Family law cases addressing the COVID-19 pandemic

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The cases listed below are all of the published Canadian family law cases dealing with the COVID-19 pandemic in a substantive manner, whether connected to the determination of urgency of the merits of the underlying applications, as of the morning of 21 April 2020 and as found on CanLII. The first 21 cases are listed in order of the number of times they have been cited. Cases with the style of cause set in bold type are important for their statement of the law, their factual circumstances or both, and are, in my view, especially worth reviewing.

1. **Ribeiro v Wright**, 2020 ONSC 1829 – 44

   I. "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."

   II. "If a parent has a concern that COVID-19 creates an urgent issue in relation to a parenting arrangement, they may initiate an emergency motion – but they should not presume that the existence of the COVID-19 crisis will automatically result in a suspension of in-person parenting time. They should not even presume that raising COVID-19 considerations will necessarily result in an urgent hearing."

   III. "We will deal with COVID-19 parenting issues on a case-by-case basis.

   > "a. The parent initiating an urgent motion on this topic will be required to provide specific evidence or examples of behavior or plans by the other parent which are inconsistent with COVID-19 protocols.
   >
   > "b. The parent responding to such an urgent motion will be required to provide specific and absolute reassurance that COVID-19 safety measures will be meticulously adhered to – including social distancing; use of disinfectants; compliance with public safety directives; etc.
   >
   > "c. Both parents will be required to provide very specific and realistic time-sharing proposals which fully address all COVID-19 considerations, in a child-focused manner.
   >
   > "d. Judges will likely take judicial notice of the fact that social distancing is now becoming both commonplace and accepted, given the number of public facilities which

have now been closed. This is a very good time for both custodial and access parents to spend time with their child at home."

IV. "Judges won't need convincing that COVID-19 is extremely serious, and that meaningful precautions are required to protect children and families. We know there's a problem. What we're looking for is realistic solutions. We will be looking to see if parents have made good faith efforts to communicate; to show mutual respect; and to come up with creative and realistic proposals which demonstrate both parental insight and COVID-19 awareness."

2. **Onuoha v Onuoha**, 2020 ONSC 1815 – 14

I. "This is not the time to hear a motion on the return of children to another jurisdiction."

II. "A few comments about the summary process under the Chief's Notice as it applies to this case:

> "a. The determination of urgency is intended to be <u>simple and expeditious</u>. It is not intended to create a motion unto itself. … Given the volume of urgent family matters coming before the courts at this unprecedented time, this is the only practical way forward.
>
> "b. This determination is <u>without prejudice</u> to either party on the substance of the motion when heard. That I have determined the matter to not presently be urgent is not in any way to prejudge the strength or weakness of either party's case on the motion itself. ...
>
> "c. The process for hearing urgent motions contemplates <u>limited materials</u> before the court, recognizing that judges do not presently have access to the physical files and that there is as yet no electronic storage of family court files. …"

3. **Thomas v Wohleber**, 2020 ONSC 1965 – 14

I. "… the following factors are necessary in order to meet the Notice's requirement of urgency:

> "a. The concern must be immediate; that is one that cannot await resolution at a later date;
>
> "b. The concern must be serious in the sense that it significantly affects the health or safety or economic well-being of parties and/or their children;
>
> "c. The concern must be a definite and material rather than a speculative one. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than theoretical;

"d. It must be one that has been clearly particularized in evidence and examples that describes the manner in which the concern reaches the level of urgency."

II. "Right now, families need more cooperation. And less litigation."

4. **Le v Norris**, 2020 ONSC 1932 – 10

I. "… something direct must be said about [the mother's] worries and anxiety about the COVID-19 health crisis. Those concerns, this Court sympathizes with and understands and can even relate to … But, at the same time, those concerns can be addressed through responsible adherence to the existing Court Order. …

"… what do I mean by 'responsible adherence to the existing Court Order'? I mean being practical and having some basic common sense. Physical distancing measures must be respected. The parties must do whatever they can to ensure that neither of them nor the child contracts COVID-19. Every precautionary measure recommended by governments and health authorities in Ontario and Canada must be taken by both parties and, with their help, by [the child]. Neither party shall do anything that will expose him/herself or [the child]. to an increased risk of contracting the virus."

5. **Skuce v Skuce**, 2020 ONSC 1881 – 6

I. "In this case, there is a consent order. The mother has chosen not to respect it. She indicates it is no longer in their best interests. She has engaged in a self-help remedy despite a clear consent Order that was filed a few days ago. The Court cannot be seen to condone this type of behaviour. Without citizens obeying existing court orders, the whole justice system would be turned over on its head."

