.A. submits that the children would be able to remain in the same (French immersion) program, and that only the building in which they receive instruction will change, she acknowledges that the faculty will change. Additionally, some of their classmates may choose not to attend Amaranth, whose ranking is lower than that of Princess Elizabeth.

33 K.A. points out that both children have attended Quatre Rivières and that leaving them there would maintain the status quo. I find that neither parent regarded the full French program at Quatre Rivières as a desirable long-term education plan for the children, having regard to K.A.'s linguistic background and abilities and the importance of enabling both parents to participate fully in supporting the children's education. The children's attendance at that school is therefore a short-term option that could only be achieved at the expense of later disruption, the impact of which will grow to the extent that their transition to a more balanced program is delayed.

***d. Diversity of program and peer group***

34 Herb Campbell offers a wider range of programs and there is a greater diversity in its student body, owing to its higher enrollment, than there would be at Princess Elizabeth. This is especially valuable for the children, whose parents are linguistically different and are of the same gender.

***e. The ability of the parties to support the children's studies***

35 I find that L.D. and K.A. will be better able to support the children's studies if they are at Herb Campbell than if they are at Princess Elizabeth. L.D. has taken an active role in the children's education and their education plan, in part because of the importance she places on their French language training. I find that K.A., who has also taken an active role in the children's education, will be better able to continue doing so if they are in a 50/50 French/English program than if their instruction is predominantly in French.

***f. School ranking***

36 School ranking concerns the general population of students, not these particular children in the context of their particular circumstances at the present time. If ranking is to be considered at all in the choice of schools for H.J.A. and G.D.A., it is only one factor and is less important than the children's overall relationships with family and friends, and their sense of community. See [Wilson v. Wilson, 2015 ONSC 479](#).

37 L.D. asserts that the Fraser Institute ranks Herb Campbell higher overall than Princess Elizabeth or Mono Amaranth. K.A. asserts that the rankings by EQAO (Education Quality and Accountability Office, a Crown agency of the Government of Ontario, created in 1996 in response to the recommendations made by the Royal Commission on Learning) show Herb Campbell somewhat in decline, while Princess Elizabeth and Quatre-Rivieres have held their standings or increased them. L.D. notes that the EQAO website discloses that students at Herb Campbell perform above the Provincial average in all test areas. She further notes that students graduating from the French immersion program at Herb Campbell are fully bilingual, which contributes to their later opportunities and success.

38 In the absence of expert evidence that relates the rankings of either agency to the children's particular educational needs, I am not persuaded the rankings are relevant in this case, must less determinative of what is in the children's best interests. I find that having parents with different linguistic heritage is an advantage to H.J.A. and G.D.A., and that it is in their interests that their school program build on that advantage. The bilingual programs at both Herb Campbell and Princess Elizabeth would likely be beneficial to them in this regard. However, the relative merit of the two programs has to take into account the fact that if the children were to attend Princess Elizabeth, they would have to transfer to Mono Amaranth, which the children would attend in grades 6 to 8 if they are to remain in the French immersion program. The parties have not offered evidence about that school to support any finding, which leaves the Court, when comparing the two plans, in giving weight to the continuity of the program at Herb Campbell and the disruption that the further change between grades 5 and 6 would entail for them if they attended Princess Elizabeth.

***g. The children's connections to the Caledon community e.***

39 K.A. argues that Caledon is not a real community. She characterizes it as no more than a country intersection, I disagree. Caledon has a distinct character and those who live there identify differently with it than they do with the nearby centres of Orangeville and Brampton. Community refers to the children's relationships with friends, teachers, and others who identify with the area in which they reside and attend school. I find that Caledon is a community in that sense, and that it is important to preserve the children's connection with it, if that is possible.

40 I find that in meaningful respects, the children have a stronger connection to Caledon than they do to Orangeville. They have lived in Caledon for the past five years. They played soccer in a 7-week program in Caledon. Their Teen Ranch Camp was held in Caledon, and H.J.A. attends Caledon Sparks, a younger version of Girl Guides. L.D. is on the Board of Directors for the Hall of Fame in Caledon, which reflects community involvement.

41 K.A. argues that H.J.A.'s friends have evolved out of Day Care and attendance at Quatre Rivières, as well as from activities which were predominantly in Orangeville. She asserts that H.J.A. does not associate or play with any of the children in the Caledon neighbourhood. In order to find support for her assertion, the Court would require more detail concerning H.J.A.'s friends and activities than either party has tendered.

42 Enabling H.J.A. to maintain her connections with her friends is especially important at her age, when per peer group is becoming relatively more important.

43 While the children's doctor, dentist, and eye doctors are in Orangeville, they will be able to continue in their care. I don't regard those service-providers as having the same importance in terms of community as the children's friends and school-mates and I find that the latter relationships would have a greater connection with Caledon than with Orangeville.

44 L.D. has committed to remain in the Herb Campbell catchment area whether or not she buys K.A.'s interest in the home they shared in the past. I find, on a balance of probabilities, that she will be able to do so. Her Line 150 income in 2020 was \$184,388 and is employed as a mortgage agent. She has investments and savings and says she can afford a home with a value of at least \$1,400,000.00.

