



Novel Coronavirus (COVID-19)

Family Law

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Post-Separation Parenting in the Wake of COVID-19

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To say that the outbreak of COVID-19 has created confusion and uncertainty for many family law clients, many of whom were already struggling with the adjustment to post-separation parenting, would be an understatement.

Family lawyers have received a flood of inquiries over the last couple of weeks from many anxious parents who are uncertain how to balance the health and safety of their children and the community at large, while continuing to uphold their existing (and in many cases, court-ordered) parenting arrangements as the global pandemic continues to unfold.

To make matters more complicated, many of the Ontario courts have suspended their regular operations effective March 17, 2020 and are only hearing “urgent” matters at this time. While the “urgency” question and how it is being interpreted by the courts is an important issue that will be the subject of another Torkin Manes LegalPoint, parents and lawyers alike are encouraged to consider the following general guidelines based on what we know so far from the post-COVID-19 case law:

1. Uphold existing arrangements unless there is compelling evidence of risk

Justice Alex Pazaratz in the very recent case *Ribeiro v. Wright* set out a helpful roadmap for dealing with cases where one parent seeks to suspend the other parent’s parenting time on the basis of risk relating to COVID-19. While the decision was only released on March 24th, it has already been upheld by multiple judges in other cases since that time.

While Pazaratz J. focuses his reasons on the “urgency” test and when it is met, his clear message to parents is that existing parenting arrangements and schedules, which are presumed to be consistent with the best interests of children, should continue notwithstanding COVID-19, and the mere existence of the pandemic will not automatically result in a suspension of in-person parenting time.

In other words, any parent seeking the suspension of the other parent’s parenting time will be required to bring an emergency motion and adduce specific and cogent evidence of behaviour by the other parent that is inconsistent with COVID-19 directives. As the post-COVID case law has shown (at least so far), this is a very high threshold to meet.

2. Follow government directives and those of other “authoritative” sources

We are all familiar with the advice governments and health authorities have provided repeatedly since the outbreak of COVID-19 (among other things, to observe social distancing, limit social interactions, and follow proper hand washing and sanitization practices).

Parents should only rely on authoritative sources such as the federal, provincial and municipal governments, the Centre for Disease Control and the World Health Organization in creating their own guidelines to follow - unreliable media sources and rumours on social media will not do. Parents must also be warned that just because the other parent has different views on suggested (but not mandated) practices, they will not be justified in withholding the children from the other parent just because their own version of “best practices” is not followed.

3. Timely (but not excessive) communication

Given the directives of health officials regarding social distancing, transparency and open communication between parents as their children are transferring from one household to the other has become more important than ever. This is especially true where one parent is a front-line health care worker or where certain members of one parent’s household are especially vulnerable to infection by the virus. Ideally, parents should be 100% transparent with one another regarding any suspected or confirmed exposure to COVID-19 and establish a protocol on what practices they will each observe to limit exposure. If one parent refuses to participate in such a process, the other parent should take the initiative to suggest best practices, as guided by directives from government and other official health authorities.

Notwithstanding the increased need for communication, a reasonable expectation of privacy should be preserved and parents should be cautioned not to expect or demand excessive contact with one another. Juggling a remote work environment with increased childcare responsibilities during school closures will invariably increase stress and tension for everyone involved. Rather than bombarding the resident parent with multiple calls or e-mails each day, parents should be encouraged to follow best practices on the frequency of communication, which are often guided by their children’s unique needs as well as their ages and stages of development. This means, for instance, that in many cases, school-age children will not need to speak with the non-resident parent on Skype or FaceTime multiple times each day to report each meal they ate or what activities they were doing. One short e-mail or text at the end of each day to confirm the children are healthy and safe or to share important updates will do.

4. Find creative solutions to lost parenting time

If one parent has identified exposure to COVID-19 while the children are in the other parent’s care, there is no way around the mandatory requirement that they self-isolate in accordance with the directives from the government and health officials. This means, unfortunately, that many parents will see disruptions to their parenting time and creative solutions to ensure the self-isolated parent maintains regular contact with the children will be necessary. While there is no one-size-fits-all solution, the case law flowing from Pazaratz J.’s decision in *Ribeiro v. Wright* sets the clear expectation that parents are to be flexible about changes to parenting arrangements during this turbulent time, whether this means agreeing on make-up time, adjusting the regular schedule entirely on a temporary basis, or facilitating video calls as an alternative to in-person contact.

If you have questions about the impact of COVID-19 about your parenting issues, please contact a

member of our team. For more information about dealing with COVID-19, please visit our **COVID-19 Resource Center**.

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