II. "Uncertainty and lack of direction can add further havoc to the lives of the children who are most vulnerable when the parties are unable to resolve matters. … The children need and deserve stability, comfort and predictability in their routine. Despite the current world events, this can be accomplished."

6. C.Y. v F.R., 2020 ONSC 1875 (style of cause amended by order made on 11 June 2021) – 6

7. Smith v Sieger, 2020 ONSC 1681 – 6

8. Sion v White, 2020 ONSC 1915 – 5

9. **L.-A.F. v K.V.S.**, 2020 ONSC 1914 – 5

I. "… I find that the issues raised by the father are potentially urgent. This is a preliminary determination, without prejudice to either party on the ultimate hearing of the motion."

II. "Given the fact that the father has raised concerns which impact on the immediate safety and well-being of the child, I am satisfied that a very short-term, temporary, without prejudice order is appropriate without notice to the mother."

10. **Tessier v Rick**, 2020 ONSC 1886 – 3

I. "I am prepared to treat this matter as the mother's motion to suspend or vary the father's access due to her allegations that the father is exposing the child to significant risk due to not complying with COVID-19 safety measures. The onus, therefore, is on the mother to provide specific evidence or examples of behaviour or plans by the father that are inconsistent with COVID 19 protocols and expose the child to risk. …"

II. "The father's requested relief for make-up access is not urgent."

11. **Ahmadi v Kalashi**, 2020 ONSC 2047 – 2

I. "[The mother] is not permitted to simply engage in self help, or to interpret public health directives as a license to terminate parenting time. …"

12. **Lee v Lee**, 2020 ONSC 2044 – 1

I. "The possibility of the respondent having been exposed to COVID-19 appears to be small, and perhaps nominal. Yet in such uncertain times, it is preferable to avail oneself of certainties when available. Thus on the facts of this case, and with a view to reducing the risk factors to the parties' son, I find that the 'self-isolation clock' for the respondent … should begin to run on [the date the respondent began to self-isolate].

"In coming to this decision, I am not making a finding that the respondent has done something wrong. I trust that the respondent, and for that matter the applicant, will continue to follow the government COVID-19 protocols and minimize all potential exposure to themselves and their son. In balancing the respondent's right to access with the child's best interests, I am merely adding four more days until his access potentially resumes in order to reduce the known risks to everyone involved."

13. **Elsaesser v Rammeloo**, 2020 ONSC 2025 – 1

I. "Determinations of urgency are summary in nature, and <u>wholly without prejudice</u> to both parties on the hearing of the motion itself. A determination of urgency is not intended to be a motion unto itself and is intended to be simple and expeditious."

II. "… no matter how difficult the challenge, or what modifications or restrictions may be appropriate, we must find ways to maintain important parental relationships, above all in a <u>safe way</u>."

14. **Balbontin v Luwawa**, 2020 ONSC 1996 – 1

I. "All levels of government in Canada, national, provincial and local have issued public health notices dealing with preventing infection which include guidelines for physical distancing and, where appropriate, self-isolating. <u>Good parents will be expected to comply with the guidelines and to reasonably and transparently demonstrate to the other parent, regardless of their personal interests or the position taken in their parenting dispute, that they are guideline-compliant</u>. …"

II. "A parent's failure to communicate and meaningfully co-operate where a child's safety and well-being are involved is a failure to parent, especially in the current environment."

15. Balbontin v Luwawa, 2020 ONSC 2060 – 1

16. **J.W. v C.H.**, 2020 BCPC 52 – 1

I. "To be considered urgent, there must be some issue of immediate concern. Examples of this may include:

> "a. An imminent plan to relocate with a child or to remove a child.
>
> "b. An imminent or recent threat of family violence against a family member.
>
> "c. An imminent threat that a party may be arrested or committed to jail.
>
> "d. An imminent risk of irreparable harm, including undue financial loss, if an application is not heard at this time.

"A matter is not urgent if the order sought has no immediate consequence. …"

II. "Parenting arrangement orders continue in effect and should be complied with. However, the parties must also be practical and exercise their common sense. A child should not be exposed to unreasonable risk but at the same time, COVID-19 is not an excuse to deny a person from having scheduled time with a child when there is no reasonable basis for doing so. This will be a difficult balancing act because the best interests of a child includes a consideration of the child's health and safety. Given COVID-19 and the threat it poses to the child, a person's right to time with a child could be considered of less importance despite the terms of an existing court order."

17. **McNeil v McGuinness**, 2020 ONSC 1918 – 1

I. "I have no idea if a mere <u>recommendation</u> will have much impact. So perhaps I can go one step further. Perhaps I can give high conflict parents a bit of a <u>warning</u>.

