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The government has directed Saskatchewan families to stay home, schools and daycares are closed, extra-curricular activities are cancelled, and words like “self-isolation” and “quarantine” are a part of daily conversation. Shared parenting is more complicated than ever. Here are some of the concerns facing parents during this challenging time:

- School and daycare closures have interrupted shared parenting schedules;
- Public places where parents used to exchange children have closed;
- One parent might be ignoring proper social distancing measures;
- Children might be travelling with a parent outside of the province or country;
- Children or parents might have conditions that make them more vulnerable to COVID-19; and
- Parents might be at higher risk for contracting COVID-19 through their employment and more likely to pass on the virus to their children.

In this article, I summarize the Courts’ approach to COVID-19 parenting issues so far and offer strategies to assist separated parents with shared parenting during the pandemic.

## How the Courts are Deciding Parenting Issues During the COVID-19 Pandemic

The Saskatchewan Court of Queen’s Bench is closed to most matters but will hear family law matters on an urgent and emergency bases. What constitutes an “emergency” family law matter during the COVID-19 pandemic has been considered by courts in several jurisdictions.

### 1. COVID-19 Parenting Concerns Can be Seen as Emergent

Parents may bring emergent Court applications if they can show that a COVID-19 issue has created an urgent parenting problem.[1] However, simply raising a concern will not necessarily result in an urgent hearing date being set or in a court deciding to suspend one parent’s parenting time. Before hearing an emergency application, the Court has advised parents to first attempt to problem solve between themselves or through their lawyers. [We have provided a broad overview of the Court process during the COVID-19 pandemic here.](#)

### 2. Evidence Needed to Show that a COVID-19 Parenting Concern is Urgent

If a parent feels that a COVID-19 issue has created an urgent parenting problem that must be decided by a Court, the following evidence is necessary to convince the Court that the issue is urgent:

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- The parent bringing the urgent Court application will be required to provide specific evidence of behaviour by the other parent that places the child at risk;
- The parent responding to the application must provide evidence that COVID-19 social distancing and public safety directives are being followed; and
- Both parents must provide specific proposals for shared parenting time that address the COVID-19 pandemic concerns and prioritize the child's best interests.

If a parent refuses to comply with social distancing directives or fails to take reasonable health precautions, this may be sufficient to raise concerns with the Court that the parent's judgment is questionable, and his or her direct contact with the child should be altered.[2]

### **3. How to Deal with Existing Parenting Orders and Agreements**

Courts have indicated that all existing parenting Orders and Agreements should be complied with during the COVID-19 pandemic to the best of both parents' ability, subject to whatever necessary modifications need to occur to adhere to government directives.[3] If there is already an agreement or order in place requiring shared parenting, there will be a presumption by the Court that meaningful contact with both parents is in the best interests of the child.[4]

### **4. What if One Parent Unilaterally Refuses Parenting Time to the Other?**

The Courts have held that during the COVID-19 pandemic, children need love and support from both parents now more than ever.[5] One parent's decision that a child is not to have any contact with the other parent is inconsistent with the overall goal of making decisions that are in the best interests of the child.[6]

If one parent encourages a child to refuse to spend time with the other parent, the denied parent can rely on this behaviour as evidence to support a Court application to alter the parenting arrangement.[7] In a very recent (unreported) Saskatchewan decision, one parent argued that since the child's school is currently closed due to the COVID-19 pandemic, the shared parenting arrangement should be changed to the already agreed upon parenting schedule for the upcoming summer holiday. This parent also asserted that the child no longer wanted to live with the other parent.

The Court held that a parenting arrangement could not be solely left up to the child. Where a parent does not

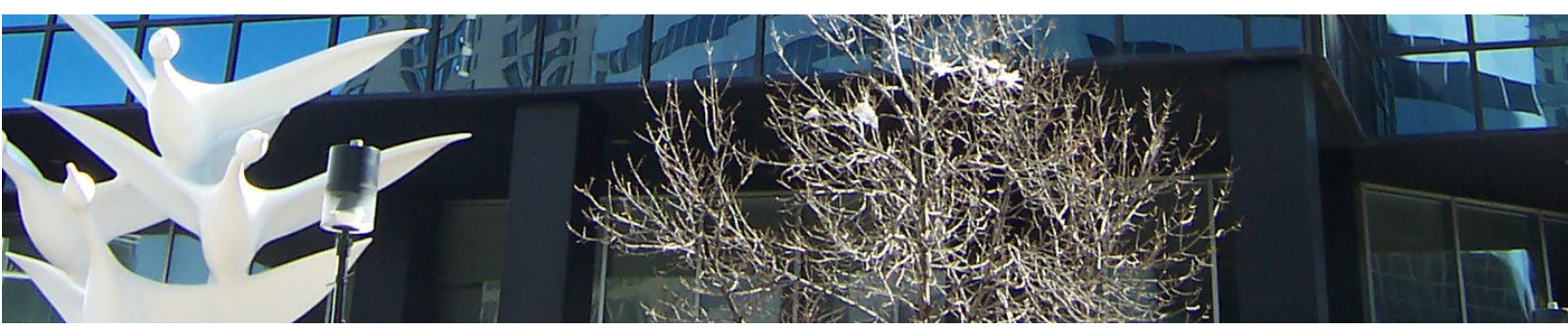
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take reasonable steps to facilitate access with the other parent, even when the child is resistant, the Court can make a finding that that parent is in contempt of a Court order, which can have serious consequences.[8] The Court ordered the parent to return the child immediately, and for the agreed-upon parenting arrangement for the school year to continue.[9]