45 L.D. has assumed payment of 100% of the carrying costs of the former family home on a without prejudice basis. She states that if she is unable to buy K.A.'s interest in the home, she will secure alternate accommodates in East Caledon, within the

Herb Campbell catchment area, which is approximately 15 kilometres from the former family home and within Peel Region. She notes that the area has a vibrant community, with a variety of vendors and professionals including doctors and dentists, and many parks and recreational areas.

***h. K.A.'s unilateral action***

46 L.D. characterizes K.A.'s surreptitious enrollment of the children in Princess Elizabeth as a unilateral action undertaken to advance her own interests in moving to Orangeville with the children. K.A. says that she enrolled them at Princess Elizabeth only to ensure that there would be a spot for them there, and that after filing an initial application, she did not complete the application and would not have placed the children there without L.D.' consent.

47 I find that K.A.'s enrollment of the children at Princess Elizabeth was designed, in part, to gain a strategic advantage in the proceeding and a greater control over the children. This is evidenced by the fact that she stated on the enrollment form that the children lived with only one parent and listed her mother as an emergency contact, leaving L.D. off the registration form altogether. I am not satisfied with K.A.'s explanation that disclosing that L.D. was the children's other parent might have jeopardized the application.

48 K.A. never did disclose to L.D. that she had enrolled the children at Princess Elizabeth. L.D. did not learn of it until four months after the fact, when she looked at the children's bussing schedule. The Court disapproves of such unilateral action. See [Moussaoui v. Herkouken](#) 2021 ONSC 196, paras 46 to 47 and 60 to 62.

49 It is not in H.J.A.'s interest to delay her enrollment at Herb Campbell. She should have the opportunity to bond with her classmates there at the formative moment when they begin grade 1, and not have to join a year later, when her classmates have established themselves and their relationships among themselves.

***i. Transportation logistics***

50 The logistics of transporting the children to school from their home in Caledon favours their remaining at schools in that Village. I find that there is no bus route from Princess Elizabeth to the children's home in Caledon. Having unilaterally decided to move out of the children's school catchment area, K.A. cannot rely on transportation difficulties to extract the children from that area. See [Tsiriotakis v. Rizzo](#) 2018 ONSC 1544, at paras. 21 and 27.

51 The 15 or 20 minute drive from K.A.'s new home in Orangeville to Caledon will not impose a meaningful burden on the children, especially if, as is likely, K.A. will be driving them, as this will contribute to the time they are able to spend together.

52 K.A. asserts that she faces a logistical challenge arising from the fact that G.D.A. starts school at Quatre Rivières Elementary School at 8:25 a.m. while the bus picks H.J.A. up near the former family home in Caledon at 8:27 a.m. She further states that H.J.A. returns to her bus stop in Caledon at 4:15 p.m. and G.D.A. ends her school day at Quatre Rivières at 3:19 p.m. with the result if K.A. drives her to the former family home in Caledon, she would arrive after a 20 minute drive at 3:30 p.m. and would have to wait forty-five minutes until H.J.A. arrives at her bus stop.

53 L.D. disputes that this conflict exists but, even if such a conflict exists, I find that it would not present an insurmountable problem for K.A.. K.A. asserts that she has the support of her family, especially from her parents, who she says can help her with child-care. I presume that their willingness to help in this regard would encompass driving one of the children to her bus stop in Caledon, while K.A. drops the other at Quatre Rivières Elementary School, if that is necessary.

54 L.D.' occupation allows her to modify her schedule to meet the needs of the children. She works approximately 120 hours per month, with the majority of those hours working remotely from home. K.A. works 7 shifts of 24 hours per month for a total of 168 hours per month out of the home, which would likely create some gaps in the periods when she would be able to pick up the children from school if an emergency arose.

**CONCLUSION AND ORDER**

55 For the foregoing reasons, I find that it is in the children's interests that they continue attending school in Caledon and that Grayson continue attending kindergarten at Quatre Rivières and that Harper be enrolled in first grade at Herb Campbell for the current academic year. It is therefore ordered that:

1. The child, H.J.A., born [Date Omitted] age 6, shall attend Grade 1 in the 50/50 French Immersion program at Herb Campbell Public School located at 3749 King St, Caledon, ON L0N 1K0 for the 2021/2022 academic year;
2. The child, G.D.A., born [Date Omitted] age 4, shall attend Junior Kindergarten at the Ecole Elementaire des Quatre-Rivières located at 60 Century Dr, Orangeville, ON L9W 3K4 for the 2021/2022 academic year;
3. The children shall be bussed to and from their respective schools from the bus stop(s) in proximity to the family residence located at 37 Elite Road, Caledon Village, Ontario, L7K 0L2.

56 If the parties are unable to agree on costs, they may submit written arguments, not to exceed 4 pages, and a Costs Outline, which shall include their counsel's year of call to the Bar, partial indemnity hourly rate as per the Costs Bulletin of 2005, adjusted for inflation, their dockets or a summary of the time spent, a calculation of costs on both a partial and, if sought, a full indemnity scale, and the party's position on each of the factors listed in [Rule 24\(1\) of the Family Law Rules](#).