ONTARIO

SUPERIOR COURT OF JUSTICE

COURT FILE NO.
FC-26-1868-00

ENDORSEMENT

APPLICANT(S):	KAYLA TORCATO	
COUNSEL:	AMANDA TAERK	AMANDA@TAERKFAMILYLAW.COM
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RESPONDENT(S):	ADAM DA SILVA TORCATO	
COUNSEL:	ANUSHA GUNARAJAH	ANUSHA@LAYNEFAMILYLAW.COM

Date: 17 November 2026

Heard November 10, 2026

1. On October 23, 2026, the Applicant filed an urgent motion that was before this Court. Based on the evidence filed, I made parenting Orders, a restraining Order and an Order for exclusive possession of the matrimonial home. I then set November 10, 2026 as the return date and provided the Respondent with an opportunity to file his own Affidavit.

2. The parties were married.

3. There are three children of the relationship, namely: Sofia Torcato, born August 6, 2013, Orlando Torcato, born February 12, 2015, and Myla Torcato, born May 23, 2017.

4. The Court was advised today that the Applicant wished to withdraw her motion, terminate the restraining Order, and that she was seeking to reconcile with the Respondent.

5. It was her submissions that she notified Counsel for the Respondent on November 6, 2026 of her desire to withdraw, however, the parties could not agree to terms as the

Respondent was seeking costs. Counsel for the Respondent complained about receiving conflicting information and no formal notification of the withdrawal.

6. At the outset of the hearing today, the Court heard submissions on the issue of costs and whether the motion should be dismissed with prejudice.

7. The Respondent sought costs in excess of $14,000 for this short motion. The Applicant took the position that no costs were payable, or alternatively, that a modest award be made in the amount of $1,500 payable over a period of 90 days.

8. The Respondent's position relating to the with prejudice nature of the dismissal was difficult to follow.

9. The Applicant made numerous, very serious, allegations in her motion material that was before me on October 23, 2026. Those allegations satisfied me that she was fearful for her safety and that a restraining Order was appropriate at the time. No updating Affidavit was filed as the Court made an Order that no reply was to be filed.

10. The Respondent took the position that the Applicant withheld material facts in her motion, and he denied that there was any immediate danger justifying the motion proceeding on an *ex parte* basis.

11. The Respondent claimed to take accountability for "incidents" that took place during the relationship; but then pointed out that the Applicant "chose" to resume their relationship thereafter.

12. He acknowledged pushing and hitting the Applicant in 2020. He expressed regret and he participated in an anger management program thereafter.

13. In January 2025, the Respondent acknowledged reacting to the Applicant hiding his car keys by "emptying the contents of closets and wardrobes" in the presence of the children. He denied threatening or touching anyone and denied any damage being caused to the property.

14. The Respondent acknowledged "temporarily blocking" the Applicant's access to the credit card she used; but claimed to have restored access before the *ex parte* motion was filed.

15. The Respondent wished to draw the Court's attention to evidence that he stated was inconsistent with the Applicant's claim of being fearful, as follows:

    a. She did not revoke her consent for him to reside in the home pursuant to the Peace Bond between 2025 and 2026.
    b. The parties were intimate on September 20, 2026.
    c. On September 27, 2026, the Applicant hid the Respondent's car battery charger that he needed to be able to start his truck.

d. On October 16, 2026, she turned on the lights in his room and played loud music.
e. She did not contact the police to report the most recent allegations set out in her motion material.
f. The Applicant's communication between Counsel on October 14, 2026 did not list an allegation of fear or violence.
g. The Applicant recently communicated through the children that she wanted the Respondent to return to the home and that she had made a mistake.
h. The Applicant had access to her own finances, earned her own income and had her own bank accounts and she managed the family finances.

16. Not only was the Applicant not fearful, he claimed; but she also behaved badly. He alleged that the Applicant frequently belittled and disparaged him – allegedly in an attempt to provoke him into "reacting."

