

## **COVID-19, gender based violence & family law toolkit for frontline workers**

*Prepared by Luke's Place Support and Resource Centre on May 1, 2020*

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## **Introduction**

It is no surprise to those who work with women fleeing abuse that many of their partners and former partners are using the pandemic and the public health protocols put in place to contain the spread of the virus as an excuse to engage in a wide range of abusive, bullying, harassing and manipulative behaviours.

We have heard reports from our clients and from frontline workers across the province about:

- Attempts to manipulate an existing parenting order or informal status quo about the children
- Threatening to not return or not returning children from access time
- Insisting on access even where the court order is for supervised access or exchanges, and those centres are now closed
- Going back and forth on what arrangement he will accept, especially when the separation is recent and no order is in place
- Making false allegations about the mother's inability to protect the children from the virus
- Refusing to use a public place to exchange the children, even when this is the existing arrangement or order
- Claiming that the children cannot be with the mother if she is living in a shelter

Women who already live in fear of their partner are even more vulnerable than usual right now. In addition to their concerns about their partner, they are worried about the virus, managing their children with no school or day care, possibly trying to work from home or working in a frontline job that exposes them to risk, worried about money, and so on.

Women are coping with all of this within the context of courts dealing only with urgent matters, and doing that largely electronically.

It is a lot for women and those of you who support them to contend with.

Luke's Place has been collecting information, consulting with the courts, lawyers, frontline workers and women, reviewing and analysing cases and developing resources since mid-March.

We have pulled those resources, updated where necessary, together, along with new information (in particular, case decisions) to assist frontline workers who support women living in or leaving abusive relationship with family law issues that arise during COVID-19.

### **Disclaimer**

The information contained in this document is just that: information. It is not legal advice and should not be relied on as such.

It is current and accurate to the date it was prepared: May 1<sup>st</sup>. We will provide updated information and new resources as appropriate, which you can find at:

<https://lukesplace.ca/supporting-women-to-access-family-law-supports-during-covid-19/>

We cannot guarantee the accuracy or currency of the information in this resource after May 1<sup>st</sup>.

We also note that the information in this resource is general in nature. We recognize that women living in rural and remote communities and women with intersecting marginalization face even more challenging situations under COVID-19, just as they do every day, and that not all of the services and supports referred to in this document will be available or able to support them appropriately.

### **Is the family court operating now?**

Ontario's courts, including family courts, have suspended their regular operations, but are available to hear urgent matters as well as requests for 14B consent orders. Limited case conferences are being held, generally for no more than 30 minutes, and judges are setting limits on which issues will be addressed so they can focus on the most urgent.

There may be some regional differences in the availability of these operations. For more information: <https://www.ontariocourts.ca/scj/notice-to-the-profession-the-public-and-the-media-regarding-civil-and-family-proceedings-update/>

Most hearings take place either by teleconference or videoconference with the judge, clerk and parties.

The filing counters at most courthouses remain open with reduced hours (10 – 12 and 2 – 4), **but you should check with your courthouse to confirm how its filing counter is operating.**

Documents **for urgent matters only** can be filed electronically: [www.ontario.ca/page/file-divorce-application-online](http://www.ontario.ca/page/file-divorce-application-online)

Duty counsel services are being provided remotely by Legal Aid Ontario, which has **waived all legal and financial eligibility requirements** for survivors of domestic violence with family law issues. For more information: <https://www.legalaid.on.ca/services/domestic-abuse/>

LAO's Client Lawyer Service Centre can be reached at 1-800-668-8258, for summary legal advice about a family law issue.

Information and Referral Coordinator services are available electronically.

## **Where and how can a woman find legal support?**

### Luke's Place Virtual Legal Clinic

Luke's Place is making its Virtual Legal Clinic (VLC) available to women anywhere in Ontario who are fleeing abuse and have family law issues. The VLC connects a woman with a family law lawyer via a web-based video conferencing platform or by telephone, for a summary legal advice consultation. Interpreters and a support person from a service organization in the woman's community can be included in the consultation.

If you have a client who could benefit from a VLC appointment or for more information about the clinic process, please contact us at: [projectco@lukesplace.ca](mailto:projectco@lukesplace.ca).

### FCSW services

If your agency is not responsible for delivering the Family Court Support Worker program, you may want to refer clients with family law issues to the service in your community. FCSWs provide support and assistance to survivors of domestic violence throughout their family court case. This includes safety planning, assistance with collecting evidence and preparing court documents and court accompaniment.

You can find the agency delivering the FCSW program in your community at:

[www.attorneygeneral.jus.gov.on.ca/english/ovss/family\\_court\\_support\\_worker\\_program/service\\_providers.php](http://www.attorneygeneral.jus.gov.on.ca/english/ovss/family_court_support_worker_program/service_providers.php)

### Online resources

Community Legal Education Ontario (CLEO): <https://stepstojustice.ca/covid-19/covid%E2%80%9919-abuse-and-family-violence>

Finding family law support across Ontario: <https://lukesplace.ca/resources/family-law-support-services-for-women/>

Family court survival workbook for women: <https://familycourtandbeyond.ca/>

## **How can I support a woman who is still living with her abuser?**

We know that many women are remaining with their abuser during the pandemic. There are many reasons for this: there may not be a shelter in her community; she may think the shelter is full; she may not be sure how the shelter can help during the pandemic; she may be concerned about exposing herself and her children to possible infection by moving to a group living situation; the abuser may be physically or emotionally preventing her from leaving; she can't find a family law lawyer; family court is operating on a limited basis, or she can't search for or secure appropriate housing.

