

LEGAL BULLETIN

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Coercion and Control in Family Law Cases: *Armstrong v Coupland*, 2021 ONSC 8186.

Introduction

High-conflict family law cases often come before the court several times before a Final Order is made, particularly in cases where family violence concerns are present. In these cases, the court must establish a parenting regime that protects the parties from ongoing family violence and serves the best interests of the child. This task is complicated when violence continues after the parties separate, as in this case. In this case, the court's decision was aimed at protecting the parties from ongoing abuse and mitigating the effects of family violence on the child.



Background

The parties were in a relationship from 2016 to 2019 and again from February 2020 to September 2020.¹ The parties have one child, Eliza, who was almost three years old when the case was heard.² After the parties separated, the mother supervised the father's parenting time because of his "substance abuse, his anger issues, uncertainty about his housing situation and threats that he had made that he would not return Eliza to her care after visits."³

The father brought an application seeking unsupervised parenting time, parenting time during the Christmas holidays, and a final order determining decision-making responsibility ("DMR") in April 2021.⁴ The first hearing, in April 2021, resulted in a temporary Order that the father's parenting time would continue to be supervised.⁵ The parties

engaged a supervision service.⁶ In August 2021, the service withdrew involvement due to difficulties dealing with the father.⁷

Following the withdrawal, the father brought a motion in September 2021 for unsupervised parenting time.⁸ On a temporary basis, the court allowed the father to have unsupervised parenting time for three 3-hour periods per week.⁹ The purpose of allowing the father to exercise unsupervised time on a temporary basis was to act as a test-run before the parties returned to court in December 2021.¹⁰

The father failed to abide by the September 2021 order. In November 2021 the father threatened to withhold Eliza. The court noted that the father emailed the mother's lawyer to tell her that he would

¹ *Armstrong v Coupland*, 2021 ONSC 8186 at para 6.

² *Ibid* at paras 1, 6.

³ *Ibid* at para 7-9.

⁴ *Ibid* at para 2.

⁵ *Ibid* at para 10.

⁶ *Ibid*.

⁷ *Ibid* at para 13.

⁸ *Ibid* at para 14.

⁹ *Ibid*.

¹⁰ *Ibid* at para 34.

be keeping Eliza from Sunday to Thursday each week, despite the September order.¹¹ Consequently, the mother denied the father's parenting time until she could consult with her lawyer and return to court. The father proceeded to search the mother's and the maternal grandmother's homes for the child.¹²

The father also sent frequent aggressive emails and text messages to the mother and her lawyer. He contacted the mother's lawyer on evenings and weekends and demanded a prompt response. He implied that the mother's lawyer was incompetent, called her "a blight on Family Law," and referred to her as his "next project."¹³

The parties returned to court in December 2021. The mother requested that the court vary the September 2021 order to reinstate the supervision of the father's parenting time.¹⁴ She also sought a restraining order (this order was denied, however some conditions were nonetheless imposed). She indicated that the

father had "persistently pressured her to permit extended and unsupervised time; had made constant last-minute demands; imposed unreasonable time limits for responses; and has threatened to keep the child from her."¹⁵

The mother's materials emphasized the father's domestic violence towards her and suggested that the father continued using illicit substances.¹⁶ She submitted that the father had a history of coercive and controlling behaviour that had impacted her mental health.¹⁷ She had taken time off work and was genuinely fearful that Eliza would suffer "emotional and potentially physical harm" if left in the father's unsupervised care.¹⁸ The father denied all allegations concerning his behaviour, mental health, and substance use.¹⁹

Because the parties were never married, the dispute was governed by the *Children's Law Reform Act* ("CLRA").²⁰

A Finding of Family Violence

Justice Chappel held that the father's behaviour constituted family violence within the meaning of the CLRA.²¹ Specifically, the court noted that his communications with the mother and her lawyer were "inappropriately aggressive, demanding, and threatening" and designed to undermine the mother's relationship with her lawyer.²² The father was found to be demanding and coercive with the mother during parenting exchanges. The court held that this amounted to a **"pattern of threatening, coercive and controlling behaviour."**²³

Justice Chappel emphasized that family violence can have a profound effect on children. She stated that:

"[The] consequences can be both direct, if a child is exposed to the family violence, or indirect, if the victimized parent's physical,

emotional and psychological well-being are compromised, since these consequences in turn often negatively impact that parent's ability to meet the child's physical and emotional needs."²⁴

This is particularly important in *Armstrong v Coupland* as the mother's mental health had been affected by the father's intimidating and abusive behaviour. The court found that the father's abusive conduct was so significant that it required the mother to take time off work and reside with family members to cope.²⁵

Justice Chappel held that the father's continued combative behaviour had "wreaked havoc on the [mother's] life and seriously impacted her ability to focus on caring for Eliza."²⁶ The father's persistent requests for more parenting time resulted in a

¹¹ Ibid at para 35.

