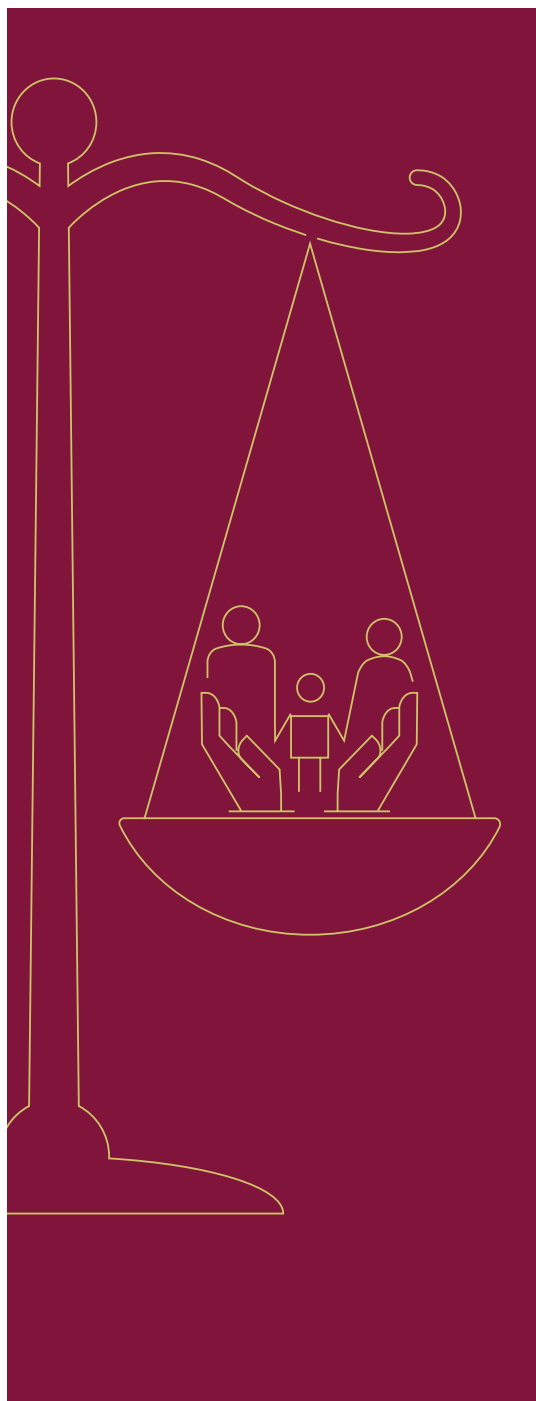


# LEGAL BULLETIN

Updates of Quebec Case Law in Family Law



## Introduction

In this bulletin, we'd like to take stock of recent decisions in Quebec law on parental time and conjugal violence. With the recent amendments to the Divorce Act, it's interesting to see how case law has adapted to the new requirements of the best interests of the child and the definition of violence.

The first five decisions presented concern disputes in which the court is seized of an application to modify parental time. Of these five decisions, the first four involved allegations of violence against the mother, while the fifth involved allegations of violence against the child. In the last two cases, the court had to rule on a request for permission to move out of the country with the parties' children.

## Droit de la famille - 212374, 2021 QCCA 1888 (CanLII)

In this decision, the appellant appeals against a judgment in which the Superior Court awarded custody of the parties' children to the respondent, granted him extended rights of access and ordered him to pay support and contribute to the payment of their special expenses. In particular, he argued that the trial judge had not properly analyzed the children's best interests, which in his view militated in favor of shared custody.

At trial (Droit de la famille - 212397, 2021 QCCS 5329), the plaintiff (respondent) alleged that she had been a victim of domestic violence. Several

facts reported in the decision support this conclusion: the plaintiff had been recognized as a victim of a criminal act in an IVAC decision, she was being followed by workers from a transition house, she had filed a complaint with the police on several occasions, the father denigrated the plaintiff to the children and one of their children had experienced worrying periods of anxiety during which she had self-harmed. In addition, at the mother's suggestion, the father began to consult resources, and took part in some fifteen meetings with an organization that helps violent men.