Here are some tips to assist you in supporting a woman in such a situation. You can encourage her to:

1. Call 911 in an emergency: police services continue to operate and to respond to calls for assistance in abuse situations.
2. Connect with the women's shelter in her community (see the list at <https://www.sheltersafe.ca/>). Even if she doesn't stay at the shelter, staff can provide outreach services to support her and can help her make an emergency escape plan as well as a safety plan
3. Check out <https://familycourtandbeyond.ca/> for safety planning tips and information about family law and family court
4. Look at the Learning Network infographic on safety during COVID-19: <http://www.vawlearningnetwork.ca/our-work/infographics/covid19safety/LN-Safety-COVID-19-PDF.pdf>
5. Clear the call display frequently on all phones her partner might access, so he can't see who she has been calling or receiving calls from
6. Clear her browser history every time she uses her computer
7. Talk to a women's counsellor about tech safety and maintaining privacy online
8. Find or make a safe room in her house. This should be a room with a solid door and a lock or, if not a lock, a room in which she can move a piece of heavy furniture in front of the door. It should also have a window big enough for her to get out through in an emergency
9. Think about how unsafe the kitchen can be. It contains knives, heavy pots and stovetops, all of which can be used to hurt her. Bathrooms can also be unsafe because they don't usually have a second exit. Women should try to stay out of these rooms during an assault or fight
10. Make a list of any weapons, especially firearms, that her partner has and where they are in the house. She should keep this list somewhere private but easy for her to find quickly
11. If possible, carry her cell phone with her at all times, tucked away so it is hard for her abuser to take it from her. It is a good idea to have key telephone numbers saved on it,

including any that she might need to quick dial during an assault. The cell phone should be kept fully charged at all times

12. Avoid wearing scarves or jewelry that he could use to strangle her, if he is frequently physically violent
13. During an assault, make herself as small as possible and, if she can, put herself in a corner or behind or under a large piece of furniture and/or cover her face and the chest/abdominal part of her body
14. Know where every exit in her house is
15. If she has a car, keep the gas tank full and back into the driveway, if that is possible. If she can, she should have a trustworthy mechanic check the car for GPS. It is a good idea to keep a set of car keys somewhere secret just outside the house where she can grab them quickly if she needs to. She could stash some cash there, too
16. If the woman has a neighbour she trusts, ask if they can leave a key to their house somewhere safe for her in case she needs to get to a safe space quickly. She can tell her kids they can go to this neighbour for help at any time
17. Talk to her children in a way that is age-appropriate so they can be and feel safe. Develop a code word with them and use that word when (and only when) she needs them to dial 911 and/or run to a neighbour for help.

## What makes a case urgent?

When Chief Justice Morawetz announced, on March 15<sup>th</sup>, that courts were suspending their regular operations and would be hearing only urgent matters, he said: "Access to justice for the most urgent matters must always remain available."

He listed three categories of family law issues that could be deemed urgent. These are cases involving:

- The safety of a child or parent (e.g. a restraining order, other restrictions on contact between the parties or between a party and a child or exclusive possession of the home);
- The well-being of a child including essential medical decisions or issues relating to the wrongful removal or retention of a child;
- Dire financial issues, including, for example, the need for a non-depletion order

For more information: <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>

Triage judges are in place at each family court to determine which cases are urgent, and their decisions will be based on the facts of each case.

At this point, four criteria seem to have been established that need to be met for the court to consider a case to meet the test of urgency. These were set out by Justice Kurz in *Thomas v Wohleber 2020 ONSC 1965*:

1. The concern must be immediate; one that cannot await resolution at a later date;
2. The concern must significantly affect the health or safety or economic well-being of parties and/or their children;
3. The concern must be definite and material rather than speculative. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than theoretical.
4. It must be clearly particularized in evidence and examples that describe why it is urgent.

Within this context, courts are making decisions on a daily basis, first, about whether or not a case is urgent and, second, if it is, whether the motion should be granted.

In deciding whether or not the case is urgent, the court also considers whether the issue(s) being raised fit within the list provided by the Chief Justice in March (see above).

**Just because a triage judge determines that an issue is urgent does not mean the person will obtain the outcome they are seeking. It simply means the court will hear the motion.**

There are two separate issues for the court to decide: urgency and, if urgent, the merits of the motion.

*Cases on this point:*

In a recent Ottawa case, the father brought an urgent motion in response to the mother's decision to deny his regular access time with the three-year-old child as set out in a 2018 final order.

The mother cited "the COVID-19 situation" as her reason for doing so. In her affidavits to the court, she raised a concern that the father's household was not engaging in appropriate social isolation and noted that the father was using public transit to transport the child to and from visits. She was able to provide text messages between the parties to support her concerns.

In her decision, Justice MacEachern wrote:

"There is a presumption that all orders should be respected and complied with. In this matter, the mother has provided material that supports her concerns regarding the child's exposure to risk while in the father's care. . . . I am prepared to treat this matter as the mother's motion to suspend or vary the father's access . . . . 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. I find that the mother's material, although unsworn at this point, provides a basis in support of such a finding."

Justice MacEachern gave the father the opportunity to serve and file an affidavit responding to the mother's allegations and providing evidence "on the issue of his household's compliance with COVID-19 safety measures, his use of public transit and any risks to the child as a result," noting that his affidavit "should include his specific and realistic proposal for access, which adequately addresses all COVID-19 considerations, in a child-focused manner."

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*Reitzel v Reitzel* (2020 CarswellOnt 4269 (S.C.J.)) Madsen J.: The father, who had not seen the children since the parties separated in September 2019, brought a motion for access. The mother alleged verbal and physical abuse by the father of her and the children and also said the children did not want to see their father. Child protection authorities confirmed that they did not support the father having unsupervised parenting time. Justice Madsen found the father's motion as not urgent because he did not bring it in a timely manner following the separation of the parties, there were no issues related to the safety or well-being of children, a Voice of the

Child Report – currently not being undertaken by the Office of the Children's Lawyer -- would be appropriate given the ages of the children (aged 12 and 14) and preliminary evidence indicated the involvement of child protection authorities.

## **What are the courts' expectations of parents at this time?**

Whether or not there is an order already in place, courts generally want to see the status quo maintained. Where there is an order, the parties are expected to follow it. Where there is no order, the parties are expected to continue doing whatever they have been doing.

In response to a series of questions about whether existing orders relating to access have to be followed during the current public health crisis, the Superior Court of Justice noted:

"We understand that it will be difficult for many families to manage the parenting arrangements during this time and that it may give rise to some emergency situations. Clients and lawyers should be encouraged to resolve these issues between themselves where possible and only engage the court where there are really pressing issues regarding a child's safety or wellbeing, or the safety of a parent. We understand that virtual mediation services may also be available that could be considered, for appropriate cases, to address pressing child-related issues.

Counsel is encouraged to follow the case law to see how judges are applying the urgency threshold to these circumstances."

