

31807 **Mohammed Refaat Loubani v. Rana Riad Yassin**  
(B.C.) (Civil) (By Leave)

Family Law - Interim custody - Jurisdiction - *Parens patriae* - Whether the Queen's courts have a right founded under s. 47 of the *Family Relations Act* or under the Crown's *parens patriae* jurisdiction over children who are themselves Canadian citizens, to exercise jurisdiction by making an interim order for custody when the children at the time of the making of the order were neither "habitually resident" nor physically present within the jurisdiction - *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 47

The mother, Yassin and the father, Loubani are both Canadian citizens. The parties married in 1999 and moved to Saudi Arabia shortly after their marriage. They have two children of the marriage and both children are Canadian citizens. In November 2004, the parties separated and after Yassin sought a divorce in the Saudi court system, the divorce was granted in October 2005. At the time of trial, both parties and the two children of the marriage were in Saudi Arabia. The children were living with their mother. Yassin sought an order in the British Columbia provincial court for interim sole custody of the children to meet the requirements of the Government of Canada for issuing passports to the children. The Canadian Embassy had taken the position that it would issue passports for the children only if Loubani consented or if there was a court order granting Yassin custody of the children. Yassin's position was that she was at risk of losing the children by being deported from Saudi Arabia without them. She claimed that she had a 30-day residency permit and faced possible deportation each time it had to be renewed. Loubani's position was that the mother's application was a poorly disguised attempt to enlist the assistance of the Canadian courts in abducting the children to Canada or some other location.

The chambers judge held that it was in the best interests of the children to make an interim custody order in Yassin's favour and the danger that she would be deported and separated indefinitely from the children was of overriding importance. Pursuant to s. 47 of the *Family Relations Act* Yassin was granted interim sole custody of the children. The Court of Appeal dismissed Loubani's appeal but granted Yassin's cross-appeal by omitting the reference to s. 47, having found that the court had jurisdiction under s. 5(3) and the court's *parens patriae* jurisdiction.

April 12, 2006  
Supreme Court of British Columbia  
(Kelleher J.)

Respondent granted interim sole custody of the children pursuant to s. 47 of the *Family Law Relations Act*

November 15, 2006  
Court of Appeal for British Columbia  
(Southin, Rowles and Ryan JJ.A.)

Appeal dismissed; cross-appeal allowed

January 12, 2007  
Supreme Court of Canada

Application for leave to appeal filed