

Updated at 8 May 2020

To women who are accessing resources on their devices, the BC Society of Transition Houses has recently released information on how to keep your phones and computers safe.

Rise Women's Legal Centre is a community legal clinic operating in Vancouver BC, Canada. We assist self-identifying women in BC primarily with family law matters, and the legal services are provided by senior law students under the supervision of Rise's staff lawyers.

During the current COVID-19 pandemic, some parents who share parenting time for their children pursuant to a court order or agreement may have questions about how to continue to share parenting time (including contact or access) and questions about support payments amid rapidly changing health advisories.

We have collaborated with Vancouver family lawyers Zara Suleman, Andrea Glen, and Tanya Thakur to share the following guidelines in the hope that they are of assistance to parents who are divorced or separated and who have current co-parenting arrangements for their children during the COVID-19 Pandemic.

The steps that are being taken by the government and courts are unprecedented, and case law on how COVID-19 will be treated by courts is only just developing. The following guidelines are for information purposes only, and are not legal advice. Please seek legal advice about your specific case.

NOTE: Remember that all of your communications (video, email, text messages, voicemails) may be eventually reviewed by a court, so be clear, respectful, and reasonable in your communications and avoid name-calling or blaming.

If you are experiencing violence during this time and need protection, the courts are accepting various processes (including virtual, fax, in-person drop box for documents) for obtaining a Protection Order in Family Court, and Rise can connect you with the best local resource in BC to assist you. Please visit our [website](#) and click the "Request Help" button to select a time to speak with our case manager, or contact the court registry directly. If you are in immediate danger, call 911. If you need immediate support of any kind, dial 2-1-1 and BC211 can assist you in finding the help you need.

If you have a court order in place specifying parenting time or support payments, you should follow it unless there are extreme or special circumstances. Although the Government of BC does not appear to have officially designated the exchange of children as an “essential” reason for leaving homes (see BC [list](#) of essential services), other jurisdictions have been explicit that moving children between parents’ homes is an exception to stay-at-home rules and we believe that this will also be the case in BC.

Should the COVID-19 pandemic prevent parents from being able to follow family court orders, parents should attempt to follow the spirit of the order by making safe alternative arrangements for the child(ren). This can include maintaining the parenting time with video messaging and phone calls.

Parents are ultimately responsible for ensuring that the best interests of their children are met. Some of the circumstances that parents may need to consider in moving children between homes include: the child’s present health and any increased risk they may have due to pre-existing medical conditions; vulnerable or at-risk individuals in one household or the other; the ability of each parent to ensure physical distancing in their homes.

In the event you choose not to follow the court order, it is likely the court will assess your conduct to see whether parents acted reasonably and practically during the crisis.

We anticipate that Courts will look unfavourably on parents who fail to do their best to adhere to safety protocols, take advantage of the pandemic to unreasonably deny parenting time, or who were unreasonably inflexible in accommodating parenting time.

We recognize that many women and children may face heightened safety concerns during this pandemic. Other jurisdictions have reported drastic increases in rates of domestic violence, and we expect BC to be no different. At the same time, services like police and transition houses may be operating with reduced capacity. We have broken our guidelines down into two sections: firstly if you can co-parent safely, and secondly if you cannot co-parent safely. We recommend you read through all the information.

If you can SAFELY co-parent:

1. **Respect Orders and/or Agreements:** Where you can do so safely, follow the existing court order. If you are unable to follow the court order exactly as written, try to follow the order as well as you can.
2. **Be Reasonable and Practical:** If you are unable to follow the order/agreement, and it is safe to do so, try to ensure that the parent whose time with the child is being impacted maintains a close relationship with the child.

If the current order requires that one parent use public transit to bring the child to the other parent, consider whether alternative arrangements can be made. Perhaps one longer visit would be easier to organise than two shorter visits and would minimise the number of times that the child has to be transported. Many children have a short attention span for conversations over video conferences so consider whether there are other fun activities that can take place online. Here are some examples:

- books and movies can be shared through FaceTime, Zoom, Skype, WhatsApp, or telephone
- many videogames and card games can be played online with video conferencing functions

3. **Be Proactive:** If communication with the co-parent is possible, try to develop a plan for what steps each of you will take to protect the child and each other from exposure to COVID-19. Both parents have an obligation to share information about their care of the child and both parents should immediately inform the other of any symptoms, or if they themselves may be exposed.
4. **Document Any Changes:** If you and the other parent agree to make alternative arrangements for your child during the pandemic, document the reasons for the change and how long you expect the changes to last (e.g. “until government public health restrictions are lifted”). We recommend this be done in writing. While a signed agreement is preferable, emails or text messages can document what is being agreed to as a revised parenting/support arrangement for this period of time.