Generally, we have seen the following in decisions over the past several weeks:

- If the children are in a safe situation, there is less likelihood that the court will find the matter urgent
- The court may find the situation to be urgent if there is evidence that the parent is allowing the children to be at non-essential places of potential COVID-19 exposure: pet stores, sleepovers, etc.
- The test of urgency will be strictly enforced to ensure that the most serious and urgent cases will get dealt with promptly
- Courts are stressing the importance of flexibility, reasonableness, creativity, common sense, cooperation, communication, out of court efforts to resolve differences/disputes
- If following the order or the status quo would put either one of the parties or the children at risk, the situation may be deemed urgent. That risk could be one of safety (e.g. mother's safety doing an exchange if exchanges used to be supervised) or health (e.g. one of the parties or children has health issues making them more vulnerable to COVID-19)

Courts want to see disputes resolved out of court. To that end, they expect the following from parents:

Communication  
Cooperation  
Compromise  
Creativity

Of course, these are difficult, if not impossible, in situations involving family violence, so it will be very important for women whose partners or ex-partners are abusive to provide evidence of

this to the court to explain why communication has not worked and why cooperation and compromise are not likely to be safe or realistic.

*Cases on this point:*

In *Douglas v Douglas* (so far unreported), the father brought a motion to have the status quo access arrangements with the 6 ½ year old child reinstated.

The parents have been separated since December 2018, and there are no court orders in place dealing with parenting time. Since February 2019, the father has had regular time with the child every other weekend and each Thursday evening following his access weekend. His most recent access was the weekend of March 13<sup>th</sup>.

On March 18<sup>th</sup>, the mother sent the father an email indicating that the child would remain in her care because she was concerned about the father's access to the COVID-19 virus and the need for social distancing. She felt that the travel from one parent's home to the other was "unnecessary" as defined by the state of emergency in place in Ontario. She also noted that the child had been ill during his most recent weekend with the father.

When the father came to the mother's home on Thursday March 19<sup>th</sup> for his regular time with the child, the mother refused to allow him to see the child. The father requested FaceTime visits; the mother offered such a visit on March 18<sup>th</sup>, but none have taken place.

In making her decision that this was **not** an urgent matter as defined in the present circumstances, Justice MacPherson noted:

"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. . . . Total removal of one parent from any child's life must be exercised cautiously. This is uncharted territory for the court, as well. The safety and well-being of children and families remain the principal concerns for the court.

This 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...

I would point out that in [his] notice, the Chief Justice of Ontario called "upon cooperation of counsel and parties to engage in every effort to resolve matters" during the period of suspension of regular court operations.

The parties have experienced family law counsel representing them. It does not appear that mother's counsel has responded to father's counsel in any meaningful way to reach a reasonable resolution. He is encouraged to do so. Surely a complete termination of all contact between the child and his father cannot be in the child's best interests even in these unprecedented times.

Finally, all counsel and parties must be aware that actions taken in these unusual circumstances may very well be judged once court operations resume, as not being appropriate nor in the best interests of their children."

## Can a woman take matters into her own hands?

The courts are frowning on parties who make unilateral decisions to change or not follow an existing court order in the current pandemic situation.

### *Cases on this point*

*McNeil v McGuinness* 2020 ONSC 1918: In this case, Justice Pazaratz declined to find the father's motion to be urgent and then wrote:

"Perhaps I can give high conflict parents a bit of a *warning*:

- 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."

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In *Burton v Woods* 2020 ONCJ 158, Justice Pugsley was quick and clear in his response to a father who decided not to return the 10-year-old child to the mother at the end of his access time. The existing order, issued after a trial, was for the mother to have custody and the father to have "very clear and quite limited" access. The father has appealed that decision and asked that the trial decision be set aside while the appeal is in process, but his motion to that effect has not been heard, so the existing order is still in effect.

When the father failed to return the child from access, the mother brought an emergency motion to have him returned to her care. Both parents were unrepresented during this process.

In his decision, Justice Pugsley noted that the father's issues "have no merit," and that "Mr. Woods has decided to take advantage of the current world-wide crisis to take self-help remedies . . . .Mr. Woods knows that his assertion is false. He has decided to disobey a court order. This cannot be allowed to continue . . . ."

"None of the respondent's past behavior suggests that he can be trusted to follow the orders of the court. [The child] must be apprehended by the police and the local CAS immediately and returned to the care of the Applicant, Mrs. Burton. Pending further court order . . . all access by [the child] to Mr. Woods is suspended effective immediately."

*Comment*

Given this approach by the courts, a woman who feels that her existing order may not be in the best interests of the children in the present circumstances should **get legal advice** before taking any action or making any decisions to alter or not follow the order.

She may want to consider an urgent motion seeking a change to the existing order. If she is successful, she has a new order that reflects her concerns. If she is not successful and the existing order remains in place, she may make the decision not to follow it. If her former partner then alleges wrongdoing on her part, she can respond to any motion he brings by showing that she tried to get the court to change the order and, when it didn't, she took the steps she deemed necessary to ensure the safety of the children.

## **Issues and cases**

We have heard from frontline workers who support women in many different settings, contexts and parts of the province, with questions about what their clients should do about a wide variety of family law issues in this pandemic environment. The Q and As below attempt to address as many of those issues as possible, including any case law we have found that relates to the specific issue.

**Please remember, the information, cases and suggestions below are not legal advice or a replacement for legal advice. They are offered as suggestions to assist you in supporting your clients.**

**You should strongly encourage any woman with a family law issue to consult with a lawyer before she takes any further steps. See page 5 for more information.**

## **Can a woman suspend court-ordered supervised access or access exchanges because the access centre is closed?**

Ontario's supervised access centres are closed in order to prevent unnecessary exposure to or transmission of COVID-19. This means that neither supervised visits nor supervised exchanges are available for the time being.

Courts are encouraging parents to be creative and flexible in order to maintain in-person access by finding an appropriate person to supervise the access from a distance as well as a location where it is safe for access to take place.

The same is true with respect to supervised exchanges: parents are expected to be creative and flexible in finding an alternate way to exchange children that is still safe for the mother.

*If a woman has an order for supervised exchanges of the children:*

Encourage her to consider whether there is another safe way she can exchange the children with their father/other parent.

Is there a public space she could use? For example, it might be possible to use the parking lot of a hospital, where people are coming and going but she can still keep physically distant from them. Could she use the police or fire station in her community? The parking lot of a fast food restaurant?

Could she do the exchange at the end of her or her ex-partner's driveway, with the person doing the dropping off staying in their vehicle and the other person staying inside the house?

Could someone accompany her, keeping the required six feet away?

Could she exchange the children on the front lawn of a friend, family member or neighbour?

*If she has an order for supervised access:*

Women need to keep their children's safety as their top priority. This may mean that access cannot happen, at least for now.

