

What should parents do if they are worried about children moving between the parties' homes during COVID-19?

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In these trying and uncertain times, many family law clients are wondering how to navigate the legal system during COVID-19. Challenges facing clients today include the recent closing of many court resources, court dates being postponed, and mediations and other alternative dispute resolution processes being delayed. Amid all these hurdles, family law clients face the same difficult issues, which in some cases have been exacerbated by the COVID-19 crisis, including shared parenting during social distancing recommendations.

Parents have serious concerns currently about children who have access with the other parent. The message from all levels of government and public health officials is that we are encouraged to follow a strict policy of social distancing and limiting community interactions as much as possible.^[1] Does this mean that one parent can deny all access to the other parent in favour of social distancing and if not, what parameters are appropriate in the circumstances?

These exact questions were before the court on March 24, 2020 in the recent case of *Ribeiro v Wright*.^[2] The Mother sought to suspend all in-person access to the Father because of COVID-19 in favour of practicing social distancing. While the Mother was not successful in convincing the court that the matter should proceed urgently, the court did provide useful guidelines for parties and counsel when considering these issues.

The court acknowledged that the health, safety and well-being of children and families remains the court's foremost consideration during COVID-19, and that the court must balance existing access time with public directives for strict social distancing.^[3] The court concluded that unless there are reasons to limit parenting time "a blanket policy that children should never leave their primary residence – even to visit their other parent – is inconsistent with a comprehensive analysis of the best interests of the child. In troubling and disorienting times, children need the love, guidance and emotional support of *both* parents, now more than ever".^[4]

However, the court did acknowledge that while the presumption is that existing parenting arrangements should continue, there are cases where modifications need to be made. These modifications may include as follows:

- Custodial or access parents may have to forego their times with a child, if the parent is subject to some specific personal restriction (for example, under self-isolation for a 14 day period as a result of recent travel; personal illness; or exposure to illness);
- a parent’s personal risk factors (through employment or associations, for example) may require controls with respect to their direct contact with a child;
- if a parent’s lifestyle or behaviour in the face of COVID-19 (for example, failing to comply with social distancing or failing to take reasonable health-precautions) raises sufficient concerns about parental judgment that direct parent-child contact will have to be reconsidered;
- Transitional arrangements at exchange times may require changes to transportation, exchange locations, or any terms of supervision; and
- In blended family situations, parents will need assurance that COVID-19 precautions are being maintained in relation to each person who spends any amount of time in a household – including children of former relationships.^[5]

The court stated in no uncertain terms that safety is the number one priority and that “there will be zero tolerance for any parent who recklessly exposes a child (or members of the child’s household) to any COVID-19 risk.”^[6]

Note: The information provided is based on Ontario law, and the laws of Canada applicable therein. However, it does not constitute legal advice or create a solicitor-client relationship. Readers are encouraged to consult a member of Blaney’s Family Law practice group for advice specific to their circumstances. We are available by telephone and electronically during the Covid-19 crisis.

^[1] *Ribeiro v Wright*, 2020 ONSC 1829 (Ont. S.C.J.) at para. 8 [*Ribeiro v. Wright*].

^[2] *Ribeiro v. Wright, ibid.*

^[3] *Ribeiro v. Wright, ibid.* at paras. 6-8.

^[4] *Ribeiro v. Wright, ibid.* at para. 10.

^[5] *Ribeiro v. Wright, ibid.* at paras. 12-16.

^[6] *Ribeiro v. Wright, ibid.* at paras. 14 and 18.

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