

**CITATION:** Abesteh v. Eagle, 2020 ONSC 2086  
**COURT FILE NO:** FC-20-575  
**DATE:** 2020/04/01

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** Farhad Abesteh, Applicant

**AND**

Carol Eagle, Respondent

**BEFORE:** J. Mackinnon J.

**COUNSEL:** Steven Greenberg, for the Applicant

Alison Boyce, for the Respondent

**HEARD:** April 1, 2020

**ENDORSEMENT**

[1] The applicant husband asks for a determination of urgency for his proposed motion for exclusive possession of the home and a restraining order against the respondent. The respondent opposes but will wish to argue for spousal support on an urgent basis if his motion is allowed proceed.

[2] The father's request is based heavily on his assertions that the mother is a chronic alcoholic who is daily intoxicated and verbally abusive to himself and their 13-year-old child. His allegations are supported by an affidavit from the older son who is 19 years of age and lives away from home for university.

[3] The mother denies the allegations and puts forward her own version of a husband who has tried to marginalize her from the lives of both children and acted unilaterally in his efforts to get and keep her out of the house.

[4] I have determined that the motion is urgent. The mother does not address the alcohol issues other than a general statement to say she does not abuse alcohol in the manner he alleges. Although she raises issues about the admissibility of the recording submitted by the father on its

face it contains a lengthy abusive diatribe by the mother that would clearly be contrary to the child's interests to be exposed to. Independent evidence is also contained in the Ottawa Police Occurrence report. It does not mention intoxication, but it does state that the mother was ranting throughout the police involvement.

[5] It appears from the material that the parties have been living separate and apart in the matrimonial home since December 2019. The recent events that gave rise to the motion relate to the applicant's decision to take the 13-year-old to Montreal against the respondent's wishes based on the COVID-19 recommendations against non-essential travel, and her uncertainty as to when they would return. That said her decision to call 911 was an overreaction and ill advised. Although the father was not entitled to change the locks after she left the home voluntarily for the one night, his reasons for doing so and her decision to return several days later with police assistance, all point to the high level of tension and conflict in the home at this time.

[6] Pending the hearing of the motion I urge the parties to heed the advice of the Chief Justice in his Notice to the Profession outlining the Court's response to the COVID -19 crisis in Ontario by using their best efforts to reach an out of court settlement of their current issues. Each has retained counsel and ideally settlement discussions should commence now with counsel's assistance.

[7] The suggestion to seek an OCL appointment and clinical investigation has merit but is not a short-term solution. The OCL has advised that it will prioritize limited resources for the time being to urgent, complicated and high conflict custody and access disputes. The OCL will not be providing Voice of the Child Reports until further notice.

[8] I suggest that the parties consider a private retainer of a qualified social worker to prepare a voice of the child report for them so that they and if need be the court can be informed of their son's views and preferences with respect to his residential arrangements. This would require a social worker who would meet the child by FaceTime, Skype etc. which I would hope could be facilitated.

[9] Costs are reserved to the motion judge.

Justice J. Mackinnon (this is my electronic signature)

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J. Mackinnon J.

**Released: April 1, 2020**