

LEGAL BULLETIN

Issue No. 35

The impacts of post-separation family violence on the victim and the modulation of parental rights: 2485, 2024 QCCS 264 ([*CanLII*](#))

Context

Post-separation family violence exerted by an ex-partner against the victim can take many forms and lead to the suspension of parental rights as well as a communication ban. This is the case in the decision discussed in this analysis.

The parties are the parents of three minor children, including X, born in 2010, Y in 2013 and Z in 2014. They separated on October 14, 2016, and the mother, as plaintiff, obtained custody of the children. At the same time, she filed a complaint against the father, who is the defendant in this case. The man was convicted of assault and sexual assault against the plaintiff. He received a one-year prison sentence and was registered as a sex offender for ten years. Upon his release from detention, a judgment dated April 11, 2018 established joint custody of the children with a weekly exchange on Fridays.



In November 2022, each party petitioned the Court for custody and access rights. On November 15, 2022, a protection order was issued by the Court. In accordance with the wishes of child X, aged 12, custody was entrusted to the defendant, with a right of access granted to the plaintiff. The same measures were applied to children Y and Z, whose custody was also awarded to the defendant, while the plaintiff was granted a right of access to the children. In addition, the parties signed “voluntary measures” given that the three children were in a “situation in which their security and development was in danger following psychological ill-treatment and numerous absences from school”.

To ensure continuity of the proceedings, the Court ordered a psychosocial assessment with the approval of the parties.

Psychosocial assessment, position of the DPJ and decision of the Court

Pending the results of the court-ordered psychosocial assessment, the specialized educator from the Direction de la Protection de la Jeunesse (DPJ), who has been working with the children since September 21, 2023, was heard.

She made several observations during her hearing:

- The children have been absent from school more frequently since the father has had custody of

them.

- The defendant interferes with the relationship between the children and their mother and adopts “irascible behaviour”.

The observations of the specialized educator from the DPJ are in line with the conclusions of the psychosocial assessment.

The expert report notes that the defendant and her children are victims of “post-separation” family violence on the part of the defendant. The latter uses various tactics to exert power over the plaintiff, using her three children as a “vehicle for post-separation violence.” He “denigrates” the mother in front of the children and calls her parenting skills into question, which has contributed to the children’s estrangement from their mother.

The family violence suffered by the plaintiff during her relationship with the defendant did not end with the separation, but continued in the form of coercive control.

The plaintiff’s behaviour, which could be considered to stem from post-separation conflict, is simply the result of the violence she has suffered.

The expert report contains several recommendations in this regard, including:

- A temporary suspension of the defendant’s rights of access to his children;
- Follow-up of the defendant’s violent behaviour “by a helping relationship professional and in order to develop his parenting skills;”
- Psychosocial support for the plaintiff in her role as a parent;
- Psychosocial support for the plaintiff in her parental role.

The Court’s verdict followed the recommendations of the psychosocial assessment, and custody of children X, Y and Z was therefore awarded to the plaintiff. The defendant’s access rights were suspended, with a ban on communicating in any way with the children or with the plaintiff. A recommendation for psychosocial follow-up was sent to the defendant and the plaintiff.

Conclusion

After considering the matter, it appears that in a context of family violence, children’s “rejection” of their mother can be caused by manipulation orchestrated by the father and resulting in a “dynamic” akin to that of “alienated children.” In any event, the Court did not find that there was a situation of alienation, but confirmed the need to temporarily remove the children from their father in order to help them and their mother rebuild their lives.

The psychosocial assessment on which this decision was based also showed that family violence can induce post-traumatic stress in the victim and lead to unusual behaviour. Under such circumstances, we need to take into account the person’s status as a victim and the psychological impact her marital experience may have had on her when analyzing her behavior in and reactions to a stressful situation.

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