


COVID-19: Your Legal Case is Suspended, Can You Make an Interim Agreement?



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COVID-19 RESOURCES including court changes, making an affidavit, template clauses for making an agreement during the period of the pandemic

Family and civil courts at all levels and in all provinces and territories are generally closed now




This means that your matter – whether a trial, a case management conference, a settlement conference, an application, a motion – is probably adjourned either to a tentative new date, or *sine die* (without a date)

All courts are prioritizing
and making exceptions
only for hearing
“urgent” or
“emergency” cases

URGENT

Meantime, all existing court orders (eg parenting arrangements, support) will remain in effect





“Court orders that set out the parenting arrangements for children, even in these uncertain times, should be adhered to unless there are compelling reasons and evidence that satisfies a Court that there should be a change.”

Justice Doyle in *Skuce v Skuce* 2020 ONSC 1881



Decisions by courts on urgent cases: what has been deemed urgent and changed as a result?


- ▶ **Skuce v .Skuce 2020 ONSC 1881** : father residing in sobriety home and mother stopped his access. Deemed urgent and father given access provided he moves to mother's home who can supervise access
- ▶ **S.R. v M.G. 2020 BCPC 57: risk to child** – mother is a health care worker and father works in the community. Tried but failed to work out a regime between themselves, before that broke down. Deemed urgent, judge imposed new schedule of shared parenting, parents required to share information about any new risks to child
- ▶ **Thomas v. Wohleber 2020 ONSC 1965** : one parent drained the parties joint line of credit (\$755,000) because he believed she was having an affair. Deemed urgent and funds ordered returned.



What has been considered by a judge but deemed not urgent, and nothing changed?

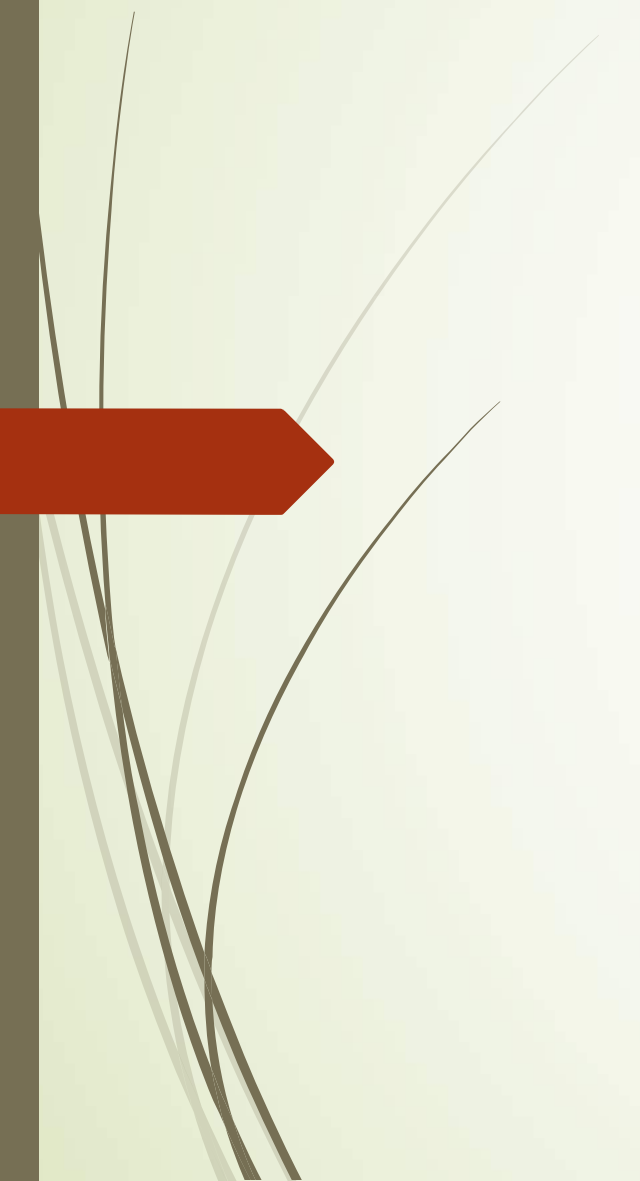
- **Ribeiro v Wright, 2020 ONSC 1829**: mother concerned father would not observe social distancing (deemed not urgent; needed evidence that other parent violating social distancing protocols) *“Right now, families need more cooperation. And less litigation.”* Justice Pazaratz
- **Zheung v Zheung FC-13-043392 (SCJ)** : mother argued that the child’s safety was at risk in access visits with father. Court said that access would only be suspended if there were specific safety concerns that could not be addressed, or that the parent refuses to address. Important for child to retain relationship bonds with both parents during the pandemic crisis.