“a. Just because a Triage judge decides an issue isn’t urgent, it doesn’t mean the issue isn’t important. It simply means we have to prioritize which issues we currently have the resources to deal with.

“b. The suspension of most court activities during the COVID-19 crisis means that – temporarily -- separated parents are largely going to be on ‘the honour system’.

“c. We’re counting on parents to be fair and helpful with one another. To rise to the challenge and act in good faith.

“d. Because now more than ever, children need parents to be mature, cooperative, and mutually respectful. In these times of unspeakable stress and anxiety, children need emotional reassurance from both parents that everything is going to be okay.

“e. How parents conduct themselves during this time of crisis will speak volumes about parental insight and trustworthiness.

“f. Your reputation will outlast COVID-19.

“g. So please don’t try to take advantage of the current situation.

“h. In the long run, self-help will turn out to be a big mistake.

18. Reitzel v Reitzel, 2020 ONSC 1977 – 1

19. Phipps v Petts, 2020 ONSC 1999 – 1

20. **Thibert v Thibert**, 2020 ONSC 2409 – 1

I. “It is clear that the pandemic, standing alone, is not a reason to suspend parental access, particularly where there is evidence to indicate that appropriate precautions are being taken to avoid exposure to infection.”

II. “At present, it is uncertain how long the pandemic will force closure of [a supervised contact] facility. I am of the view that, on its face, this request presumptively meets the test for urgency. There are two central concerns in this case. First, it is important to facilitate an ongoing relationship between the respondent and his child. Second, in light of the outstanding criminal charge and non-association clause, it is important to ensure that any access arrangements reflect the need to protect the safety of all family members. …”

21. **Johansson v Janssen**, 2020 BCSC 469 – 1

I. "Issues to be considered on the question of [urgency and appropriateness for hearing] may include the practical utility of any order, difficulties faced by parties in obtaining necessary evidence, and the possibility of changing circumstances as the emergency situation evolves."

II. "I have concluded this matter is not urgent. An order requiring return of the children to British Columbia would have no immediate practical consequences. The claimant recognizes that it could not be implemented until current international travel restrictions are lifted and no one knows when that may be."

22. **McNulty v Graham**, 2020 ONSC 2264

I. "… While the withholding of access, particularly over a short period, such as one, two or three weeks, would not usually meet the threshold of urgency, in this situation, it appears that [the mother] intends to deny [the father] access with [the child] indefinitely in light of the pandemic. I accept that this denial of contact, along with the evidentiary basis supporting apparent risks caused to the safety and well-being of [the child], are of sufficient gravity to [the child's] best interests to be considered urgent."

II. "There is a presumption that this order should be respected and complied with."

III. "As the parents of [the child], it is expected that both parties will take the appropriates steps to insist that all persons within their family unit will take whatever steps are reasonably necessary to ensure that he is not unnecessarily exposed to COVID-19 risks. I am satisfied that this is occurring at present."

23. **Trudeau v Auger**, 2020 ONCJ 197

I. "It is not enough, to demonstrate that the onset of Covid-19 is a material change in circumstances. The current case law would seem to support the view that in most circumstances, Covid-19 will not be sufficient on its own to justify a variation of an existing court order if any risk can be dealt with by appropriate compliance with existing community and public health directives."

II. "The father must take the following precautions to mitigate the risk to [the child] by:

> "a. disinfecting items such as door knobs that may be touched by others entering his home and apartment;
>
> "b. maintaining social distancing;
>
> "c. staying at home except for necessary appointments such as attending for food and medication;

"d. allowing no one else to enter his home;

"e. avoiding going out of his home unnecessarily;

"f. limiting his access visits with his son to visits within his own home and not taking him to any public location;

"g. wearing a mask or other facial covering when necessary."

III. "Some circumstances that may justify a suspension of access in the future would include:

"a. evidence of a disregard for the safety and well-being of the child by the father by disregarding the directions relating to Covid-19;

"b. specific medical evidence relating to this child that access to the father would place the child at significant risk;

"c. increased and better general information about Covid-19 relating to the risk of taking a child with [the child's] medical conditions for access visits out of his home even with safeguards and precautions in place;

"d. specific evidence relating to the increased risk within the child's community … and the risk of the child travelling from his home to the father's residence;

"e. the child or the parents becoming ill in circumstances that a visit or visits would place the child at significant risk. Should the child become ill, he should reside with his primary parent, namely his mother, with access temporarily suspended to the father. Should the father exhibit Covid-19 symptoms, his access shall be suspended;

"f. a more restrictive order being made by the authorities to quarantine or restrict public movement in the community. In the event of such a restriction, the child would remain with his mother as primary caregiver."