### **5. Travel with Children During the COVID-19 Pandemic**

If a parent directly disregards COVID-19 public safety directives, as the parent did in the recent Ontario decision *C.Y. v F. R.*, the Court can suspend that parent's contact with the children, order that the children are returned to the other parent, and authorize the custodial parent to enlist law enforcement to assist with locating and returning the children if further issues arise.[10]

If a child is travelling with a parent outside of Saskatchewan or Canada, the Court can intervene to assist with the child's return. In the recent Ontario case of *Smith v Seiger*, one parent had travelled with the child to the United States prior to the COVID-19 pandemic. The Court ordered that the child return to Canada immediately and live with the other parent for the mandatory 14-day isolation period.[11]

If an existing parenting arrangement includes travel with a parent during school breaks and the upcoming school summer holiday, it is unlikely that a Court application to order this travel to continue will succeed. In the recent case of *Onuoha v Onuoha*, one parent asked for the children to be returned from Ontario to Nigeria. Even though the parent indicated that he had not consented to the children travelling to Ontario, the Court declined to hear the matter on an urgent basis, due to the widespread travel restrictions currently in place.[12]

### **6. Other Circumstances Where COVID-19 Concerns might Necessitate Court Intervention**

In some cases, the Court has indicated that it may be appropriate for a parent to forego parenting time due to specific risks such as personal illness, exposure to illness, or mandatory isolation due to travel.[13]

A parent's personal risk factors due to their employment or other concerns can also be a valid reason for a Court to interfere with that parent's direct contact with the child.[14]

When making decisions regarding shared parenting, the Court will analyze each matter and make its decision in light of the unique circumstances of each family. The Court will look to see whether parties have made efforts to communicate or come up with creative and realistic proposals to deal with parenting disputes that demonstrate parental insight and COVID-19 awareness. Parents who are found not to be taking the enhanced parental responsibilities related to COVID-19 seriously will be treated with no tolerance from the Court.[15]

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### Strategies for Parents Navigating Shared Parenting During COVID-19 Pandemic

The cases above show that there are many complex issues facing parents during the COVID-19 pandemic. The following are strategies to resolve the shared parenting issues your family might be facing:

- Do not unilaterally withhold parenting time based on general concerns about the COVID-19 pandemic. Denial of parenting time without a valid, specific COVID-19 concern is unlikely to be upheld by the Court, and could expose you to an Order for compensatory parenting time to the other parent, and make you subject to pay the legal costs of the other parent;
- Do not use parenting time in the interim arrangement as a tactic to negotiate a new status quo or as a bargaining tool for other family law issues; and
- Do not put your children in the middle of decisions regarding new routines for shared parenting. Evidence of manipulation or coercion of children will not be looked at favourably by the Court.

[More tips on shared parenting during the COVID-19 pandemic can be found here.](#)

If you are experiencing difficulties with shared parenting during the COVID-19 pandemic, need assistance in preparing an interim parenting arrangement for your children, require assistance bringing an emergency application to the Court, or have other questions about how to manage family issues during this difficult time, please do not hesitate to contact the family law lawyers at McKercher LLP in Regina and Saskatoon.

[1] Ribeiro v Wright, 2020 ONSC 1829 [Ribeiro].

[2] Ribeiro.

[3] Ribeiro.

[4] Ribeiro.

[5] Ribeiro.

[6] Ribeiro.

[7] Aalbers v Aalbers, 2011 SKCA 156.

[8] Godard v Godard, 2015 ONCA 568.

[9] Moyle v Mamer, DIV 268 of 2012, not electronically available.

[10] *C.Y. v F.R.*, 2020 ONSC.

[11] Smith v Seiger, 2020 ONSC 1681.

[12] Onuoha v Onuoha, 2020 ONSC 1815.

[13] Ribeiro.

[14] Ribeiro.

[15] Ribeiro.

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#### About McKercher LLP:

McKercher LLP is one of Saskatchewan's largest, most established law firms, with offices in Saskatoon and Regina. Our deep roots and client-first philosophy have helped our firm to rank in the top 5 in Saskatchewan by Canadian Lawyer magazine (2019/20). Integrity, experience, and capacity provide innovative solutions for our clients' diverse legal issues and complex business transactions.



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