*In either situation:*

1. If it is safe for her, she could discuss the situation with her former partner by email or text message. This will mean she has a written record of what both of them have both said.
2. She should make a safety plan for any communication or other contact she may have to have with her former partner (link to <https://familycourtandbeyond.ca/keep-safe/web-phone-safety/managing-electronic-communication-with-an-abusive-ex-partner/>)
3. She should get legal advice, because she may have to go to court to make a new plan for how she will exchange the children or how the children will see their other parent while services like supervised access centres remain closed.

Women should always remember that safety -- theirs and that of their children -- is the most important consideration.

## **What can a woman do if she wants to limit or suspend her ex-partner's access to the children during the pandemic?**

The first consideration is that, generally, the courts expect people to follow existing orders, unless the matter is one that is urgent (see FAQ above). In the case of access, the urgency would have to relate to the safety or well-being of the children or, possibly, the mother.

Second, as discussed above, the courts are not generally responding positively when a parent engages in a "self-help" remedy.

In other words, except in an extreme emergency, it is better for a woman to get a court order before she limits or suspends her children's time with their other parent.

### *Cases on this point*

In *Balbontin v Luwawa* 2020 ONSC 1996, Justice Jarvis dealt with a motion by the mother of a three-year-old child in which she sought to suspend the father's access (as per an existing temporary order) until he could provide evidence of his compliance with COVID-19 protocols. Both parents submitted unsworn affidavits and then participated in a teleconference with the judge, in which they swore to the truth of the contents of their affidavits.

Justice Jarvis described the relationship between the parents as "high conflict," noting that the case was awaiting trial.

Some of the evidence the judge considered was:

- Photos the father sent to the mother on March 11 of the child in a public playground
- Ongoing emails from the mother to the father about her concerns and asking the father to work with her to develop a safe approach to his time with their daughter
- The consistent lack of response by the father
- Provision by the mother, on March 14, of face masks, hand sanitizer and disposable gloves for use during access and the father's apparent lack of interest in using them
- The mother's decision not to bring the child to the police station for the March 28 access exchange
- Communication from the mother's lawyer to the father
- Requests by the mother for COVID-19 safety measures information from the father, to which he did not respond

In his decision, Justice Jarvis noted that the mother's concerns were "legitimate about the child's third-party exposure" and that the father ignored the mother's concerns until she said she would not bring the child to the access exchange location:

"Rather than engage her and her lawyer in a good faith effort to communicate and allay those concerns, the father insisted that he knew his rights and obligations and would ensure their protection. . . he said there was no evidence of risk. The requests made of the father were respectful and child-focused . . . his refusal to engage with her where the priority should be ensuring the safety and well-being of the child is unacceptable."

Justice Jarvis ordered a suspension of the father's access until he filed an affidavit with the court addressing the mother's concerns and providing the information requested by her, noting that:

**"A parent's failure to communicate and meaningfully cooperate where a child's safety and well-being are involved is a failure to parent, especially in the current environment."** (emphasis mine)

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*Ribeiro v Wright* 2020 ONSC 1829

In this case, the parents have had joint custody of their nine-year-old son since 2012, with the mother having primary residence and the father exercising access on alternate weekends. The access arrangement is relatively new, having come into effect in September 2019.

The mother brought an urgent motion to suspend all in-person access because of her concern that the father would not maintain social distancing for the child and because she and her family were practising social isolation in their home.

Justice Pazaratz decided **not** to authorize the matter as urgent.

In his reasons, he noted that there was an existing order in place and there was a presumption that orders should be complied with. He also acknowledged that, due to COVID-19, many of our "daily routines and activities will for the most part have to be suspended, in favour of social distancing and limiting community interactions as much as possible." He pointed out that while, at this time, we don't know how long the crisis will last:

"children's lives –and vitally important family relationships – cannot be placed "on hold" indefinitely without risking serious emotional harm and upset. 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."

Justice Pazaratz set out that COVID-19 parenting issues will be dealt with 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
- 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 that have been closed. . . .”

Justice Pazaratz then found that, while the mother’s concerns were well-founded, she did not establish a “failure, inability or refusal” by the father to adhere to proper protocols in the future. He urged the parents to “renew their efforts” to address the issues in a “conciliatory and productive manner.”

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*Chrisjohn v Hillier* (March 26, 2020): The mother withheld the two-year-old child from the father, contrary to an existing court order, because she felt the father was not following COVID-19 protocols. The father said he was. The child has a neuromuscular disorder with respiratory complications, but Justice Mitrow found that the matter was urgent and ordered the mother to comply with the regular parenting schedule:

*It is trite that in Ontario and elsewhere in Canada 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.*

## **Can a woman move or travel with her children during COVID-19?**

Mobility is an issue that is fraught with complications at the best of time. Given the public health restrictions on unnecessary travel, it is not surprising that courts are generally not permitting parents to travel or relocate with children at this time.

### *Cases on this point*

In *Amirzada v Alemn* 2020 ONSC 1979, the mother sought temporary sole custody and primary residence of the child, who was just under three years old, as well as an order permitting her to travel to Vancouver so she could live with her extended family for the duration of the COVID-19 pandemic. She also sought a suspension of the father's in-person parenting time with the child, to be replaced by FaceTime access and a restraining order against the father. The father opposed this motion and sought an equal parenting schedule and an order prohibiting the removal of the child from Ontario.

The parties in this case had separated and reconciled on several occasions, over the course of which they had entered into two consent orders for joint custody, with primary residence with the mother and scheduled parenting time with the father.

In March 2020, according to the mother's evidence, she left the father because he assaulted her such that she required hospital care. She provided photographs of her injuries of this assault as well as past assaults. As a result of the most recent assault, the father was charged with assault choking/strangulation, assault and uttering a death threat. He was released on bail subject to a condition that he have no contact with the mother except through a third party for the purpose of arranging parenting time.

The mother's position was that she had concerns for the child's safety in the father's care, for her own safety because she thinks the father will disregard the bail condition and that, for her own emotional safety, she needed the support of her extended family.

The father's position was that travelling to Vancouver would not be in the child's best interests in the COVID-19 pandemic and that the child would be safe when in his care. He lived with his mother and siblings, with whom the child had a long-standing and close relationship.