24. Kirn v Kirn, 2020 ONSC 2159

25. **Heywood v Jallad**, 2020 ONSC 2336

I. "This court's only concern is the safety and best interests of [the child]. While it is vitally important, particularly in these challenging times, that important parental relationships continue and that children have the benefit of ongoing contact with both of their parents, this needs to be balanced against the added risk of exposure to the COVID-19 virus, to not only the child but family members. …"

26. McArdle v Budden, 2020 ONSC 2146

27. Guerin v Guerin, 2020 ONSC 2016

28. Little v Cooper, 2020 ONSC 2023

29. **Tigert v Smith**, 2020 ONSC 2220

    I. "The rationale for continued parent contact is that, under the existing order, it is presumed to be in the child's best interests. This rationale gives way if, as a result of continued contact, the child's safety or wellbeing would be compromised."

    II. "Withholding the child contrary to the existing order raises an issue relating to the child's wellbeing."

30. Bartlett v Loewen, 2020 ONSC 2230

31. Livingstone v Cooper, 2020 ONCJ 174

32. **Cooper v TenEYCK**, 2020 ONSC 1876

    I. "There are significant challenges for parents in knowing what is best for their children at this time. The 'goal posts' seem to move daily, and what is deemed 'safe' today may not be deemed 'safe' tomorrow. Parents and the courts are aware that recommendations by senior public health officials are shifting in response to the evolution of the pandemic in Canada. While travel back and forth from [the mother's town] to [the father's town] for parenting exchanges may not be contraindicated by public health officials today, it is possible, based on the well-publicized experiences of other countries at this time, that such travel may be contraindicated in the not-too-distant future. We simply do not know. It is no wonder that this is a difficult time for parents to make decisions.

    "This is a circumstance that demands the best of parents and requires them to work together, no matter their differences, to craft the safest options for children while ensuring that children derive the benefit of the love, nurturance, and guidance of both of them. Of course, the overriding requirement on parents is to keep the health, well-being, and best interests of their children at the forefront of their decision-making."

    II. "In this case, a police enforcement clause, as sought by the father, is no solution. This would cause significant stress on the children and is not appropriate in the circumstances. Police enforcement is not what is 'urgent' at this time.

    "What is 'urgent' at this time is that this mother and this father work together to adapt and shape their existing parenting order to work in the current circumstances. That order continues to govern. There is no presumption that COVID-19 permits a primary residential parent to terminate the children's time with the other parent. These parents should work together to make any adjustments needed to fit the current public health circumstances. …"

33. Sneyd v Turmurtogoo, 2020 ONSC 1917

34. **Smith v Smith**, 2020 ONCJ 180

    I. "There is a presumption that all orders should be respected and complied with. The onus, therefore, in this prevailing pandemic climate, is on the party seeking to restrict access to provide specific evidence or examples of behaviour or plans by the other party that are inconsistent with COVID-19 Protocols and which expose the child to risk."

    II. "… should the court determine that access should be suspended and delays a resolution on this issue for an indefinite period, which given the present uncertainty would certainly be the case, I am confident that the relationship which father has sought to reinstate with his sons would be compromised."

35. K.B. v K.K., 2020 SKQB 86

36. **Leach v MacDonald**, 2020 ONSC 2178

    I. "In my view, applying the Notice to the Profession and the developing caselaw on this issue, the motion brought by the mother is urgent. Without a resolution of the matter at hand, albeit a narrow issue, the conflict between the parties may escalate and result in unilateral upset to the existing parenting arrangements."

37. V.C.S. v T.S., 2020 BCPC 60

38. L.R. v A.L., 2020 BCPC 72

39. Theis v Theis, 2020 ONSC 2001

40. **Toth v Stockton**, 2020 ONSC 2187

    I. "I find that this urgent motion is warranted. The issue in this motion effectively concerns whether [the mother's] access should be varied or effectively suspended, temporarily but indefinitely, due to [the father's] allegations that [the mother] is exposing [the child] to significant risks, due to her not complying with COVID-19 safety measures. While the withholding of access, particularly over a short period, such as one, two or three weeks, would not usually meet the threshold of urgency, in this situation, it appears that [the mother] intends to deny [the father] access for an extended, indefinite period in light of the pandemic. I accept that this denial of contact, along with the evidentiary basis supporting the otherwise apparent risks possibly caused to the safety and well-being of [the child], are of sufficient gravity to [the child's] best interests to be considered urgent."

41. **N.J.B. v S.F.**, 2020 BCPC 53

I. "The father relies on some recommendations that have recently been drafted by Dr. Michael Elterman, to provide guidance to parents in the time of Covid-19. Although these are general recommendations, and are not in the nature of an expert report, I will note that Dr. Elterman is a psychologist with considerable expertise in child related matters and is well known to this Court.