However, he put an end to the follow-up as he no longer considered it necessary. However, the court considered the complaint too incomplete and imprecise to conclude that domestic violence had occurred (para 35). These elements were nevertheless taken into account by the court, which awarded

custody to the mother, with access rights for the father.

According to the Court of Appeal, which reiterated that the applicable standard of intervention for determining what measures are in the best interests of the child calls for great deference, the trial judge had not erred in deciding to follow the recommendations of the psychosocial expert report. His decision was validly based, in particular, on the defendant's (appellant in the case) difficulty in managing his emotions, the unwise decisions he made with the children, and his parenting abilities determined to be deficient, in contrast to the mother's undeniable parenting ability. The judge made his own determination of the children's best interests after assessing the evidence, and there was no reason to modify the custody order. The appeal is therefore dismissed.

## **Droit de la famille - 221628, 2022 QCCS 3581 (CanLII)**

In this decision, the plaintiff wishes to continue to exercise sole custody of the children, while the defendant wishes to establish joint custody. To rule on custody, the Superior Court had to determine whether, in a context of domestic violence, the children's desire to live in shared custody.

The Court raised three points to reject the father's argument that the court should not consider his criminal record in deciding custody of the children. Firstly, in *Barendregt v Grebliunas*, the Supreme Court rejected the suggestion that domestic violence has no impact on children and has nothing to do with the parenting capacity of the perpetrator (para 72). Secondly, the criteria for child custody in the context of domestic violence adopted by the legislator in the new

sections 2 and 16 of the *Divorce Act* must be transposed to situations involving couples outside marriage (para 73-76). Thirdly, in *Michel v Graydon*, the Supreme Court recognized that some abusive fathers can, and do, instrumentalize the process in order to maintain dominance and control over their ex-wives (para 77-78). The evidence confirms the presence of moral, verbal and psychological violence against the plaintiff throughout their relationship, as well as after the couple's separation.

The Court concluded that the children's right to develop in an environment free of domestic violence outweighed their desire to spend more time with their father. It acknowledges that their desire is one factor among others to be taken into consideration, but it cannot be deemed decisive, notably

because it is “colored by the desire to put an end to the parental conflict, by offering their

father the shared custody he requested” (para 91).

## Droit de la famille - 221895, 2022 QCCS 4112 (CanLII)

In this decision, the Superior Court was seized of a divorce application in which the father sought equivalent time-sharing with the parties’ child, and the mother sought the majority of parental time with the child. The Court reiterated that there is no presumption of shared or equivalent parenting time; it is a matter of maximizing a child’s contact with each parent based on the child’s best interests and the parenting capacity of each parent.

During a trip by the parties to Guinea to visit their respective families, the father tore up the passports of the mother and their child, with the aim of abandoning them in this country, and returned alone to Canada.

It was only after several months during which she had to take numerous steps, including legal recourse in Guinea, that the mother managed to return to Canada. The Court determines that this situation in itself constitutes family violence within the meaning of the *Divorce Act* which, in itself, disqualifies the father from obtaining shared parenting time (para 103). The Court further recognizes that the mother was the victim of domestic violence on several occasions during the marriage and that the plaintiff continues to have a controlling attitude towards the mother. Therefore, the court grants the mother the majority of parenting time.

## Droit de la famille - 221841, 2022 QCCS 4010 (CanLII)

In this decision, the Court had to rule on the custody arrangements of the parties’ children. The father, the plaintiff, wanted to establish joint custody, while the mother, who alleged that she had suffered domestic violence and that the father behaved impulsively and violently, felt that supervision of the father’s parenting time was necessary.

The expert’s testimony indicated that the father had made excellent progress, trusting the counsellors he consulted regularly and not denying the episodes reported by the mother concerning his impulsiveness. The court emphasized that the expert had not identified any domestic violence “intended to destroy the other”, and described this form of violence as situational. However, we question the fact that these episodes took

place mainly under the influence of alcohol, in order to minimize their importance (para 24). Furthermore, according to the expert, the father poses no danger to the children. Lastly, for the past two years, the father has complied with all the recommendations made to him by the court, and the three specialists he has met over the years have been positive and assertive about his ability to manage his emotions and his parenting skills.

