

Newsletter



Robinson Sheppard Shapiro
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April 9, 2020

COVID-19 and Custody: Recent Case Law

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The recent declaration of the COVID-19 public health emergency raises many questions concerning parental authority and custody arrangements. Two recent Superior Court of Quebec decisions shed light on this issue, affirming the importance of maintaining existing custody orders and favouring parents' custodial time despite the exceptional situation.

Droit de la famille – 20474, 2020 QCCS 1051

On March 27, 2020, the Superior Court of Quebec rendered a decision addressing the urgency of the parents' dispute and offered guidance for parents coping with this new reality of the COVID-19 pandemic.

The father presented an urgent application for a safeguard order, requesting the suspension of the mother's access rights, and suggesting that the access rights be replaced with Skype or Facetime calls for the duration of the health emergency. At the time, the father had interim (temporary) custody of the parties' three minor children, while

the mother exercised access rights two weekends out of three.

The father claimed that the mother's living environment presented health and safety dangers for the children, and that members of the father's household were particularly at risk with respect to the virus as they suffered from pre-existing health conditions.

The Honourable Justice Johanne April, J.C.S., rejected the father's application for a safeguard order, citing the lack of urgency to change the status quo custody arrangement.

As its main preoccupation, the Court recognized that this exceptional situation presented great disruptions in the lives of children and that parents must



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aim to avoid causing further harmful consequences. More importantly, the Court noted that parents must ensure that children are protected from the virus.

The Court held that, in the absence of symptoms of the virus, the existence of the COVID-19 health emergency is not in and of itself a sufficient reason meriting a modification of the status quo access rights. The Court did not consider that the mother's living environment presented any danger to the children's health and safety, as she undertook to follow the necessary precautions.

The Court strongly recommended that the parents respect the hygiene and safety instructions issued by governmental authorities related to the COVID-19 pandemic.

Droit de la famille – 20506, **2020 QCCS 1125**

On April 3, 2020, the Superior Court of Quebec reaffirmed that the COVID-19 pandemic is not in itself a sufficient reason to modify custody arrangements and to deprive the children of the presence of a parent. In a judgment rendered by the Honourable Justice Marie-Josée Bédard, J.C.S., the Court emphasized that existing court orders must be respected, and that one parent may not unilaterally modify custody arrangements.

The parents had been exercising a joint and shared custody arrangement at the time of the dispute. However, the mother refused to send the minor children to their father's house for his custodial time, as she was concerned about the children's safety in light of the recent health emergency. She wished to suspend the shared custody arrangement until the end of the pandemic. In turn,

the father presented an application for a safeguard order to uphold the existing shared custody arrangement.

To justify her refusal, the mother raised the issue of the children's asthma, as well as the fact that the father works in a health care setting and, according to her, does not respect all instructions issued by public health authorities. The mother suggested granting the father access rights via technological means as a solution.

The Court held that each situation warrants a case-by-case analysis in relation to the risk presented to the children. In this particular situation, the sole fact that the father was employed in an essential service was considered in and of itself insufficient, in the absence of infection or symptoms of the concerned individuals, to suspend his custodial rights. Furthermore, the evidence did not demonstrate that the father failed to respect health and safety instructions issued by authorities.

The Court granted the father's application and rendered an order to uphold the shared custody arrangement of the minor children. The Court also took act of the mother's decision to forego her custodial time during the pandemic in order to protect her newborn baby born from another union.

Takeaways for Parents

The Court's recent decisions continue to serve as a reminder to parents to consider the best interests of their children above all else. This includes following government recommendations concerning social distancing and taking the necessary sanitary and hygiene precautions. Parents must also recognize and strongly consider that most children benefit from the presence of both parents, and that custody ar-



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rangements may not be unilaterally modified.

In the face of conflict concerning custody arrangements, parents are well-advised to first attempt to reach an amicable agreement. Now is the time, more than ever, to favour healthy co-parenting through flexibility and collaboration. However, we also recognize that some issues may not be easily

agreed upon and that every situation is different. For the most urgent matters that cannot be resolved amicably, the courts remain open.

The RSS Family Law team remains available to help clients navigate through custody challenges and related issues impacting families during the current health emergency.