Justice Akbarali determined that it would not be in the child's best interests to travel to Vancouver for a number of reasons, including:

- The child's close relationships with both parents and their extended families; with his relationship with the mother's extended family already established primarily through FaceTime
- The importance of stability for the child, including that he continue to reside in his usual home and have regular contact with his father
- The lack of concerns for the child's safety in the father's care based on evidence from the CAS
- The risk of exposure to COVID-19 if the child were to travel to Vancouver

The judge explicitly noted, nonetheless:

**"I accept that the mother's allegations of abuse by the father are credible, and I am greatly concerned by the content and tone of some of the father's text messages to the mother, which suggest he has acted in a controlling manner towards her. . . . Accordingly, while I have grave concerns about the father's behaviour towards the mother, on this urgent motion, I am not concerned about the child's safety, and the existing restraining order can protect the mother."** (emphasis mine)

In order to ensure the child would have frequent contact with both parents, Justice Akbarali ordered that he be with the father from Thursdays at 6 pm until Sundays at 5 pm, with exchanges to be handled by the father's sister at the mother's home.

She set aside the temporary joint custody order, noting that because of the mother's allegations of abuse "it is not appropriate, in view of those concerns, to maintain an order for joint custody. Nor is it appropriate to award sole custody, even on a temporary basis, to the mother at this time," because the allegations against the father must be "properly tested" before "they form the basis to exclude the father from decision-making."

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*Onuoha v Onuoha* 2020 ONSC 1815: The family had been living in Nigeria, but in October 2019, the mother brought the couple's two children to Ontario. The father claimed that he had not consented to this and brought a Hague application in Ontario for the return of his daughters.

The case was mid-process when regular court operations in Ontario were suspended due to COVID-19, at which point the next hearing was postponed until early June. The father sought to have the matter dealt with on an urgent basis.

Justice Madsen, in deciding the matter was not urgent, wrote the following:

"At first blush, this case would appear to fall within the understanding of an "urgent" matter . . . as it is a matter "relating to the wrongful removal or retention of a child," (at least from the perspective of the father). However, I am unable to find that the matter is urgent at this time. The children are currently residing with their mother in Kitchener-Waterloo, Ontario. There is currently a global pandemic underway, which has resulted in wide-spread travel restrictions, including the current international Travel Advisory of the Government of Canada....

"This is not the time to hear a motion on the return of children to another jurisdiction. Indeed, were the father to be successful, any order would likely not be capable of being implemented for weeks or even months. It would be foolhardy to expose the children to international travel. . . . the children's "safety" and "well-being" are protected, for the time being, by remaining where they are in the care of their mother in Ontario. While the matter is very important to the parties, it is not in my view currently "urgent.""

Justice Madsen then assured the father that no *status quo* in favour of the mother would result from the delay in hearing his motion and stated that she expected the mother to make "every reasonable effort" to have the children speak regularly with their father by Skype, FaceTime, telephone or other means.

## **What can a woman do if her partner has the children and won't return them to her?**

As discussed above, the courts are taking it very seriously when one parent does not follow an existing court order without providing a good reason. So, if a woman and her ex-partner have a court order and he has decided not to follow it by, for example, not returning the children to her at the end of a regularly scheduled access time, there is a good chance the court will find her case urgent.

### *Cases on this point:*

*Jackman v Doyle* 2020 ONSC 1875: In this case, the mother sought the return of the children from the father's care.

The triage judge, Justice Shore had, the day before, deemed that the unlawful withholding of the children, given the COVID-19 situation, met the urgency requirement currently in place. Justice Diamond then held a telephone hearing with the parties. He concurred with Justice Shore's determination that the mother's motion was "presumptively urgent," warranting "interim relief from the courts."

The parties have two children, who are three and five years old. They separated in July 2019, but lived together until December 2019. There was no formal parenting agreement in place, but the children had consistently lived with the mother, who had always been their primary caregiver, since the date of separation. When the father spent time with them it was at the mother's property, with the children's nanny present.

This changed when the father told the mother he planned to take the children to his home for the March break. The mother objected, and her lawyer wrote to the father's lawyer to indicate this. In response, the father fired his lawyer, went to the mother's home and took the children without her consent.

The mother's evidence set out what the decision calls a "volatile" relationship, including both physical and electronic monitoring of her as well as financial extortion by the father.

The mother attempted to have the father return the children to her, but was unsuccessful. She had a number of concerns specific to the present public health situation. The children became ill and developed a fever while with the father, but he declined to seek medical advice. Despite this, he took them to public places and to visit his aged mother. Justice Diamond shared her concerns: "the applicant is understandably concerned for the children's well-being."

In making his order that the children be returned to the mother, Justice Diamond wrote:

"Until the events of this past week, the children's *status quo* was found and maintained at the applicant's property. The children's lives were at the applicant's property both before and after separation. . . . I find that the children's *status quo* was unilaterally altered by the respondent's actions and it is in the children's best interests to make an interim order returning the children to the applicant's care and control at her property. In terms of access, I make no order at this time and the parties are free to negotiate

that issue. If they cannot reach an agreement, the issue can be raised at the next telephone hearing in one week's time."

The order set out a number of provisions, including one that "if necessary," the mother could enlist the assistance of the police, and listed three police forces -- Toronto Regional Police, OPP and RCMP.

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*Tomkins v Che*, 2020 ONSC 2424: The mother (applicant) brought an urgent motion for orders to address a number of issues relating to parenting arrangements for the parties' children. At the time of her motion, the children -- 6 ½ year old twins -- had been with the father for more than a month, in an unknown location, and the father was not communicating with her.

In her materials, she stated that she had been the primary caregiver before the parties separated in July 2019 and that she has had difficulties with alcohol use. She admitted to a relapse on March 11<sup>th</sup>, the last day the children were in her care, when she drank three beers. When the father came to the home, the two of them had an argument; he took the children and did not return them. When she called the police, they located the father but would not tell her where he was. The father sent one text message a week later to say he and the children were "in a local but isolated location."

Justice Madsen, in her decisions, stated:

"In my view, applying the Notice to the Profession and the case law, the motion brought by the mother is urgent. On Ms. Tomkins' evidence, the children were removed from her care and she does not know where they are. . . . Mr. Che has not responded to texts for over one month now. Ms. Tomkins' concern is immediate and serious. If Mr. Che has concerns about Ms. Tomkins' admitted alcohol use, a plan must be developed having regard to that issue -- it does not give license to unilaterally withhold the children with no information as to their whereabouts."

Justice Madsen directed that the mother serve the motion materials and her endorsement on Mr. Che by email and by text, giving him 4 days to serve and filing responding materials, she proposed to hear the motion by teleconference no later than May 1<sup>st</sup>.

## **Can a woman get a restraining order or an order for exclusive possession of the matrimonial home during COVID-19?**

A woman seeking a restraining order at this time will need to establish that her need is urgent (cannot wait for a resolution), that the situation significantly affects her health or safety and that her concern is real and not theoretical. She will need to be able to provide the court with detailed evidence to support her claims.