"In my view, these are all reasonable recommendations, and consistent with what I understand to be the recommendations of public health officials, at this time. Although public health guidelines are not technically before the Court, in my view, and particularly under the exigent and evolving circumstances that we all currently face, I am able to take judicial notice of those guidelines, which include social distancing, frequent washing of hands and avoiding non-essential travel."

42. **Lyons v Lawlor**, 2020 ONCJ 184

I. "The applicants believe that [the child] is at particular risk as a result of his asthma. However, there is no medical opinion from the family doctor confirming this or that [the child] requires more intensive distancing efforts to keep him safe. Direct and compelling evidence from his doctor was not provided and would be required to support that conclusion. …"

43. **Feldman v Knight**, 2020 ONSC 1971

I. "In my view, this matter need not proceed as an urgent motion at this time. There is an existing parenting order. There is a presumption that all orders should be respected and complied with. … When the Applicant unilaterally withholds access, he is breaching that court order. Such disregard of an existing court order will not be looked at favourably by the courts once normal court operations resume."

44. Nasso v Nasso, 2020 ONSC 2131

45. Jumale v Mahamed, 2020 ONSC 2091

46. Chin v Omeally, 2020 ONSC 2029

47. Lovric v Olson, 2020 ONSC 2269

48. **Vasilodimitrakis v Homme**, 2020 ONSC 2084

I. "In summary, based on the evidence of the past conduct of both parties related to the Covid-19 virus, it is not at all clear to me who [the child] would have been safer with prior to the hearing of this motion. What is clear is that this is a time of great need for [the child]. It is a time

when the applicant mother, the respondent father, and their respective counsel should be focused on [the child's] well-being and not the ongoing conflict between the parties."

II. "I do not see any meaningful difference between the plan offered by the applicant mother and that offered by the respondent father within their respective homes. That is providing that each conduct access in the manner undertaken, and the respondent father remains in his home and makes arrangements for food and other necessaries to be delivered to the house."

49. Amirzada v Alemy, 2020 ONSC 1979

50. Sezin v Sheikh, 2020 ONCJ 187

51. **Chrisjohn v Hillier**, 2020 ONSC 2240

I. "The mother's conduct in withholding the child is in contravention of the existing order and I find that this constitutes an urgent circumstance…"

II. "It is trite that … there are many families where parents are living separate and apart and the children spend parenting time with each parent either pursuant to a court order, a separation agreement or an informal arrangement between the parents. In each case, parents must act responsibly in the face of the COVID-19 pandemic to ensure that their children are adequately protected.

"This should not result in a widespread suspension of in-person parenting time between a child and one of his or her parents. Each circumstance is unique, and the parents will need to act reasonably in promoting the best interests of their children in relation to parenting time."

52. **Tudor Price v Salhia**, 2020 ONSC 2271

I. " On the evidentiary record before me, there is little to no evidence raising a concern about the [father's] approach to keeping their son safe during this COVID-19 pandemic. The [father] is following the applicable provincial and municipal COVID-19 protocols. The [father's] judgment has not been called into question, other than the [mother's] attempts to revisit allegations she advanced during the trial of this proceeding before me late last year. My disposition of the majority of those allegations led to my imposition of the parenting schedule in the first place.

"The unilateral actions of the [mother] should not be condoned by this Court. A party cannot use the new, temporary reality of the COVID-19 pandemic to revisit trial results with which he/she may not be pleased. Ironically, what she now seeks (ie. an interim variation of the parenting schedule imposed by my Reasons) ought to have required her to try and seek urgent relief instead of forcing the [father] to bring his motion."

53. **Ramirez-Scrimshaw v Ingram**, 2020 ONSC 2278

I. “For the following reasons, I find that this matter is not urgent at this time:

> “a. No parenting order or agreement has been made since the parties separated. There is no status quo of the father exercising parenting time since November 2019;
>
> “b. The Notice to the Profession indicates that matters will be found to be urgent where there is a question relating to the ‘safety of a child or parent’, or an urgent issue related to a child’s ‘well-being’. On the evidence I do not see issues related to either the safety or the well-being of the children at this time;
>
> “c. Although the father blames the mother for this, his materials acknowledge that he has not had independent time parenting the children, except limited time with the oldest. His request for immediate overnight access each weekend in this context is, on its face, not reasonable;
>
> “d. In his affidavit dated March 3, 2020, the father acknowledges that the mother offered supervised access to him after she retained counsel. He has apparently not accepted that proposal, which is not an unreasonable proposal in the circumstances;
>
> “e. The mother’s allegations of abuse against the children are serious. … More evidence will be required before a determination can be made on motion about appropriate parenting arrangements;
>
> ‘f. The father has made no realistic proposal for how parenting time would reasonably be structured at this time, given the situation with COVID-19. He has provided no evidence about what precautions he is taking or would take in relation to transitions for the three young children, or of how he would keep the children safe and secure in his care. …

