

FAMLNWS 2020-11
Family Law Newsletters
March 23, 2020
— **Franks & Zalev - This Week in Family Law**

Aaron Franks and Michael Zalev

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights reserved.

Breaking News: Covid-19

Courts throughout Canada are largely closed. Although judges are still available to deal with urgent issues, including parenting issues relating to Covid-19,¹ we must remind our clients that they cannot use the pandemic to try to unilaterally change the court ordered or agreed upon parenting arrangements.

We must also encourage our clients to take reasonable positions during this difficult time. As Justice Myers stated last week in *Ali v. Tariq* (2020), 2020 ONSC 1695 (Ont. S.C.J.), a civil case about an urgent request to discharge a Writ of Execution so that a sale could close, "the Notice to the Profession [in Ontario that was released to address Covid-19] calls upon counsel and clients to do their part during these urgent times." Justice Myers also strongly encouraged counsel to step in and do what they could to get the case settled by noting that the urgent issues appeared "to be a matter that counsel acting in good faith ought to be able to lead their clients to settle today." People should not be seen to be taking advantage of a crisis.

At the very least, if a dispute arises that cannot be resolved despite reasonable and *bona fide* best efforts, the parties should be agreeing on an expedited process for resolving the dispute as quickly as possible such as summary arbitration to be heard in writing or with video conferencing software. Courts are not going to be impressed with a parent who acts unilaterally and then refuses to let his/her decision be reviewed by an independent and objective third party. Temporary without prejudice agreements are another option.

We are also starting to see various family courts take steps to deal with potential Covid-19 related parenting issues before they arise. For example, many standard Parenting Orders in Texas provide that if the non-residential parent has the child for spring break, s/he shall return the child to the residential parent the night before school resumes. As schools in Texas are currently closed, some non-residential parents apparently started "wondering" whether they could keep their children until the night before the schools actually reopen. The Supreme Court of Texas dealt with this question proactively by issuing an Emergency Order (www.txcourts.gov/media/1446106/209043.pdf) that confirmed that the *original* school schedule would continue to apply unless the parties agreed or the court order otherwise:

2. This order applies to and clarifies possession schedules in Suits Affecting the Parent-Child Relationship. For purposes of determining a person's right to possession of and access to a child under a court-ordered possession schedule, the original published school schedule shall control in all instances. Possession and access shall not be affected by the school's closure that arises from an epidemic or pandemic, including what is commonly referred to as the COVID19 pandemic.

We will try to keep you apprised of Covid-19 related family law developments as the situation unfolds, and we would be grateful to, you, our readers, if you could let us know about any Covid-19 related family law news or cases that you come across over the coming weeks and months.

This is a time to lead by example and for consideration, client control, and cooperation.

Everyone, please take the health warnings seriously, protect yourselves, and to borrow from the best TV Police Drama ever written: Let's be careful out there. (Hill Street Blues)

Stay healthy, everyone.

Aaron and Michael

1. See e.g. *Smith v. Sieger*, [2020 ONSC 1681](#), where Justice Kaufman ordered that a 16-year-old special needs child who was attending school in Utah be returned to Ontario immediately, and noted that: "The competing affidavits raise issues that would be important in normal times. Unfortunately, these are not normal times."

Disclosure: Epstein Cole was counsel for one of the parties in this case.

This excerpt from "This Week in Family Law" is reproduced with permission.