### *Cases on this point:*

*Rankin v Rankin* (unreported): The wife brought an urgent motion for a restraining order against her husband. Based on the materials she filed, Justice Fitzpatrick found that the matter was urgent and issued an interim restraining order on the basis of the wife's evidence and the fact that there would be minimal prejudice to the husband since he and the wife did not live or work together.

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in *Harrington v Dennison* 2020 ONSC 2114, Justice Madsen dealt with a motion brought by the mother for a restraining order against the father as well as an order that he have no access and that the police assist with enforcement of the orders.

In her affidavit, the mother stated that there was a history of violence by the father towards her throughout the relationship. An incident on February 5<sup>th</sup> led to their separation and to the father being charged with assault bodily harm, strangulation and assault as well as assault for a prior incident.

The mother's affidavit indicated that she was holding the 16-month-old child during the February 5<sup>th</sup> assault. She called her parents for help and, when they arrived, the father assaulted them, pulling out some of her mother's hair. The father remained in custody, but the mother feared he could be released at any time.

The father's perspective was not known to the court at the time of the motion. Nonetheless, on April 6<sup>th</sup>, Justice Madsen ruled:

"On the materials before the court, I find that the matter is urgent and grant the orders as sought on a temporary without prejudice basis."

The order and the motion materials were to be served on the father by email and by courier to the correctional facility where the father was being held "if the location is known." He then had the opportunity to file a responding affidavit by April 13<sup>th</sup>, after which – whether or not he filed materials – the judge would review the case.

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*Guerin v Guerin* (2020 CarswellOnt 4534 (S.C.J.) Doyle J.: The parties were operating under a nesting arrangement, in which the children remained in the family home and the parents

rotated in and out on a weekly basis. They both moved into the home full-time because of COVID-19. The father began coming and going from the house in a manner that concerned the mother, who was immune-compromised and had a number of health issues including asthma.

The father would not discuss his movements with her, so she brought a motion for interim exclusive possession of the matrimonial home and for the father to pay the mortgage in lieu of child support.

Justice Doyle found the mortgage payment request not to be urgent, but granted the mother's exclusive possession claim because of the father's failure to take the increased risks to the mother and children seriously. She ordered that the father have reasonable and generous electronic contact with the children and gave him leave to return to court on or after April 17<sup>th</sup> to provide "details and measures he has taken to minimize the risk to the family and specifically how he has avoided contact with others since the date of this Order."

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*Colasuonno v Colasuonno* 2020 ONCS 2061: The mother, who was the respondent, brought an urgent motion about exclusive possession of the matrimonial home and various related matters. Justice Charney deemed the issues to be urgent and elected to make a decision based only on the written materials submitted by both parties.

The parents separated sometime in 2019, although they disagreed by several months on the date.

The mother's position was that, during the separation process, she became frightened by the father's behaviour towards her, which included "incessantly sending text messages," "initiating arguments" and becoming "increasingly hostile and angry." In December, she called the police, who asked the father to leave the family home, which he did, moving in with his parents for a short time. When he returned to the family home in January, against the mother's wishes, she took the two children and moved into her parents' home.

The mother wanted to return to the family home with the children but not with the father there "given the high level of conflict between us," which she did not think was good for the children. She took the position that it was not safe for her and her children to live with her parents during the pandemic because they are over 55 years of age, proposing a nesting arrangement in which the children would remain in the family home and she and the father would rotate in and out, with each of them staying with their parents when they were not with their children. She would continue to have the majority of the time with the children, as had been the arrangement previously.

The father's position was that he and the mother could live separate and apart in the family home, with him living in the basement, claiming that the mother greatly exaggerated the extent of the conflict between them. He said that his parents, who are in their 70s, would not let him live with them during the pandemic because of their concerns about exposure to the virus.

Justice Charney found parts of each party's affidavits "to be dubious," and excluded that evidence from consideration.

He concluded that the mother's affidavit did not contain any admissible evidence to support her contention that the father was failing to comply with relevant COVID-19 protocols.

He also concluded that none of the actions by the father, as noted in the mother's affidavit, "rise to the level of violence as that word is used in s. 24(3) of the *FLS*," and excluded violence as one of the considerations in determining whether or not the mother should have exclusive possession of the matrimonial home.

In considering the other two factors set out in the statute -- the best interests of the children and the availability of other suitable and affordable accommodation -- he noted that:

- "All things being equal, it is usually in the best interests of the children to remain in the matrimonial home, although that is not, in itself, a sufficient basis to give one party exclusive possession of the matrimonial home."
- the mother's father and both of the father's parents are at increased risk of more severe outcomes if they are exposed to the virus
- the father lacked the financial resources to afford an apartment
- the mother had more than \$500,000 in savings, putting her in a better position to find alternate accommodation

He did not find the issue of parenting time to be urgent, but "[t]his is not, however, an invitation to deny or suspend [the father's] parenting time with the children. . . . Moving forward, both parents are required to provide very specific and realistic time-sharing proposals that fully address all COVID-19 considerations, in a child-focused manner."

Justice Charney then dismissed the mother's motion for an order for exclusive possession of the matrimonial home and for the children to be exclusively in her care for 14 days with no access to their father during that time and finds that the father "is presumptively entitled to costs for this motion."

## **Can the courts stop legal bullying during COVID-19?**

Legal bullying is an ongoing issue for women with abusive partners. Often, the courts are slow to respond. However, as the case below illustrates, there may be an increased willingness at this time to shut down litigants who attempt to use the present situation to harass the other party and/or the court.

### *Case on this point*

*Scion v White* 2020 ONSC 1915: Neither party in this case had a lawyer. On March 24<sup>th</sup>, Justice Pazaratz issued a triage endorsement allowing the father's access request to proceed as possibly urgent, but found that his financial and property issues were not urgent and so would not continue at the present time.

Nonetheless, the father brought a further emergency motion about the financial issues three days later. Justice Pazaratz once again confirmed that the financial and property issues were not urgent and issued an endorsement that the father "may not bring any further motions on property or financial issues without leave of the court."

A different judge, Justice Brown, dealt with the access issue via teleconference with both parents on March 27<sup>th</sup>. Her endorsement denied the father's request that the issue proceed on an emergency basis:

"There is an existing order for access which the applicant [mother] states she is prepared to continue and the respondent [father] has not given sufficient evidence to establish why the existing order should now be varied on an urgent or emergency basis."

