

LEGAL BULLETIN

# Issue No. 54

MHS v MR (2021, ONCJ 665) is a decision on a motion for a temporary parenting order

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## Introduction

MHS v MR (2021, ONCJ 665) is a decision on a motion for a temporary parenting order. The applicant father (MHS) sought a temporary parenting order that the children have their primary residence with him, or, alternatively, requested an order for equal parenting time with them. The respondent mother (MR) sought temporary orders for primary residence and sole decision-making responsibility for the children, supervised parenting time for the father, and a restraining order against the father. She also sought a temporary order that the father deposit his passport and the children's passports with the court and that he not be permitted to remove the children from the City of Toronto. Two issues were before the judge: (1) what temporary parenting orders are in the children's best interests, and (2) should a restraining order be made against the father, or in the alternative, should restrictions on communication and contact between the parties be made pursuant to section 28 of the *Children's Law Reform Act*?



In this case, the issue of family violence was central to the legal analysis of parenting time and granting a restraining order. The mother alleged that the father was physically, emotionally and financially abusive. The father alleged the mother was an unfit parent and was abusive to him and the children. After reviewing the evidence, Justice Sherr found the father not credible, manipulative, and abusive. As a result, the court ordered that the children primarily reside with the mother and that she be granted sole decision-making responsibility. The father was allowed supervised parenting time with the children. A temporary restraining order was also granted.

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## Case Background

MHS and MR are cousins who entered an arranged marriage in 2011 when the mother was 17 and the father was 24. At the time, the mother lived in Canada and the father lived in Afghanistan. Once the mother turned 18, she sponsored the father's immigration to Canada, and he arrived in January 2015. The parties began living together at that point. They had two children, who were aged five and two at the time of the motion.

The parties separated in October 2019. After separation, the children resided with the mother.

The father regularly saw the children for several hours a few times a week but never had them overnight.

In May 2021, the mother had a mental health breakdown and was hospitalized for two months. During this time, the children resided with the maternal grandmother. After the mother was released from the hospital, she resumed caring for the children with the assistance of the grandmother. The father continued to have his parenting time with the children.

## Procedural History

On September 17, 2021, the father took the children for a scheduled visit and refused to return them. He only allowed the mother limited virtual contact with the children. The father issued an application on October 22, 2021, but did not serve it on the mother. The mother retained counsel and brought a without notice motion on November 19, 2021. The court held that the mother had established a prima facie case of an abduction risk and risk of physical harm if the father received notice of the motion. The court granted temporary orders returning the children to her, restricting their removal from Toronto, requiring the father to surrender all passports, and imposing a restraining order. The court later allowed the father supervised parenting time but he failed to comply with the passport deposit requirement.

## Narrative of the Parties

On the motion for a temporary parenting order, the father claimed he had always been the primary caregiver, the mother was abusive towards him and abusive and neglectful towards the children, and that her mental health made her unfit to parent. He also alleged that the maternal grandmother and uncle had supported his earlier decision to withhold the children.

The mother denied these claims, asserting that she was the children's main caregiver throughout the relationship and after separation, except during her hospitalization. She alleged that the father had been physically, emotionally, psychologically, and financially abusive towards her and the children. She described threats of abduction from the father, saying that he boasted of police connections and claimed she could not stop him if he took the children to Afghanistan or Germany. The mother testified that she was very afraid of the father, and her fears intensified when he withheld the children in September. The maternal grandmother and uncle supported the mother's account, denying that they had ever agreed the father could keep the children.

## The Evidence

There was evidence that the father engaged in

financial control and manipulation. He had not paid child support since separation despite being employed. He had diverted the Canada Child Benefit payments to himself even though the children lived with the mother. Additionally, the mother lived in a rental unit leased in the father's name and would transfer him funds for the rent. The father had the mother transfer a rent payment to him for July 2021, even though he terminated the lease and she did not live in the unit that month. He did not return the money to her.

Additionally, when the children were in the father's care, he did not enroll the oldest child in school because he did not want the mother to try and pick them up from school. He also excluded the mother as a contact for the younger child's daycare.

After the without notice motion, the father breached multiple court orders, including by failing to deposit the passports, and by making threatening and abusive phone calls to the mother's family. During his cross-examination, the father gave inconsistent testimony, concealed his address, and tried to shift blame for his misconduct.