¹² Ibid at para 17.

¹³ Ibid at para 37.

¹⁴ Ibid at para 15.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid at para 16.

²⁰ RSO 1990, c C-12 [CLRA].

²¹ *Armstrong v Coupland*, supra note 1 at para 39.

²² Ibid.

²³ Ibid.

²⁴ Ibid at para 21.

²⁵ Ibid at para 39.

²⁶ Ibid at para 35.

situation wherein he “simply began to dictate changes to the September 10, 2021 order without regard for whether the [mother] consented or not.”²⁷ The mother became anxious during exchanges because of the expectation that the father would pressure her in front of the child.

The court found that the father’s **“inappropriate conduct since September 2021 is not isolated in nature; the evidence indicates that the [father] has a long-standing history of engaging in family violence.”**

The father had been controlling and coercive both during the relationship and post-separation. Moreover, this behaviour had a spillover effect that detrimentally affected Eliza: Eliza began to exhibit

“uncharacteristically violent behaviour” since her father began unsupervised parenting time.²⁸

After making a finding of family violence, Justice Chappel ordered that the father’s parenting time be supervised by a professional agency. The mother was awarded sole DMR and primary residence of Eliza. The order decreased the father’s parenting time to no more than twice per week for two hours each time.²⁹ Justice Chappel highlighted that the CLRA, which directs the court to craft a parenting order that allows a child to have as much time with each parent as is in their best interest, does not create a presumption in favour of equal parenting time.

The Court’s Response to The Father’s Coercion and Control

Justice Chappel details the father’s concerning behaviour at paragraph 37 of the judgment. She noted that the father failed to acknowledge any of the serious concerns presented in the mother’s evidence.³⁰ The court found that there was “no evidence that he has engaged in any counselling or consistent, long-term substance abuse treatment and relapse prevention services, or that he recognizes a need to do so.”³¹ The court did note that it would be possible for the father to have unsupervised parenting time in the future, if he accessed services to address the concerns about his behaviour and demonstrates progress in doing so.³²

The court stressed that the September 2021 order provided the father with the opportunity to showcase his co-parenting abilities.³³ However, the father used the unsupervised parenting time to “perpetuate his history of family violence against the [mother].”³⁴ This behaviour was sufficient to warrant a regression in his parenting time and the reinstatement of a supervision

order. Notably, the court emphasized that the father’s family violence towards the mother had negatively affected the child:

“[The family violence] has caused a great deal of distress and disruption for Eliza’s primary care-giver, which has in turn been detrimental to Eliza’s overall well-being and stability. Eliza has been showing signs of emotional distress since the unsupervised visits began in the form of violent behaviour that she never exhibited in the past”³⁵

It is also worth noting that the court admonished the father’s treatment of the mother’s lawyer. Justice Chappel characterized the father’s communications with the mother’s lawyer as “demonstrat[ing] extremely poor impulse control and a general sense of dysregulation.”³⁶ The judgment specifically states that this behaviour contributed to a finding of family violence.³⁷

²⁷ Ibid.

²⁸ Ibid at para 42.

²⁹ Ibid at para 43.

³⁰ Ibid at para 42.

³¹ Ibid.

³² Ibid at para 33.

³³ Ibid at para 34.

³⁴ Ibid at para 43

³⁵ Ibid.

³⁶ Ibid at para 36.

³⁷ Ibid at para 39.

Takeaways

If a parent engages in family violence by undermining the other parent's relationship with their lawyer, intimidating and threatening the other parent to the point of causing anxiety, and disregarding prior court orders, the court may decrease their parenting time. Moreover, in some cases, the court may find that it is in the child's best interest to order supervised parenting time. This is more likely where a party has demonstrated they cannot be trusted to have unsupervised parenting time.³⁸

Some legal commentators have highlighted Justice Chappel's emphasis on protecting the solicitor-client relationship.³⁹ Abuse of counsel may constitute family violence. This sends the important message that family violence can be perpetrated against third parties in addition to those within the family unit.

³⁸ Ibid at para 43.

³⁹ See, for example, Russell Alexander, "Family Law: An Expansive Concept" (April 2022), online (blog): *Russell Alexander Collaborative Family Law* <<https://familyllb.com/2022/06/16/family-violence-an-expansive-concept/>>; Pamela Cross, "Recent case: Abuse of counsel may amount to family violence" (13 May 2022), online (blog): *Luke's Place* <<https://lukesplace.ca/recent-case-abuse-of-counsel-may-amount-to-family-violence/>>.

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