

LEGAL BULLETIN

Issue No. 49

Unsuitability of Interim Co-parenting Orders in Family Violence Situations —
Mohammad v. Salam, 2025 NSSC 228

Introduction

This case highlights how shared parenting arrangements or arrangements which necessitate a high level of cooperation are not suitable when there is evidence of family violence. An interim order should preserve the status quo, unless the status quo is no longer in the best interests of the children. When allegations of family violence are made, courts must assess the suitability of co-parenting arrangements in terms of the safety and best interests of the children. This case also draws attention to the accessibility of culturally appropriate services as an important consideration in court-ordered parenting plans, and the need to avoid weaponizing cultural and linguistic barriers when crafting safe and responsive parenting plans.



Case Background

The parties were separated spouses with three children, ages 9, 4, and 1. The father (Mr. Mohammed) and mother (Ms. Salam) had not been able to reach a parenting agreement and allegations of abuse and pending criminal charges against the father had led to a court order restricting communication between the parties. The no-contact order was put in place on September 16, 2024, after the father was charged with one count of assault causing bodily harm (s. 267(b)) and three counts of assault (s. 265) following several physically violent incidents against the mother between June and September 2024. The parties then separated and the mother has since refused to allow the father access to or visits with the children, citing the need for supervised visits and anger management counselling. The father filed a Notice of Application on December 19, 2024, seeking shared parenting. An interim order for child and spousal support was issued in March of 2025 and a hearing on the shared parenting issue was held on May 15, 2025. Both parties provided affidavit evidence, but neither was cross-examined

on the allegations of family violence or coercive control.

Issues & Outcome

The court's central consideration was what interim parenting arrangement is in the children's best interests? To address this, the court needed to determine:

- 1. Was there family violence in the relationship?**
- 2. What were the status quo conditions before the parties separated?**

The court found the mother credible in her claims of family violence and determined that the best interests of the children were served by remaining in her primary care. The father would be permitted supervised visits with the children following completion of anger management counselling. A third-party records clause was added to the order so that updates about the children could be given to the father through the children's service providers,

rather than by (or with the consent of) the mother.

Burden of Proof

The onus (or “burden”) for proving the facts of an allegation of family violence rests on the party who makes the allegation. The standard of proof is a balance of probabilities, which is a much lower standard than the “beyond reasonable doubt” standard that is used for establishing guilt in a criminal trial. The balance of probabilities standard requires that the facts in issue be proven to be “more likely than not” to have occurred as the applicant alleges that they have (*F.H. v McDougall*, 2008 SCC 53). Proof on a balance of probabilities was described by the Supreme Court as an onus on the applicant for convincing the court that what he or she asserts is more probable than not – that the balance is tipped in his or her favour. You must examine the evidence and determine whether the party who has the burden of proof on an issue is relying on evidence that is more convincing than the evidence relied on by the other side. In short, you must decide whether the existence of the contested fact is more probable than not (*R. v. Layton*, 2009 SCC 36, para 28).

Defining Family Violence and Coercive Control

Ms. Salam alleged that Mr. Mohammed committed acts of family violence and coercive control during their relationship and that she feared he might harm the children if granted unsupervised parenting time. She asked the court to “provide Mr. Mohammed time to engage in services to address his anger and to gain insight into the impact of his actions on the children” therefore giving the court the opportunity “to better assess any risk of harm to the family” (para. 13). She submitted photographic and affidavit evidence detailing injuries she sustained during incidents of physical and emotional abuse by Mr. Mohammed. Conversely, Mr. Mohammed did not provide any rebuttal to the allegations of family violence and coercive control other than to state that they were not true. He submitted to the court as evidence that he had entered a plea of “not guilty” to the criminal charges of assault against him.

The court referred to the definition of “family

violence” in Nova Scotia’s Parenting and Support Act (s. 2(da)), noting several factors of consideration for parenting orders, such as the nature of the violence, its frequency, and its impact on the children, citing the Supreme Court’s decision in *Barendregt v. Grebulinas*, 2022 SCC 22 at para. 143:

The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator’s parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives.

The court in *Mohammed v. Salam* also examined the meaning of “coercive control,” citing Dr. Katreena Scott’s definition that was adopted by the Nova Scotia Mass Casualty Commission in its Final Report, *Turning the Tide Together*:

[A] pattern of behaviours to assert control over a person through repeated acts that disempower the other partner in a number of possible ways including through fear for the safety of self or others, removal of rights and liberties or fear of this removal, by isolating them from sources of support, exploiting their resources and capacities for personal gain, removing the victim’s rights and liberties, depriving them of the means needed for independence, resistance, and escape, and regulating their everyday behaviour (vol. 3, pg. 11).

