

LEGAL BULLETIN

# Issue No. 58

Coercive Control and Parenting Orders: *MacDonald v Cannell*, 2021 ONSC 7769

## Introduction

This bulletin considers the Ontario Superior Court of Justice decision in *MacDonald v Cannell*,<sup>1</sup> which followed a four-day trial on decision-making authority, parenting time for the five-year-old child Ryker, and child support. The parties were not married and therefore their parenting dispute was governed by the *Children’s Law Reform Act* (CLRA). The primary issues were which parent should have decision-making responsibility, whether the child should reside with the father 5/14 or 7/14 nights during the school year, and how much child support the father should pay.<sup>2</sup>



This case is significant because it recognizes that ongoing parental conflict is harmful to children, and that allocating sole decision-making responsibility to one parent is an appropriate way to reduce parental conflict and protect children.

## Case background

The parties were in a relationship from 2016 to 2019.<sup>3</sup> The relationship was described as rocky and insecure from the beginning.<sup>4</sup> The father was highly critical of the mother and frequently disparaged her parenting. After the child was born, the father insisted that the child live in his home. The mother yielded and moved in with the father.

After separation, the parties had a 2-2-3 time sharing schedule. At trial, the father sought joint decision-making responsibility and a continuation of equal parenting time. The mother sought sole decision-making responsibility and primary residence of the child with reduced parenting time for the father.

## Decision-Making Authority and Communication Deficits

The court awarded the mother sole decision-making responsibility over the child. The court held that joint decision-making responsibility was not appropriate because the parents lacked the ability and willingness to work together, or to plan and problem-solve for

the benefit of the child efficiently and amicably. Joint decision-making responsibility should not be ordered in the hope that communication will improve, or because it makes parents feel better.<sup>5</sup> In this case, assigning a “final decision-maker” was necessary

<sup>1</sup> 2021 ONSC 7769.

<sup>2</sup> *Ibid* at para 5.

<sup>3</sup> *Ibid* at para 14.

<sup>4</sup> *Ibid* at para 20.

<sup>5</sup> *Ibid* at para 8.

to reduce conflict between the parents and protect the child. The court found that Ryker’s best interests were served by granting the mother final decision-making authority because she was the most even-handed, fair, and mindful of Ryker’s ongoing needs, and would promote Ryker’s relationship with his father.<sup>6</sup> The father’s communication style with the

mother was characterized by the court as crude, rude, personally invasive, demanding, critical, and unacceptable. Notably, the court raised concerns about the impact of the father’s verbal abuse on Ryker’s future treatment of people, especially women.<sup>7</sup>

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## Parenting Time and Stability

The court determined that the equal parenting schedule established after separation was not in the child’s best interests. While courts are generally reluctant to change a long-term parenting arrangement, they are less willing to maintain a “status quo” that has been unilaterally set by one of the parties. Here, the court found that the mother accepted but did not agree to the equal

time-sharing arrangement. Moreover, the court found that the child’s constant “back and forth” between the parties’ homes was causing the child to have tantrums and poor behaviour and was therefore not in his best interests. The parenting time arrangement was amended to slightly reduce the father’s parenting time and grant the mother primary residence of the child.

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## Findings on Coercive Control and Credibility

The CLRA directs courts to consider “family violence” when determining a child’s best interests. The court found that while there was no evidence of physical violence, the father exhibited “coercive and controlling behaviour” during and after the

relationship.<sup>8</sup> Examples of this behaviour included tracking the mother’s whereabouts, sending frequent invasive texts and calls, demanding immediate answers, and exerting financial control by terminating her health benefits.<sup>9</sup>

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## Child Support Determination

The father sought a reduction in child support on the basis that he was the sole provider for his children from a prior relationship. He also relied on section 9 of the *Child Support Guidelines* (CSGs) which allows a court to reduce a payor’s child support obligation where a child spends at least 40% of their time with each parent. The court concluded that Ryker should not receive less than his proper share of the father’s resources because the father had made a deal years

ago regarding child support for his other children.<sup>10</sup> The court also declined to reduce the father’s child support obligation according to section 9 of the CSGs. The father’s income was more than double that of the mother and the father was therefore in a better position to bear any increased costs of shared parenting. The father was also ordered to pay retroactive child support.

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<sup>6</sup> *Ibid* at para 9.

<sup>7</sup> *Ibid* at para 71.

<sup>8</sup> *Ibid* at para 68.

<sup>9</sup> *Ibid* at paras 33, 43, 52, 68.

<sup>10</sup> *Ibid* at para 85(b).

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