“While I am finding that this matter is not urgent at this time, this is not intended to give the mother ‘carte blanche’ to deny access to the father on an indeterminate basis. …”

54. **Scharafanowicz v DeMerchant**, 2020 ONSC 1916

I. “I am satisfied that the matter meets the threshold for ‘urgency’, because the court cannot permit or condone unilateral behaviour by parents, except perhaps briefly and in the most serious of circumstances.”

55. Potter v Gibson, 2020 ONSC 2268

56. **Hall v Thomas**, 2020 ONSC 2162

I. "The assertions set out by the father bear directly on the well-being of the children based on the mother's proposed unilateral removal of the children from this jurisdiction to [town]. Counsel for the father has attempted to deal with this matter on a consent basis. This issue is urgent as the mother has set a timeline for the move to take place 'sometime in April or May 2020'."

57. Francis v Francis, 2020 ONCJ 171

58. **Matour v Hashemian**, 2020 ONSC 2112

I. "The motion brought by the mother [to return to a shared parenting arrangement] is urgent. The mother states that without a return to the status quo parenting arrangements, she is unable to attend work as she does not have other childcare options, and that if she cannot work, she risks losing her employment. This is a potentially serious and immediate harm."

59. Courchesne v Goodwin, 2020 CanLII 26893 (ONSC)

60. Burns v Burns, 2020 CanLII 27955 (ONSC)

61. **Herman v Kideckel**, 2020 ONSC 2021

I. "The response to the current pandemic, however, is not to disregard or cast aside existing agreements and orders that have been negotiated and/or considered at length, and that have been determined to be in a child's best interests."

II. "Parents are not permitted to disregard a court order simply because they believe they know better."

62. Bruni v Daunheimer-Bruni, 2020 ONSC 2017

63. **Thomson v Fleming**, 2020 ONSC 2036

I. "… because of the very negative effects of wrongful, prolonged parental estrangement on a young child, I find this case meets the threshold for urgency."

64. Stewart v Reid, 2020 ONSC 2262

65. **Ivens v Ivens**, 2020 ONSC 2194

I. "During this COVID-19 pandemic, the courts are beginning to see a situation that approaches a crisis of its own: parents using the urgency of the moment to seize the sole right to parent their children, contrary to court orders. The suspension and limited administrative capabilities of this

court have necessarily led it to be very strict in determining the level of urgency necessary to allow an audience with a judge. But that rigour does not mean that we should ignore blatant breaches of custody and access orders or the unilateral usurpation of parental roles under the guise of COVID-19 protection. Such a state of affairs would, in itself, create a situation of harm for children."

II. "I find that this motion is urgent. But that the urgency is not the result of the COVID-19 virus or the risk that the father allegedly poses to the children. Rather the urgency arises from the mother's second unilateral refusal in just over a year to honour the … orders that provide for equal, shared parenting time for [the children] and the father's right to final decision making for both children. A continuation of that refusal runs the real risk of emotional harm to [the children] through the rupture of their relationship with their father."

III. "A parenting order is not a suggestion nor is it a recommendation. It is a command and direction which must be obeyed. Compliance is not optional."

IV. "… the COVID-19 pandemic does not grant parents the right to exercise self help in the face of their subjective view of the parenting abilities or arrangements of their former spouse"

66. Land v Tudor, 2020 ONSC 2163

67. Hall v Thomas, 2020 ONSC 2088

68. Ramanauskas v Podwinski, 2020 ONSC 1955

69. **S.B. v M.P.**, 2020 BCPC 68

I. "The issue of the safety of international travel during the COVID-19 pandemic has been commented on in at least two decisions of the Superior courts on Ontario. While each of these cases dealt with applications for urgent hearings the comments of the courts are compelling and are, in my respectful view, accurate concerning the risk of international travel during this pandemic. …

"In this case travel to Vancouver from [omitted for publication] would require, at a minimum, a 14-hour trip which would include stopovers in two American cities. It would likely require a greater amount of time and more stopovers if other flights had to be booked. Such a trip would, I conclude, put the children's health at risk unnecessarily and would not be in their best interests."

II. "I am satisfied that, although it is far from optimum, the relationship between the children and [the father] can be maintained and fostered through continued electronic communication, including FaceTime."