17. The Respondent wished to resume a meaningful relationship with the children, pursuant to a shared parenting schedule.

Analysis:

18. The Respondent's allegation that the Applicant withheld material facts or made omissions in her motion material cannot be determined on the record before me.

19. That said, the material facts and omissions he alleges, appear to be *disputed* facts as between the parties.

20. Many of the material facts before me were not disputed.

21. The undisputed material facts that go to the heart of this motion are as follows:

a. There have been incidents of violence perpetrated by the Respondent against the Applicant, including in front of the children.
b. The police have been involved with the family and charges were laid against the Respondent.
c. The Respondent emptied cupboards and wardrobes in frustration in January 2025 in front of the children. His denial that this was not abusive or threatening demonstrated a lack of insight – particularly in the context of the historical assault that he did not deny.
d. The Respondent interfered with the Applicant's ability to use her supplementary credit card in August or September 2026. His reinstatement of her access later is not relevant.

22. The Respondent's repeated attempts to suggest that the Applicant was not fearful, or at risk, due to her choice to return to the relationship, her consenting to contact despite the Peace Bond and her failure to contact the police (in some instances, but not all) rests on stereotypes of how a victim of violence is expected to behave. The Court must not rely on such stereotypes in its review of the evidence.

23. The Court asked Counsel whether the Court was required to permit the withdrawal of the motion or to terminate the restraining Order upon request, and both Counsel acknowledged that the Court retained the discretion to make any such determination.

24. Based on the evidence before the Court me, I am not satisfied that it is appropriate to terminate the restraining Order or to set aside the Order of exclusive possession at this time.

25. The Court is very concerned about the vulnerability of the Applicant based on the undisputed evidence before me.

26. The Court is not prepared to shift the responsibility of the Respondent's behaviour onto the Applicant. The Respondent is a grow man who is fully responsible for his behaviour - 100% of the time.

27. The Court is adjourning this motion to give both parties an opportunity to seek professional support to address the toxic dynamics that exist in the relationship. The Respondent requires support in managing his behaviour and the Applicant requires support from a professional who has experience working with people who have been subjected to trauma.

28. The Court is mindful that declining to set aside/terminate the Orders at the request of the Applicant could be viewed as paternalistic; however, I do not have any evidence from the Applicant to explain why she has changed her mind about the Orders. Further, the evidence of the Respondent reinforced the Court's concern.

29. I am scheduling this matter to return to me with updated evidence.

30. Costs are not appropriate in the circumstances of this case.

31. Regarding parenting, the Court has insufficient evidence to support the Respondent's request for a shared parenting plan, however, the Court is prepared to vary the previous terms to allow for more frequent parenting time and for additional parenting time to take place, as agreed between the parties through Counsel.

ORDER

1. This is a Temporary, without prejudice, Order.

2. This Order is made pursuant to the *Divorce Act and Family Law Act*.

3. The Orders of Justice Daurio dated October 23, 2026 shall continue to be in effect, subject to the following variation to the parenting schedule only:

a. The Respondent's parenting time shall be expanded to take place each Saturday from 10:00 a.m. to 8:00 p.m. and on each Wednesday evening, pick up from school to 8:00 p.m.

b. Any further or other parenting time as may be agreed to between the parties, via Counsel and in compliance with the terms of the restraining Order.

4. The motion shall be adjourned and return before Justice Daurio on **December 16, 2026 at 10:00 a.m., virtually**.

a. The Applicant shall serve and file an updating Affidavit and draft Order containing a proposed parenting plan no later than December 8, 2026.

b. The Respondent may serve and file an updating/responding Affidavit and draft Order containing a proposed parenting plan no later than December 14, 2026.

5. This Endorsement is deemed to be an Order of the Court that is operative and enforceable without any need for a signed or entered, formal, typed Order.



The Honourable Justice A.M. Daurio