On March 30<sup>th</sup>, the father filed yet another emergency motion with respect to both access and financial issues, which Justice Pazaratz did not permit to proceed. In his decision, he noted that, with respect to the financial issues, he had already made a determination that they could not proceed on an emergency basis, the most recent request directly contravened the earlier endorsement and the materials the father filed on March 30<sup>th</sup> were far in excess of the two-page limit set out in an earlier endorsement.

With respect to access, he wrote:

"it could only potentially be urgent if there was a complete denial of access. But as Justice Brown noted in her March 27, 2020 endorsement, there is no denial. The Applicant has undertaken that the existing pattern of two hour weekly supervised visits will continue. There is no reason these visits can't take place in an open setting such as a park. . . Obviously, there are going to be practical issues which arise in making the access arrangements successful from the child's perspective. If it's raining, either a sheltered location will have to be found (which may be more difficult in COVID-19 circumstances) or perhaps the visit will have to be rescheduled for a time or adjacent day when the weather is more favourable. These are common sense details which people acting in good faith should easily be able to resolve without taxpayers funding a Judge's involvement."

## **Can the court make orders about financial matters during COVID-19?**

While the vast majority of decisions issued by family courts during the pandemic have related to parenting arrangements, a few have dealt with financial and property issues. There must be dire financial need or risk, as was the situation in the case below.

### *Cases on this point*

*Thomas v Wohleber 2020 ONSC 1965:* The two parties had been married for 11 years and have two children. No court orders were in place until the wife brought this motion without notice.

Their marriage had been, in the words of the wife, “rocky.” The husband was financially controlling and secretive. He was the primary income earner and, again in the wife’s words, his income allowed the family to live a “materially substantial life.”

In February, the husband drained the couple’s line of credit to the tune of \$775,000. When the wife discovered this, she confronted him. His response was that he thought she was having an affair, so he took the money. The husband had been struggling with some mental health issues and, at this point, the wife’s concerns about those led her to take the children and move to her parents’ home about half an hour’s drive from the matrimonial home, where the husband continued to live.

The husband agreed to return the money to the line of credit if she would move back into the family home. She agreed, he returned the money to the line of credit, but, as the wife shortly discovered, removed it again the following day.

It also became apparent to the wife that the husband was stalking her and had likely installed spyware on her cell phone. At this point, the wife once again took the children and moved to her parents’ home because she felt unsafe, after which she facilitated access between the children and their father.

There was an exchange of correspondence between the parties’ lawyers, in which the husband’s lawyer demanded that the wife agree to a shared parenting arrangement and surrender the home to the husband. Following this initial correspondence, the husband began to represent himself.

Justice Kurz’s decision set out clearly and in detail the requirements under usual circumstances for a matter to be found urgent as well as the requirements under the present circumstances.

He identified four factors that are necessary for a case to meet the current interpretation of urgency:

- “1. The concern must be immediate; that is one that cannot await resolution at a later date;
2. The concern must be immediate in the sense that it significantly affects the health or safety or economic well-being of parties and/or their children;

3. 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.
4. 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."

Justice Kurz then applied these factors to the case at hand and found, for the reasons listed below, that it was an urgent matter:

- The husband had demonstrated erratic personal and financial behaviour in recent weeks
- Correspondence from his lawyer contained the husband's "implicit admissions that he had unilaterally removed the funds"
- The husband "has refused or failed to justify his unilateral conduct"
- "The amount of the debt on the [line of credit] is equivalent to more than eleven times [the wife's] annual income"
- The funds removed were liquid and available to the husband to use as he saw fit
- The wife would be jointly and severally responsible for repaying all of the funds removed by the husband, which she would be unable to do
- Bank records confirmed that the funds were removed by the husband
- There was a significant risk that the husband would dissipate the funds
- "All of this raises concerns of dire circumstances for [the wife] and the children if the funds are not repaid on the [line of credit] and a non-dissipation order is not made"

The judge ordered that the husband return the funds within 24 hours of being served with a copy of the order and provide proof of repayment within 24 hours of that. He also ordered that the line of credit be frozen. The order further restrained the husband from "transferring, assigning, pledging, disposing of, depleting, dissipating or otherwise dealing with any assets under his control," with the exception of payments "necessary to preserve and maintain the home and to retain counsel for this proceeding."

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*Theis v Theis* 2020 ONSC 2001: Ms Theis brought an urgent motion to have the court order payment of her share of the proceeds of the sale of the family home, which were being held in trust. She argued that she had been unable to operate her small esthetic services business due to pandemic protocols so had no income, but still had to pay business rent and utilities as well as living expenses for herself and the children. She planned to apply for CERB, but anticipated a delay in receiving the money, which would, in any event, be inadequate to cover her expenses. In addition, the father was more than \$4,500 in arrears on child support payments.

Justice Madsen acknowledged that the circumstances faced by Ms Theis were difficult, but concluded that her evidence did not establish "dire financial circumstances." She suggested that Ms Theis would need to provide further evidence (her previous income, her total current income from all sources, her personal and business expenses, and the full extent of her resources) to make a case for urgency.

**What can a woman living in a shelter do if her children have court-ordered access with their father but the shelter does not permit residents to leave and return?**

To this date, we have not found any cases that deal with this issue. However, we know that shelters are finding different ways to support women to the extent possible so they can stay safe and follow existing parenting arrangements. In some cases, women with children are being housed in hotels or motels so the children can see their father and return to the mother without coming into a communal living situation. Other shelters permit children to leave for access, screening them on their return and keeping them as far away from other residents as possible. Others are supporting women to make alternate access arrangements, including by Skype, Zoom, text and phone, where those arrangements are safe for the children, the mother and other residents in the shelter.

A woman who unilaterally suspends access, even if she is living in a shelter that does not permit residents to leave and return risks facing the ire of the court. If the father brings an urgent motion to restore access, the mother could be seen as having engaged in "self-help," by stopping access on her own decision which, as noted above, is not seen in a positive light by the court.

Given this approach by the courts, **a woman should get legal advice** (see FAQ above) before taking any action or making any decisions to alter or not follow any order, especially if it relates to parenting arrangements and could be seen as interfering with the children's time with their father.

She may want to consider bringing an urgent motion seeking a change to the existing order. If she is successful, she has a new order that reflects her concerns. If she is not successful and the existing order remains in place, she may make the decision not to follow it. If her former partner then alleges wrongdoing on her part, she can respond to any motion he brings by showing that she tried to get the court to change the order and, when it didn't, she took the steps she deemed necessary to support the best interests of the children as well as both her safety and the safety of the kids.