While the court recognized coercive control as an important element of family violence, it did not find sufficient evidence to support a finding of coercive control in the case. The court did, however, rule that Ms. Salam was credible in her allegations of family violence. This assessment was done using a balance of probabilities and was based on the unrefuted photographic evidence of Ms. Salam’s injuries and corroboration of that evidence in other witness statements. The court also noted that the mother was “measured in her description of the parties’ roles prior to separation” and showed a willingness to admit facts against her interest (e.g. that she drove her children in the car without a valid driver’s license) (para. 30). These factors positively affected the assessment of her credibility.

Additionally, the court noted that the father had continued to make efforts to contact the mother, despite being bound by a non-contact order. The mother reported this to the police, and the father was subsequently charged with a breach of release order. The judge acknowledged that this “persistent contact despite court ordered no contact provisions caused Ms. Salam to feel intimidated and harassed” (para. 39). The court concluded that Mr. Mohammed’s actions had “emotionally harmed the children” (para. 40) and made important observations about the wide-ranging impact of family violence on children and their best interests in parenting arrangements.

Recognizing the Impacts of Family Violence on Children

Co-operation in co-parenting arrangements is a key consideration in cases involving allegations of family violence. The judge in Mohammed v. Salam remarked on the court’s responsibility to consider how “family violence impacts the parties’ ability to effectively communicate with each other on issues involving the children” (para.43). Despite having an active level of involvement with the children and no allegations of physical violence against them, the court found Mr. Mohammed had been “emotionally abusive towards the children” and that “any kind of family violence within the residence has a profound impact on the children” (para. 47). Family violence affects children’s sense of safety and security. For this reason, supervised parenting time was needed for Mr. Mohammed’s contact with the children, as well as court-ordered “services to address his anger issues and to understand what appropriate conversations with children are” (para. 47)

Parental Communication and Family Violence

Effective communication between parents is essential to a child’s health and well-being and courts have recognized how disruptive family violence is to parental interactions, even post-separation. This was expressly acknowledged by the court in Mohammed v. Salam: “Given that I have found that family violence existed in the relationship, it would not be

appropriate to expect the parties to communicate about major decision[s] concerning the children” (para. 49). This consideration, alongside the no-contact order that had been issued against the father, drove the court to make several provisions in the interim parenting order to limit the need for communication between the parties. In addition to granting decision-making authority for the children to the mother, the court added a third-party records clause to the order so that the father could receive school and health updates about the children without requiring the consent of (or interaction with) Ms. Salam. The interim parenting order also specified that “neither party shall discuss court proceedings in the presence of the children” (para. 51).

High conflict between parents can lead to unilateral decision-making, which the court discouraged in this case. The judge’s decision noted that post-separation, the father had remained flexible in his efforts to see the children after the mother refused him access, including proposing “multiple options” and “numerous individuals” to supervise his parenting time. Although the judge recognized the mother’s fears and safety concerns for the children, the decision to “unilaterally” refuse the father’s access was not her only option. The existing no-contact order could be observed with contact through a lawyer and other third-party interventions to mitigate communication between the parties. The mother’s “unilateral denial of parenting time is not in the best interest of the children” (para. 42).

Best Interests of the Child and the Status Quo

As an interim motion, the focus of the hearing in Mohammed v. Salam was to preserve the status quo “unless the status quo is no longer in the children’s best interest” (para. 15). Legislation and case law recognize the complexity of factors that courts must use when determining what is in a child’s “best interests,” including “the children’s physical, emotional, social and educational needs” as well as “the history of care for the children, the children’s cultural, linguistic, religious and spiritual upbringing” (para. 18).

The current or “status quo” conditions of a child’s life

can therefore be closely connected to their holistic needs. This was noted by the court in *Mohammed v. Salam* when describing the “status quo” as more than “just the living arrangements that existed before parties separated but, the children’s way of life that existed before the issues of custody and access arose” (para. 17, citing *A.M. v. N.B.*, 2005 NSSC 352 at para. 32).

In *Mohammed v. Salam*, the judge accepted that although both parents appeared to have strong bonds with the children, the father was the primary financial supporter which limited his time with the children. He was found to be involved in the children’s lives when he was not at work, and engaged in fishing, playing sports, helping with homework, and preparing meals. However, the mother was found to be the primary caregiver of the children on a daily basis, overlooking their physical, emotional, social, and educational needs, including attending most of their medical appointments.

The children’s attendance at religious classes, where they were introduced to the Qur’an and Arabic and Islamic values, was found to be encouraged by both parents despite different methods of accessibility. While the father wanted the children to attend classes in person, the mother, with a restricted driver’s licence, enrolled the oldest child in online classes.