## Issues

### *Parenting Time*

Justice Sherr's legal analysis on parenting time centered on the best interests of the children (BIOC) test under s. 24 of the Children's Law Reform Act (CLRA). Specifically, s. 24(3) lists out the factors for the court to consider regarding the circumstances of the child, and s. 24(4) lists out factors to consider related to family violence. The definition of family violence in s. 18(1) of the CLRA reads as follows:

"family violence" means any conduct by a family member towards another family member that is violent or threatening that constitutes a pattern of coercive and controlling behavior, or that causes the other family member to fear for their own safety or for that of another person, and, in the case of a child, includes direct or indirect exposure to such conduct"

To assess the BIOC when making a parenting order, the court must ensure that the child will be physically and emotionally safe. The court acknowledged that it

is in the child's best interest that his or her caregiver be physically and emotionally safe. Additionally, the court noted that in assessing the BIOC, it will be important to determine if a parent will follow the terms of a court order. Further, a parent's inability to financially support a child is a factor that goes against joint decision-making responsibility because it demonstrates poor judgement and an inability to prioritize the child's best interests.

### ***Primary Residence and Decision-Making Responsibility***

The court found that it was in the best interests of the children to temporarily reside with the mother and that she be granted sole decision-making responsibility. The mother has always been the children's primary caregiver, and she was the person with the closest relationship with them. The court was concerned about the mother's mental health issues, however, current medical reports indicated that she was stable, taking her medication, and undergoing treatment.

The father submitted evidence of a medical report about the mother's cognitive challenges. These cognitive challenges were apparent during her testimony. However, the court found the mother to be a credible witness because she was clear and consistent about the most important evidence pertaining to the father's family violence. Additionally, the mother received parental and emotional support from the maternal grandmother, with whom the children had a strong relationship. The court held that so long as the maternal grandmother resided with the mother, the court was satisfied that the mother could adequately care for the children. The mother also had support from her siblings.

The father was found not to be a credible witness because he avoided difficult questions at the hearing, acted in a manipulative manner, and despite his belief that the children were in danger with the mother did not bring his concerns to court. He did not satisfy the court that the mother had been abusive towards the children. Further, the father had not paid any child support, despite working and having the ability to pay. He applied for the Canada

Child Benefit and used the funds for himself. The court found that this is a recognized form of financial abuse and family violence as defined by the CLRA. Further, the father's decision to withhold the children demonstrated poor judgement and disregard for the children's welfare. The father showed no remorse for how these actions harmed the children and demonstrated to the court that he would put his own needs ahead of those of the children. Additionally, the father continuously disparaged the mother and her family at the hearing and smirked as the mother was testifying. The court had no belief that the father would facilitate the children's relationship with the mother if they were in his care. Conversely, despite the mother's feelings towards the father, she had facilitated a relationship between the children and the father.

The court acknowledged that there was a significant power imbalance between the mother and the father. The father had a university education and a job, while the mother had cognitive and mental health challenges that made her vulnerable to the father. The court found that the father had taken advantage of this power imbalance.

The court found that it was in the best interests of the children for the mother to have sole-decision making and primary care of the children. The father was granted limited parenting time, which was to be supervised. The father was ordered to speak English to the children to prevent him from undermining the mother, her family, or the children's sense of security by speaking in a language the supervisor would not understand. The court found that supervised parenting time was essential to safeguard the children while preserving a minimal relationship between the father and the children pending trial.

### ***Restraining Order***

The court granted the mother's request for a restraining order. The court found that the mother had both an objective and subjective basis to fear for her and the children's safety. The evidence showed that the father had engaged in physical, emotional, psychological, and financial abuse, consistent with the statutory definition of "family violence" in the CLRA. His behavior was characterized as controlling, coercive, and manipulative, and included withholding

the children, threatening to abduct them, financially exploiting the mother, breaching court orders, and verbally abusing the maternal family after a prior restraining order was in place. The judge also referred to the significant power imbalance between the father and the mother. The father had repeatedly used this imbalance to intimidate and control the mother, and the court expressly stated that it did

not trust him to respect boundaries or court orders at this stage. The order also prohibited the father from contacting or communicating with the mother, or from coming within a specified distance of her or the children, except as permitted through supervised access.

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## Conclusion

The court's endorsement suggests that evidence of coercive control, intimidation, and financial manipulation, even in the absence of physical harm, can and should meaningfully influence interim parenting arrangements. The court treated "family violence" broadly under the CLRA, recognizing psychological and financial abuse as central to assessing a parent's capacity to prioritize the BIOC and provide a safe, stable environment. The endorsement demonstrates that on a temporary motion, courts need not wait for a full evidentiary record before acting to protect children

and the vulnerable parent. Credible evidence of risk or controlling behavior justifies restrained parenting time, supervision, and sole decision-making responsibility for the non-abusive parent. The decision also underscores that a parent's noncompliance with court orders is an indicator of poor judgement and unsafe parenting. This case signals judicial willingness to prioritize safety on an interim basis, shifting the culture of temporary parenting orders toward a more protective, trauma informed approach that treats family violence as an immediate and ongoing risk factor.

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