



COVID-19 and Family Law:
Virtual Session with Wayne Barkauskas

March 23, 2020

10:30-11:30am

Mr. Barkauskas has been practicing since 1992, and never has he seen anything like this. Due to his experience as a litigator and mediator, he is able to see the issues surrounding the closing of family courts from a unique perspective.

The current situation: Courts will be shut down until at least May 1 - except for emergency situations.

Due to this unprecedented situation, we are relying on principles of law, as developed with other issues to apply in this case:

1. *What happens when people have a care routine/exchange in public or other spaces that are closed right now (school, daycare)?* Accommodations are being made. People are using safe spaces that are still open comply with parenting orders (ie, grocery stores or police station parking lots)
2. *What happens when someone in the family isn't feeling well/what do you do when COVID-19 is a possibility in 1 of the households?* As per AHS guidelines, you must self-isolate for the recommended period – this may require parents to self-isolate from their children.
3. *What happens when the continuation of child/spousal support payments are impacted/may be impacted due to the sudden elimination of a job?*

The payor should:

- a. Give as much notice as possible.
- b. Try to maintain payments (through credit etc) and seek an adjustment when courts reopen
- c. If you can't pay at all, hope that the other side can understand/accommodate
- d. Apply for of a "stay of enforcement" (rather than change of payment) and might be able to get in front of a judge

The above suggestions are intended as guidance only.

General information/Q & A portion:

- Most lawyers, mediators, arbitrators are still trying to connect with clients electronically, so trying those methods might work.
- Are there any steps that a parent can take for a break of order?



- WB: It is very hard unless you can prove there is a danger to the child. (since it's so early in the crisis, it is hard to prove at this point)
- What can a parent who has CFS involvement, but has visitation rights do (child is in foster care, had visitation) –
 - WB: very little right now because you have to prove the child is in danger (urgency of situation). Mediation/arbitration might be the only route.
- What about where there is a no-contact order between the parents, but facilitated hand-off?
 - WB: You have to abide by court order of no contact, but may need find another neutral party who is willing to be the go-between. On the plus side, many people are home and willing to help right now.
 - Are you putting the volunteer in danger without knowing where the parent/volunteer has been?
 - WB: This is most-often the primary parent's worry, but without evidence, is not enough to hold off on the hand-off of the child/children. By withholding the children, they may be demonstrating to the courts that they can't objectively handle the authority they have been given in the order, and it may be impacted/taken away.
- Are the courts hearing EPOs made by members of the public, alongside ones through the police?
 - WB: These would likely would be heard, due to urgency.
- If one parent has roommates who are coming and going, may not be practicing social distance can the other parent stop the kids from going over?
 - WB: Without evidence, it's hard to prove. You can ask them to confirm, in writing, whether they are abiding by AHS, but the onus is then on your to prove it.
- When a child is at risk: what evidence do you need? (for example: someone has a COVID party and it's all over social media)
 - WB: In this case, you may have strong evidence. But try to open up a conversation first. Try to get the other side to agree to a remedy to the situation; and only if they absolutely refuse, seek advice from a lawyer first and then decide whether that constitutes an emergency to get in front of a mediator or arbitrator first , and possibly then a judge.
- Lawyers/mediators/arbitrators are sharing their work plans with each other. Many are offering reduced rates right now (ADR professionals in Lethbridge, MH, RD, Calgary, Edmonton for sure, perhaps others). Also, because this is being done remotely, you can contact someone from outside your region.



- Resolution services is operating – but by phone. Their advice: IF there is parent alienation (by either party) through this time, there will be consequences once things are back to “normal
- For issues surrounding a “no contact” order; maintain no contact if at all possible. However, if there is a lawyer already involved, use them as the intermediary, if others are not available.
- What about where there is no formal court order/agreement yet?
 - Work with a lawyer/mediator to draw up a schedule that the other side agrees to before it is enforced. (email is best form; text message is probably the worst). If you can agree even to a short -term solution (a week or a few days at a time), try it and repeat as necessary. If the other party can’t uphold their end of this type of agreement, you can use this lack of adherence to implement additional rules (enlisting a mutually agreed upon person to hand off the child etc) – looks good to a judge once this matter gets to a court.

- What type of record keeping should people do if they’re being denied time once courts are back in session?
 - Email is best. If there are ongoing issues, apps/accounts such as: ourfamilywizard - \$100/year for each party – keeps a complete record for all electronic messaging (no ability to cut pieces out). Very transparent. Avoid telephone calls (he said she said) – if you text, might need a special app to print out conversations.

- Situation: Without an agreement, ex says he will not allow children to return at the end of mom’s 2 weeks quarantine, also not allowing electronic communication.
 - WB: you are building up evidence of the reasonable things you’re doing to facilitate contact. Gather evidence for when courts are back in session. There will likely be consequences for this parent.
 - Would this be considered parental alienation?
 - WB: that term is not great. An individual action(s) doesn’t indicate a pattern of behavior in how mental health professionals deemed it in the past. You don’t have to put a label on it – it’s simply inappropriate parenting and is harmful to the child.

- Will courts contact people in writing with new court dates once things are back?
 - It will be chaotic when things resume – being informed in writing is probably not going to happen. Courts will be very busy addressing all the issues that occur in this period of closure. Provincial courts have put in an automatic a 10 week adjournment period. Go to the website – it will likely change over time. Court of Queen’s Bench is not determined yet. It will likely resume in a graduated basis.

- Seriously consider ADR – you will likely get dealt with more quickly and free up the courts to handle other issues.