70. Ghazanfari v Pasalar, 2020 ONSC 2145

71. Rothschild v Rothschild, 2020 ONSC 2117

72. **Eden v Eden**, 2020 ONSC 1991

I. "… urgency is defined as a situation where the safety of a child or parent is at risk. This is not the case here. Both children are safe."

II. "Now is not the time to request a police enforcement clause which could potentially put the children at increased risk of exposure."

73. Cimitan v Tarsitano, 2020 ONSC 2138

74. Derkach v Soldatova, 2020 ONSC 1992

75. Booth v Bilek, 2020 ONSC 2116

76. **Douglas v Douglas**, 2020 ONSC 2160

I. "There is no game plan for how parents should react, and many are understandably worried for themselves and their families and confused about what to do in such an atmosphere. It is certainly expected that parents would act in the best interests of their own child which consideration must include not only the child's physical well-being, but also their emotional well-being. Total removal of one parent from any child's life must be exercised cautiously."

II. "The matter is understandably very important to the father. However, in my view it is not urgent nor is it an emergency. There is no indication that [the child's] safety is at risk. … It may be that there will be some limited scenarios involving an abduction of a child where relief is sought under the Children's Law Reform Act, and a court finds such matter to be urgent. But this is not one of those cases."

77. Harrington v Dennison, 2020 ONSC 2114

78. Davis v Eby, 2020 ONSC 2011

79. Jefic v Grujicic, 2020 ONSC 2340

80. Officer v Sawyer, 2020 ONSC 2156

81. **Mann v Mann**, 2020 ONSC 2167

I. "The parties' default [of payment to the mortgage and line of credit] continues. Fees, penalties and interest continue to accumulate, further eroding their equity. Neither party can maintain the mortgage. The urgency is immediate, material and particularized in the evidence. The [husband's] response is to wait longer. This is not tenable. The house has been empty for many

months and the [husband] did nothing to deal with it. While limited case conferences are now available, none are available until June 2020. This is too far away. The current COVID-19 crisis is not to be used as a tool to shirk a party's financial obligations within a family law proceeding."

82. Chatelain v Eeuwes, 2020 ONCJ 191

83. Fowkes v Anderson, 2020 CanLII 28299 (ONSC)

84. Baijnauth v Baijnauth, 2020 ONSC 1974

85. **Mohamed v Osman**, 2020 ONCJ 172

I. "Ordinarily, the court would proceed with the claimant's [ISOA] application on the basis of the written material filed since the respondent did not file any of the required responding materials, did not request an oral hearing and did not attend at court on the date set out in the notice of hearing.

"However, these are not ordinary times. Due to the COVID-19 pandemic, the Ontario Court of Justice has significantly restricted the public's physical access to the courthouse. At this time, only urgent matters are being heard and must be pre-approved to be heard by a judge. The public has been discouraged from entering the courthouse. There are strong warnings from all levels of government for people to not leave home except for essential purposes.

"These are considerable obstacles for a self-represented litigant who might wish to respond to the claimant's application."

86. **Drzazga v Drzazga**, 2020 ONSC 2161

I. "The assertions set out by the father bear directly on the well-being of the child … based on the mother's unilateral removal of the child from this jurisdiction contrary to the father's wishes and contrary to the directions issued by the government and health authorities. This motion is urgent. The Niagara Regional Police Services or such other police force where the child might be located require a court order to take any action."

87. Jennings v Thompson, 2020 ONSC 2236

88. Hadley v Hadley, 2020 ONSC 1927

89. **Roberts v Roberts**, 2020 CanLII 28298 (ONSC)

I. "… a determination on the issue of urgency is meant to be simple and expeditious. The [husband] claims that his income has been substantially reduced such that he can no longer continue to pay the ordered spousal support. Given the extent of the claimed reduction in

income, I conclude that this matter meets the definition of urgency as an alleged 'dire issue regarding the parties' financial circumstances'."

90. **S.W.-P. v S.P.**, 2020 ONSC 1913

I. "In ordinary circumstances the court would not consider an immediate change of a long-standing time-sharing arrangement as 'urgent', notwithstanding the 'temporary-temporary without prejudice' characterization of the existing order. However, the Respondent's materials raise concerns about the immediate physical and emotional well-being of the child. … I am sufficiently concerned about the possibility of the child running away and exercising self-help, that I am satisfied that this matter is potentially urgent."

II. "Counsel and the parties will hopefully understand that even in the best of circumstances it is very difficult for the court to deal with evolving parenting issues involving soon-to-be teenagers. And with COVID-19 restrictions, these are certainly not the best of circumstances."