“Unilateral” changes (made without consulting the other party) are frowned on by the courts




“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. “

Justice McPherson in *Douglas v Douglas* 684-19 SCJ



Making an Interim Agreement

**“Settlement Smarts for Self-Represented Litigants:
Negotiation and Mediation”**

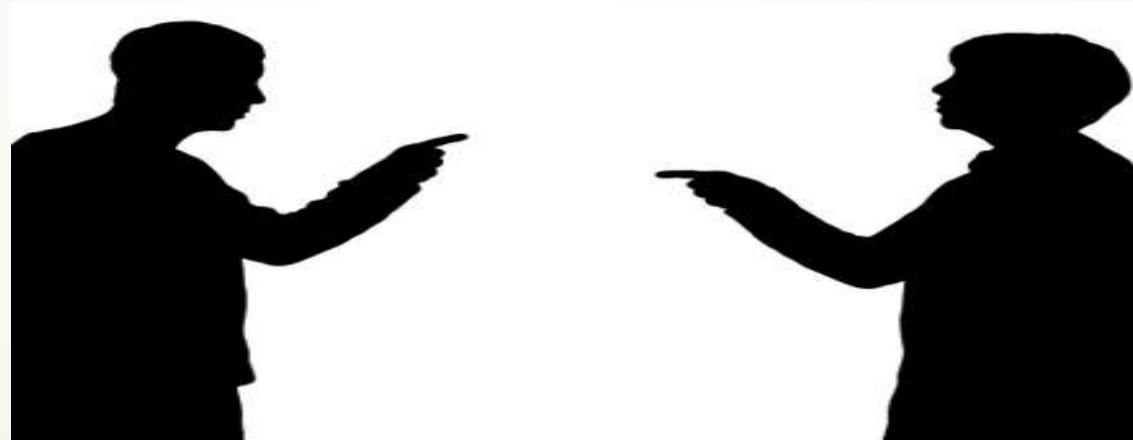


What is the advice SRLs most often give to others?

- ▶ Try to keep your emotions in check, both in trying to settle and in the litigation process in general
- ▶ Keep your eyes on the prize – especially right now, a resolution provides some measure of certainty
- ▶ Easier said than done – but now is the time to be pragmatic and realistic and reduce stress by having some kind of an agreement and shared understandings in place

What is most important to you to address / resolve at this time?

What is it that you are most worried and concerned about at this moment – write out your priorities



For example

- Social distancing undertakings by your co-parent, including hygiene protocols
- Play dates, going to playgrounds, grocery stores
- Visiting with grandparents and others
- Completion of online school work
- Agreement on sharing information re exposure to the virus
- Use of social media to stay connected
- Supervision if required while (access centres are closed)
- Support issues





Talk your priority list over with a trusted and reasonable friend or family member

Tell them you need their help to “coach” you to make an agreement to stabilize your situation and your child’s, even just for the next few weeks

What do you think is most important to the other party?

Do you know what their priorities are?

Can you ask them?



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Step One: reach out to the other side and say you want to try to make an agreement for the new conditions you are all facing during the pandemic. Just put that out there, no details. Explain why you think an agreement would help everyone

If the other side is represented by a lawyer, reach out to them with the same message.



Step Two: draft up a proposal (you can use / modify the NSRLP template clauses) and send it over

Avoid the temptation to say something positional (like, “here it is, take it or leave it!”) Say this draft reflects what you are concerned about and you want to hear their reaction and comments. Set a timeline for getting back to you.

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Step Three: hear what the other party has to say in response and evaluate how far it meets your concerns and priorities

- Compare the response to both your best, and worst, case scenario
- Compare the response to your BATNA (“Best Alternative to an Negotiated Agreement”)
- Talk to your “coach”
- Respond with a counter-offer or if satisfied, agree



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Step Four: write up the agreement and have both parties sign it

- Include a set time (2 weeks?) when you and the other party will review the agreement and evaluate how it is working
- Include a process for dealing with disputes (for example, if you believe the other parent is breaching any of the clauses)
- Any agreement reached by the parties should specify that this agreement is on a *without prejudice* basis and specifically as a result of Covid-19 concerns and protocols
- Keep a copy of the agreement. You may want to show this to a court in the future



Other options

- Consider using a mediator. There are some pro bono mediation services being offered online
- Some courts (eg the Ontario Superior Court) are now doing teleconferences for consent orders. This means you could have your agreement “rubber stamped” by the court if you feel that is important or necessary(although varying the terms of the agreement will be easier if you did not)
- Be sure to include your child / children in the discussion depending on their age

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