Thus, in the court’s opinion, the element of domestic violence should not be a determining factor in the decision whether or not to establish joint custody. The court therefore endorsed the expert witness’s recommendation and awarded joint custody to the father.

## **Droit de la famille — 22678, 2022 QCCS 1514 (CanLII)**

In this decision, the Court is seized of a request to modify the currently equal division of parental time. The plaintiff wishes to obtain the majority of parental time and reduce the father's time to every other weekend. In support of her request, the mother pleads that significant changes have occurred in their daughters' situation, one of which draws our attention: the educational methods used by the father. She criticizes him for spanking, slapping, squeezing the children's arms and wrists and shouting at them, claiming that she would never have agreed to joint custody if she had known about it at the time of the divorce (para 58).

The evidence preponderantly establishes the mother's allegations. However, according to the Court, it is not uncommon for parents to disagree about educational methods, including the use of corporal punishment (para 118). The Court recalls that the use of spanking and the squeezing of a child's arms

or neck are not per se unacceptable in law. In such situations, the whole context must be taken into account. Although in this case, the court concludes that the father occasionally uses excessive force when it leaves marks, which constitutes a fault, these abuses are not chronic or frequent. In addition, the father recognizes that he must not resort to corporal punishment and is taking steps to stop doing so, such as consulting a psychologist and a social worker. The court determines that the girls are safe with him and that his parenting skills are established.

The court also examined the other elements raised by the mother (such as Mr.'s relocation, his dating habits, the anxiety of one of their children and the girls' desire to stay more often with their mother) and concluded that there had been no significant change in the girls' situation requiring a review of the sharing of parental time.

## **Droit de la famille — 221544, 2022 QCCA 1206 (CanLII)**

The Court of Appeal dismissed a motion for leave to appeal a judgment rendered during the proceedings authorizing the respondent to move to France with the parties' children. Originally from France, the parties have been living in Quebec since 2015. In March 2022, they agreed to return to France with their children, setting August 2, 2022 as the date of departure. In June, the respondent leaves the family home to go to a shelter for victims of domestic violence, and in July, the petitioner files for divorce. The respondent presents a motion for permission to move with the children, which is heard on August 19, 2022.

Such a judgment, rendered during the

course of proceedings, may be appealed with permission if it partially resolves the dispute or causes irreparable prejudice to a party. Permission to appeal a judgment concerning a provisional measure is granted only "sparingly, if at all" (DF - 221355) and, to obtain it, the petitioner will generally have to show that the judgment suffers from obvious weakness. In the present case, the applicant failed to convince the court that he met the criteria for permission to appeal. Among the reasons given, the Court points out that the fact that the respondent is moving with the children does not constitute irreparable harm, since the judge hearing the merits of the case will not be bound by the judgment. In addition, the Court was of the opinion

that the trial judge had fully analyzed the children's best interests, referring to the

*Divorce Act*, recent Supreme Court decisions and the allegations of violence.

## **Droit de la famille - 221037, 2022 QCCS 2288 (CanLII)**

In the context of divorce proceedings, the court is seized with a request for a major move and a claim for damages for domestic violence. The mother wishes to return to France, her native country, to be closer to her family in order to rebuild herself, work for the family business and ensure a peaceful childhood for her child.

Although, on the issue of domestic violence, the court determined that the evidence presented did not support a finding that the father had committed a fault deserving damages, the court authorized the mother to move to France with the child, since it determined that this was in the child's best interests. A number of factors support the court's conclusion: the mother has been the primary parent since the child's birth, she

has provided the child with essential daily care, and she has acted as the psychological and emotional parent. Thus, the mother's need for emotional support must be considered essential, and the child's well-being goes hand in hand with improving the mother's financial, social and emotional situation. The child's age is also taken into consideration; as he or she has not yet integrated the school system in Quebec, this is the right time to move and start school in the French school system. Acknowledging that there is no perfect solution in this case, the judge determined that the father should benefit from at least six weeks of vacation time during the summer with the child, and weekly contact through technological means.

This bulletin was prepared by:

Daphnée B. Ménard



Public Health  
Agency of Canada

Agence de la santé  
publique du Canada