If co-parenting is UNSAFE

1. **Prioritize Safety:** If you are in imminent danger, call 911. When speaking with the police you may want to request a Peace Bond to prevent the other person from contacting you.

If you need to flee an unsafe situation, dial 211 and ask for VictimLink; a support worker can help you safety plan and connect you with resources to help keep you safe.

2. **Protection Orders:** The BC Courts continue to hear urgent applications, including for protection orders. Protection orders are available when someone is experiencing family violence and there is a risk of future violence. The email addresses for filing urgent applications follow below.
3. **Varying Your Order:** The BC Courts will hear applications they classify as urgent, and they are in the process of expanding matters they will hear so please continue to check in with their website. While your situation might be urgent, be aware that the court may not find it is urgent under their limited operations at this time. The first step in bringing any application during this period is convincing a judge that your matter is urgent.

Courts may hear applications to vary orders regarding parenting time and agreements in certain circumstances. The Court may also hear urgent orders involving communication between the parties.

We anticipate that Courts will not consider parents' subjective fears that a child should not be moving between homes during the pandemic, or that another parent may not be as compliant with health advisories as they are, will be enough to meet the test for urgency. However, where a parent can bring clear examples of how a child's health is being endangered due to family violence or health concerns they may be able to obtain a change in their order through this process.

- 4. Denial of Parenting Time:** The denial of parenting time is a serious step. If you do deny parenting time, you may be called upon in court in the future to justify your denial and a judge will decide whether or not the denial was wrongful or not. Please review sections 61 and 62 of the Family Law Act.

- 5. If there are fluctuations to your custody arrangement, consider how the court will interpret it.** While you are working hard to adjust to these times, try to be generous in your actions and document your communications in writing as though they may be read in court someday. We anticipate that family law judges will expect there to be fluctuations during this time, and will take seriously the concerns that are raised about parents who were highly inflexible during this time.

- 6. Keep Yourself Informed:** The BC Government has released a BC COVID-19 app where you can receive updates, obtain answers to frequently asked questions, follow BC statistics, and screen yourself for symptoms. Parents can model these positive behaviours for their children. If possible, try to limit how often you check COVID-19 media updates to twice per day, and from reliable news sources.

To track the updates of the BC Courthouse click [here](#)

COVID-19 INFORMATION AS OF May 8, 2020:

The Court released changes to their operations as of April 28, 2020. Please see [eNews](#), updated Notice to the Profession and Public: [NP19](#) and Criminal Practice Direction [CRIM 12](#): Criminal Pre-Trial Conferences During COVID-19, for details.

Family and child protection case conferences and small claims settlement conferences originally scheduled from May 19 to July 3, 2020 will be heard by telephone or videoconference on the date originally set. The Court will contact parties with connection details and let them know if their start time will be changed.

Family, child protection, and small claims trials set from May 19 to July 3 will be converted to conferences in which settlement and/or ways to proceed will be discussed. Parties who had matters scheduled from March 16 to May 16, 2020 but adjourned are also being contacted by the Court to schedule case conferences.

At the moment no in-person trials can be accommodated, unless otherwise ordered by a judge.

To contact Legal Aid to make an application or seek help with an urgent problem relating to a family court matter that has been adjourned in response to the current COVID-19 situation, please call your local Legal Aid office or call 1-866-577-2525 (BC wide) or 604-408-2172 (greater Vancouver).

Applications to a judge for determining on the record if a matter is urgent can be sent:

- by email, phone or mail to the applicable local [court registry](#); or,
- by fax to fax filing registries (see [GEN 01 Practice Direction](#)).

If a judge determines that a matter is urgent, a hearing/trial will be scheduled with all participants appearing by telephone. The hearing/trial will not be in person.

The Provincial Court registries are not accepting any new, non-urgent family filings until further notice, except for the following:

- Change of address (PFA 053)
- Notification from counsel advising change of counsel (PFA 053 or letter)
- Financial statements
- Proof of service
- Consent orders and written agreements
- Subpoenas
- Consent to change trial date (Rule 11(1) [Provincial Court \(Family Rules\)](#))
- Consent to transfer court file (Rule 19(5) [Provincial Court \(Family Rules\)](#))
- Orders made by the Provincial Court
- Victoria Early Resolution and Case Management Model (Victoria only):
 - Form E – Certificate of Service
 - Form N – Application for Family Law Matter Consent Order
 - Form D – Financial Statements
 - Form H – Application for Case Management (only for consent applications)
 - Form A – Notice to Resolve

BC Case Law Regarding Parenting During COVID-19

J.W. v C.H., 2020 BCPC 52 – 1 (Lee J)

I. This case summarized the court's response to the COVID-19 virus and classified what will be deemed an urgent matter during these times. The Judge set out examples of what may be considered urgent by the court, including:

- 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.

Further, the court decided "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."