## What are some tips for assisting a woman with a family law matter?

There are a number of ways you can assist a client who has a family law matter:

- **Assist her to obtain legal advice (see FAQ above)**
- Keep yourself up to date with how the court in your community is operating, so the information you give her is current and accurate
- Share procedural information with her:
  - Documents do not require consent to be served by email
  - Commissioning of documents can be done by videoconference
  - Unsworn affidavits can be filed, but the person must be able to swear or affirm the affidavit by telephone
- Even though documents for urgent matters can be submitted by email, the originals must be kept, as they will have to be filed when courthouses reopen
- Documents being filed by email must be less than 10 MB, but more than one email can be sent if the materials are lengthy
- Dropbox and the like should not be used without consent of the judge because of security concerns
- If the triage judge determines the issue to be urgent, it will be sent to another judge to be heard
- That hearing will take place by teleconference or videoconference
- Any order will be in effect from the time it is issued by the judge, unless the order itself stipulates otherwise

A woman bringing an urgent motion needs to be clear in her notice of motion about what she wants from the court. The list below is intended to assist you support your client in preparing her notice of motion but is non-exhaustive, and not each item will apply to every case:

- an order permitting the motion to be heard on the basis of urgency, briefly identifying what the urgent matter is (e.g. wrongful retention of a child)
- an order permitting service of materials by email
- an order permitting and validating commissioning of affidavit material by telephone
- the outcome she is seeking (e.g. return of a child)
- an order for police enforcement, if that is necessary
- such further and other relief as may be requested and the court considers just
- an order for costs

Her notice of motion needs to be supported by a detailed affidavit setting out the evidence to support the orders she is seeking. This might include:

- a copy of all existing family and criminal court orders as well as any active criminal charges against the abuser
- history of abuse, including threats to harm her and/or the children or not to return the children from access visits
- past abductions/failures to return children by the father
- post-separation abuse
- information about the father's lifestyle/lack of regard for public health regulations and guidelines
- information that the father is not following COVID-19 guidelines

- past examples of irresponsible parenting by the father
- if she is living in a women's shelter, information about the shelter's pandemic protocols
- if she is working outside the home, information about her workplace's pandemic protocols
- any attempts she has made to resolve the issue before turning to the courts

She may want to turn to friends and family as well as to social media, text and cell phone messages and emails for evidence to supplement her own knowledge.

Because there is an emphasis on parents communicating with one another rather than turning to the court to work out problems, it is important for women to keep a record of their attempts to communicate/negotiate with their ex, including any lack of or inappropriate responses from him. This will be important evidence to support the claim that the issue is urgent

The onus is on whichever person is seeking to change the status quo to establish, on a balance of probabilities, why the change is in the best interests of the children.

Women may want to consider addressing some or all of the following in any urgent matter:

- what is to happen in terms of parenting time if either person or anyone they live with exhibits symptoms of or is confirmed to have the virus
- how information about virus status is to be shared between the parents
- rules about physical distancing, both during and outside parenting time
- clear guidelines about what are acceptable reasons to be outside the house (for parents and children)
- limitations (ie a ban) on in-person social activities for the children

## How can I best support my clients during COVID-19?

1. Remember everyone is more stressed than usual: your client, her children, her extended family, even her lawyer (if she has one).

**Don't forget to include yourself on the list of people who are more stressed than usual.** You may be working from home, without ready access to your colleagues or files. You may be juggling work with caring for children who are stuck at home with no school or other outside activities. You may be concerned about other family members with whom you cannot have in-person contact. You may be dealing with financial stress.

2. Be as patient as you possibly can. Although you bring a trauma-informed approach to your work already, none of us has lived in a situation like this one. Clients who normally are able to concentrate, take in what you are telling them, organize their thoughts and move on with the tasks they need to do may not be able to do this now. Clients whose trauma was already interfering with their concentration and organizational skills may be really struggling.

**Cut yourself some slack, too.** You may be struggling to stay focused on your clients' needs, so set realistic goals for yourself. Prioritize. Allow extra time to complete tasks. Take extra breaks. Ask your colleagues for support if you need it and offer the same back to them.

3. Keep up to date with what is happening legally, at the courts and with public health requirements so you can share this information with your clients. Read the case summaries in this document and check <https://lukesplace.ca/> for regular updates.

**Staying up to date will help you cope.** If you feel that you know as much as you can, you will feel more confident and less anxious about the support you are providing to women.

4. Refer your clients who need summary legal advice to the Luke's Place Virtual Clinic (see FAQ above). Once you have set up the appointment, help your client prepare: assist her to make a list of the topics she wants to cover and any questions she has for the lawyer.

**If you can, attend the meeting with your client.** You can do this even if you and your client are not in the same place. In addition to assisting your client by taking notes and prompting her if she needs you to, you will feel more connected by being at the meeting. And, you can share any new information you get with other clients.

5. Help your clients understand what "urgent" means in the present circumstances. Understandably, your clients will likely have a greater sense of urgency whatever situation they are dealing with. However, not every case will be found to be urgent by the courts, so it is important to assist your client in assessing her situation; ideally by connecting her with a lawyer for legal advice.

**Understanding that not every case is urgent will help you set appropriate priorities.** This will make it easier for you to manage your workload without becoming over-stressed and exhausted.

## Conclusion

We hope that the information in this resource is helpful to you. Please feel free to share it with colleagues. A few final suggestions/reminders:

- Visit <https://lukesplace.ca/> regularly for updated information
- Assist your clients to get legal advice if they are considering not following an existing order or status quo arrangement or if they want to bring an urgent motion (see FAQ above)
- Encourage and support your clients who do not have their own lawyers to use the Luke's Place Virtual Clinic (see FAQ above)
- Stay in touch with us so we can keep on top of what is happening around the province: [projectco@lukesplace.ca](mailto:projectco@lukesplace.ca)
- **Take care of yourselves.** If you don't, nothing else we will be enough to get you through this difficult time. Even if you are working from home, set regular working hours, make sure your clients know you are only available at those times and then stick to your schedule. Set and maintain boundaries. Get dressed for work, even if no one except your children or dog will see you. Resist the temptation to respond to emails from clients or colleagues outside the working hours you have set. Check out the ideas in a resource prepared by the Centre for Addiction and Mental Health (CAMH): <https://www.camh.ca/en/health-info/mental-health-and-covid-19#coping>
- We are living in an extraordinary time and we don't know when things will return to normal or what that new normal might look like. We all need to pace ourselves.