After considering these various circumstances, the court ruled that the children’s best interests were served by remaining in their mother’s primary care, where their emotional and educational needs were met. This order reflected the status quo prior to separation and was “the least disruptive and most protective interim parenting plan that is in the children’s best interests” (para. 43).

Supervised Parenting is an Exceptional Remedy

In her response to the father’s claim, the mother sought to significantly restrict the nature and frequency of Mr. Mohammed’s contact with the children, specifically requesting that his visits with the children be supervised. Several circumstances have been identified in the case law as justifying

supervised parenting time, including:

- where the child requires protection from physical, sexual or emotional abuse;
- where the child is being introduced or reintroduced into the life of a parent after a significant absence;
- where there are substance abuse issues; or
- where there are clinical issues involving the access parent (as described by the court in *Lewis v Lewis*, 2005 NSSC 256 at para. 24).

As a general rule, however, courts have had the view that “supervised parenting is an exceptional remedy that is not meant to be an indefinite solution” (*Slawter v Bellefontaine*, 2012 NSCA 48 at para. 43-44, as cited in *Mohammed v. Salam*, para. 25). Moreover, orders for supervised parental visits must be made for the benefit of the child, and not if the “sole purpose is to provide comfort to the custodial parent” (*Lewis*, supra, para. 25). In the *Mohammed v. Salam* decision, the court determined that the allegations of family violence had been proven on a balance of probabilities. The impact on the children necessitated supervised visits until his anger issues and the dangers they posed to his children’s emotional well-being were addressed.

Culturally Informed Parenting Orders

In this case the father spoke Arabic and English while the mother only spoke Arabic. The father submitted to the court that the mother “cannot speak English and therefore has difficulty navigating the children’s service providers, social lives, and educational supports” (para.12), He also argued that the mother’s ability to parent was hindered by the status of her driver’s license (i.e. a learning permit that required another licensed adult in the vehicle). The father’s application requested that he be allowed to “resume his role in ‘advocating’ for the children in their academic, extra-curricular, social and community lives, and in matters related to the children’s health” (para. 12). The mother maintained her lack of English language skills had not interrupted her role as the children’s primary caregiver. She expressed a fear that the father would speak to the children about inappropriate adult matters in Arabic, if assigned a parenting time supervisor who did not speak Arabic. Importantly, the judge’s decision in *Mohammed*

v. Salam acknowledged the mother’s language difficulties and her lack of community supports without penalizing her for these barriers. Instead, the court agreed with Ms. Salam’s claims that she “can and has been advocating for the children and meeting their needs even though she does not speak English” (para. 14). The interim parenting plan ordered by the court specified that the mother would have a translator present for the children’s school and medical appointments. Arrangements for the supervised visits would be made at another hearing, following the father’s completion of a counselling program.

This case highlights the many difficulties that immigrant and newcomer parties can experience when navigating a system without the necessary language skills, particularly when faced with low levels of community access to translation and legal information services. Judicial recognition and culturally informed responses to the practical issues associated with parenting arrangements helps to ensure safety and stability for the children in the future.

Court Ordered Intervention Programs

In this case, the mother requested that the father be ordered to attend services to address his anger. This was awarded at the interim hearing, subject to adjustment at the final hearing. Importantly, the court made this order specifically within the context of the children’s best interests and the impact of family violence on those interests. The court specified a series of objectives that the father’s court-ordered counselling needed to address, (adopted from *KB v. AT*, 2023 NSSC 125):

- To gain insight into what family violence is and how his actions toward Ms. Salam were violent and abusive.
- To gain insight into how family violence impacts children.
- To gain skills to manage and control his anger.
- To understand how healthy relationship are formed and maintained.
- To gain skills to communicate with Ms. Salam in a respectful and child focused way.
- To gain skills to communicate with the children in a child focused manner (para. 52).

Conclusion

The effects of family violence are detrimental to children’s sense of safety and security and can be wide-ranging in their impact on a child’s daily life. Parents’ ability to cooperate and effectively communicate is greatly undermined by experiences and patterns of abuse and intimidation. Cases involving allegations of family violence are those in which parents are unlikely to co-operate in decision making related to the children. Judicial recognition of the ongoing dynamics between parents’ post-

separation and its ongoing impact on the children is essential in prioritizing the children’s best interest. The accessibility of culturally appropriate services is an important consideration in court-ordered parenting plans, although caution is needed to avoid weaponizing cultural and linguistic barriers when crafting safe and responsive parenting plans.

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Translated by: Text in Context