III. The Court explained that emergency motions may be made, but there is not a presumption that given the circumstances of the COVID-19 crisis there will automatically be a suspension of in-person parenting time. In addition, not all matters relating to COVID-19 will result in an urgent hearing.

Johansson v Janssen, 2020 BCSC 469 – 1 (N Smith J)

I. The Judge concluded that this matter was not urgent because an order requiring return of the children from Germany to British Columbia would have no immediate practical consequences given that the children could not return due to international travel restrictions.

V.C.S. v T.S., 2020 BCPC 60 (Malfair J)

I. This case was about an application from the father for the return of the children from Pitt Meadows to Prince George. The mother was concerned with exposure to COVID-19 and did not return the children, which violated their parenting arrangement. The Judge decided that given the circumstances, (pre-existing parenting time orders, safety precautions, private motor vehicle transportation, food packed from home, handwashing, etc.) the risk of transmission of the virus was minimal and therefore the children were ordered to be returned.

L.R. v A.L., 2020 BCPC 72 (McQuillan J)

I. This case was an application from the father to enforce the pre-existing order of equal parenting time when the mother had been withholding the child because of the father's failure to administer asthma medication as prescribed. The Judge took this issue into account because it

directly relates to the child's physical safety and well-being, therefore the denial of the father's parenting time was not deemed to be wrongful.

II. However, the Judge decided that the interim parenting schedule would remain in effect as long as school remains closed or the parents reach an alternative agreement, as long as the father complies with the required asthma treatment.

N.J.B. v S.F., 2020 BCPC 53 (McQuillan J)

I. The applicant mother sought enforcement of an Order for parenting time after the father had been denying her parenting time in light of his concern that the mother would have difficulty complying with safety measures during COVID-19. He argued that her issues with mental health, lack of parenting skills, and substance abuse would give rise to this difficulty of compliance. Due to a lack of evidence to support the father's claims specifically related to COVID-19, in addition to the prearranged agreement that the mother's parenting time would be supervised, he was required to comply with the Order, although the previous denial was found not to be wrongful. Additionally, the Judge took judicial notice of public health guidelines, which include social distancing, frequent washing of hands and avoiding non-essential travel, which were used as evidence from the father to explain what recommendations parents are urged to follow, even though they were not in the form of an expert report and came from a doctor.

S.B. v M.P., 2020 BCPC 68 (Wingham J)

I. This case dealt with the father's application for the return of the children when they were travelling abroad with the mother and did not return home on the agreed upon date because of safety concerns regarding COVID-19. The Judge relied on Ontario cases regarding international travel in deciding that the circumstances of the return home (at least two stopovers in American airports and 14 hours of travel) was a risk to the children that was unnecessary and not in their best interest.

II. The Judge found that a relationship with the father could be maintained and fostered through continued electronic communication, including FaceTime, while the children remained abroad until travel restrictions are lifted.

T.C. v R.E., 2020 BCPC 65 (Bond J)

I. This case dealt with the father's application for a drastic change in parenting time (50/50 instead of weekends) and location (Maple Ridge instead of Vancouver) during the pandemic. The Judge granted the change in location but did not contemplate any drastic changes in the parenting schedule, therefore it remained the same. The Judge commented that parents must communicate effectively in order to co-parent successfully. Specifically, in this case the father failed to inform the mother about his circumstances and intentions in regards to protection against COVID-19 in the new location, which should have been disclosed to her before the court date.

S.R. v M.G., 2020 BCPC 57 (Bond J)

I. This case decided on an application from the mother to return the child in accordance with the

agreed upon parenting regime. However, because she is a nurse, the father was concerned with her exposure to COVID-19 and the safety of their son.

The Judge outlined factors to consider in assessing the best interests of the child during COVID-19:

“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. After going through the factors listed above, the Judge found that the co-parenting schedule should continue because the risk of contracting the virus was being mitigated by the mother abiding by all relevant precautions (following nurse protocols, leaving shoes and clothes at work, showering as soon as she gets home, using bleach to clean door handles, etc.).

III. The Judge also noted that if it was found that the child had specific vulnerabilities to contracting the virus that made his situation more serious, she would not choose to expose him to any risk.

C.L.B. v. A.J.N., 2020 ONCJ 213 (Sherr J)

I. The father brought a motion to suspend the mother’s in-person parenting time due to his concerns that she would not follow physical distancing measures to prevent the spread of COVID-19 to their medically vulnerable son. The Judge made it clear that the pandemic alone is not sufficient for a parent to terminate parenting time. In addition, parents must be willing to communicate the precautions they are engaging in so that the child’s safety is a top priority. The Judge decided that the parenting order should continue with modifications to address the COVID-19 health issues such as compliance with physical distancing measures, government orders, and the Doctor’s directions.