91. Burton v Burton, 2020 CanLII 27532 (ONSC)

92. **Kostyrko v Kostyrko**, 2020 ONSC 2190

I. "… the [father] has unilaterally decided to hold the children contrary to that final order. While only urgent matters are being heard at this stage, a seemingly unilateral breach of a court order relating to custody and access of children, no matter how well intentioned, will likely rise to the level of urgency required by the practice direction. In these uncertain times, it is particularly important for the public to have confidence that the Courts will continue to fulfill their constitutionally mandated role of overseeing the justice system. A key part of that role is ensuring that Court orders are enforced, and are not unilaterally changed by a party without Court scrutiny."

II. "At this point, we do not know how long the COVID-19 crisis will last. The recent comments of various political leaders suggest that it could be some 'weeks or months' before the social distancing measures that we are currently taking, and that have resulted in the closure of the Courts, are relaxed. There is, therefore, no end time on how long the [father] in the case before me would have the children without access to the [mother], who is the custodial parent."

III. "Similarly, a parent who unilaterally denies another parent access because of concerns about the COVID-19 crisis will be doing so indefinitely. This type of unilateral 'self-help' remedy is always discouraged by the Courts. Adopting a very narrow holding as to what matters will be viewed as urgent runs the risk of sending a message to parents who have primary residence of the children that it is acceptable to simply refuse to provide access to the other parent under the guise of the 'COVID-19' crisis."

IV. "Although the test for urgency is high, it must be remembered that urgency is a threshold question. In my view, a judge's determination of the urgency of the request should be

determined as preliminary issue that is generally separate from an assessment of the merits of the case. Of course, the merits will have to be considered to some extent to determine whether the case is the <u>type</u> of case that is viewed as urgent or whether the facts as set out by the moving party, if accepted as true, disclose urgency. However, a granular review of whether the specific facts are urgent will result in conclusions being made about the merits of the case that are best left to a determination on the merits. Those conclusions should be avoided on a preliminary question."

93. J.D. v N.D., 2020 ONSC 2089

94. Russell v Daoust, 2020 ONCJ 188

95. **T.C. v R.E.**, 2020 BCPC 65

I. "This case is an example of one party placing his perceived right to his children over the mother's right and responsibility to ensure the children are protected during an unprecedented crisis. … it is appalling that the matter was brought to the court before full disclosure had been made to [the mother] as to what [the father's] intentions were and as to what precautions had been taken to ensure the children would be safe. I hope that this exercise will bring home to both parties the meaning of co-parenting in the <u>children's</u> best interests."

96. Abesteh v Eagle, 2020 ONSC 2086

97. Ivens v Ivens, 2020 ONSC 2128

98. **S.R. v M.G.,** 2020 BCPC 57

I. "I find a constellation of factors to consider, in assessing what is in a child's best interests. In this situation, the following factors are relevant:

> "a. Whether the child is at an elevated risk of suffering the more severe consequences of the virus;
>
> "b. Whether either party, or those in their household are at an elevated risk of suffering the more severe consequences of the virus;
>
> "c. Each party's exposure to the risk of contracting the virus;
>
> "d. Steps taken by each party to mitigate the risk of exposure;
>
> "e. All of the relevant factors listed under s. 37 of the Family Law Act …

> "f. In the larger context, society's need to maintain and access resources in the community, including health care and other ventures that provide services and income for families in a safe manner over an extended period of time."

II. "I find that it is appropriate that [the mother] continue to have parenting time with [the child]. While there is some risk that she could contract the virus, I find that she has mitigated that risk by abiding by the precautions for nurses 'and then some', as she says. …

III. "… if I were to find that [the child] was particularly vulnerable to suffer severe consequences from contracting the virus, I would not be inclined to expose him to any risk …"

99. Guerin v Guerin, 2020 ONSC 2092

100. Ross v Kenyon, 2020 ONSC 2283

I. "As a practical matter, it is only those matters that are truly urgent that can be entertained under the current circumstances. On the other hand, a definition of 'urgency' must not be so narrow that avenues of relief are effectively foreclosed, and lawlessness is encouraged. While most citizens obey the law without the threat of sanctions, the court system exists to ensure compliance where necessary. There must be at least a rudimentary level of court oversight."

II. "There is an existing order in place. It is not alleged that children are in danger. Presumably, the current situation is temporary. Once the court system is up and running again, this matter can be dealt with promptly. If indeed there has been non-compliance, the respondent is not without a remedy. Lack of access time can be made up. Costs sanctions can be imposed.

"I make no determination, of course, that the applicant is in violation of the order. I remind her, however, that the COVID-19 pandemic furnishes no excuse for violating the order. If it turns out that she has done so, the court will have very little sympathy with her position, and may very well impose remedies and sanctions that she would undoubtedly find unpalatable."