

CO-PARENTING DURING COVID-19

*April 1, 2020; By Kelly Watson**

Many separated parents are wondering: How does the COVID-19 crisis affect our parenting schedule? The short answer is: it doesn't. In the recent case of *Ribeiro v. Wright*, Justice Pazaratz of the Ontario Superior Court of Justice affirmed that parenting schedules are to continue as normal.¹ "In most situations there should be a presumption that existing parenting arrangements and schedules should continue, subject to whatever modifications may be necessary to ensure that all COVID-19 precautions are adhered to – including strict social distancing."²

"No matter how difficult the challenge, for the sake of the child we have to find ways to maintain important parental relationships – and above all, we have to find ways to do it safely."³ As always, health and safety of the child(ren) will always be the priority. If either parent had recently traveled outside Canada in the last 14 days and is therefore subject to the self-isolation order in effect, then that parent would not be able to see the child(ren) until the 14-day period has ended. If the other parent has been diagnosed with COVID-19, is awaiting results of a test, or is experiencing symptoms, then it is reasonable to suspend access until 14 days after the parent has been given the "all clear". The courts are following the recommendations of the government.

What if I do not want the children to be with my ex during this time because I do not trust that he/she will practice appropriate social distancing? The short answer is: regular parenting schedules continue. In the recent case of *Zee v. Quon*, Justice Nakonechny confirmed that a parent unlawfully withholding a child will be ordered by the court to return the child to the other parent.⁴ Justice Pazaratz also confirmed that a vague concern that the other parent may not practice appropriate social distancing is not sufficient to unlawfully without your child from their mother/father.⁵ The takeaway is if you have a court order or a separation agreement with regards to parenting, you must continue to follow that court order or agreement, subject to the limited scope of exceptions discussed above.

Justice MacPherson acknowledges parents are "understandably worried" but cautioned, "total removal of one parent from any child's life must be exercised cautiously".⁶ In *C.Y. v. F.R.*, a mother brought an urgent motion for return of two children ages 5 and 3 after their father came to the mother's house and took the children without her permission.⁷ Justice Diamond immediately ordered the return of the children to their mother. In this case, the status quo was "unilaterally altered" by the father, which is never appropriate. In *Smith v. Sieger*, a father brought an urgent

¹ *Ribeiro v. Wright*, 2020 ONSC 1929, 2020.03.24, available here:

<https://www.canlii.org/en/on/onsc/doc/2020/2020canlii23204/2020canlii23204.html?autocompleteStr=ribeiro%20v%20wright&autocompletePos=1>

² *Ribeiro v. Wright*, 2020 ONSC 1929 at para 11.

³ *Ribeiro v. Wright*, 2020 ONSC 1929 at para 18; emphasis in original.

⁴ *Zee v. Quon*, FS-16-412436 (SCJ), 2020.03.27; unreported

⁵ *Ribeiro v. Wright*, 2020 ONSC 1929

⁶ *Douglas v. Douglas*, 2020.03.25, at para 9; unreported

⁷ *C.Y. v. F.R.*, 2020 ONSC 1875, 2020.03.20, available here:

<https://www.canlii.org/en/on/onsc/doc/2020/2020onsc1875/2020onsc1875.html?autocompleteStr=2020%20ONSC%201875&autocompletePos=1>

motion for the parties' 16-year-old son to return home to Canada from his educational-therapeutic program in Utah.⁸ This case was decided on March 19, 2020, prior to the US-Canada border closing, but the case acknowledged the border closing was “imminent” and conditions of closure were not yet known. Justice Kauffman granted the father’s request and the child was returned home and quarantined for 14-days with his father. Then, absent any health concerns, the parents were expected to determine a temporary residency schedule. As always, decisions regarding children will be made based on what is in a child’s best interest. This includes physical *and* emotional well-being, which includes maintaining parent-child relationships.

If you have specific concerns, I recommend speaking with a family law lawyer.

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⁸ *Smith v. Sieger*, 2020 ONSC 1681, 2020.03.18, available here: <https://www.canlii.org/en/on/onsc/doc/2020/2020onsc1681/2020onsc1681.html?autocompleteStr=smith%20v%20si%20e%20g%20e%20r&autocompletePos=1>