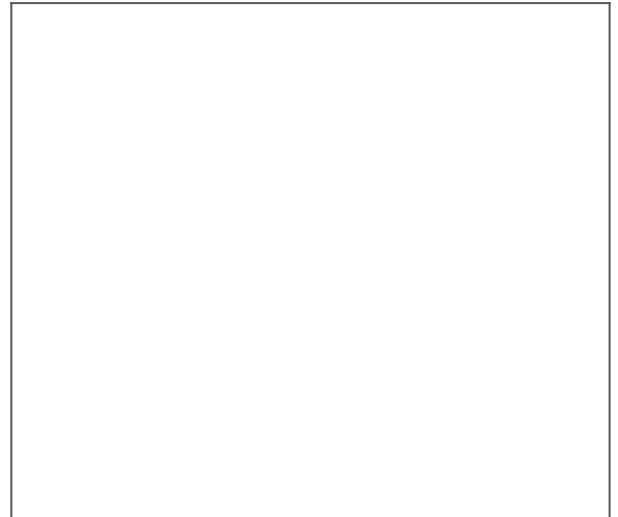


Legal Considerations When Co-Parenting During A Pandemic In Manitoba (March 21)

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As COVID-19 descends upon Manitoba, many separated or divorced parents who provide care to their children are attempting to determine what the pandemic will mean to them and their families. As a family lawyer, I have already faced novel questions and considerations that relate to what it means to co-parent during a pandemic. We are all encouraged to observe social distancing and for some, self-isolation. As schools and daycares close, there is a lack of a normal routine and supports. In these extraordinary circumstances, what should co-parents keep in mind?



This Too Shall Pass

The media is presenting the occasional story about how an earlier hit nation is attempting to return to normal after being devastated by COVID-19. A return to normalcy will ultimately occur in Manitoba. However, families in Manitoba are currently in the midst of a crisis created by COVID-19. How parents handle things during the next few months will make a difference in their future co-parenting relationship, their relationship with their child, and possibly the outcome in any contested court proceedings in which they are involved.

Best Interests of the Child

It is important to acknowledge and accept that these are very stressful times for both parents and their children. The best thing for parents to do right now is to try and keep things as conflict-free as possible.

Parents need to behave in a way that is in the best interests of their child, physically and emotionally. Using social distancing to exclude a parent, or scaring a child that causes a child to not want to be with the other parent, is destructive of the co-parenting relationship and is emotionally damaging to the child. Where there are unresolved court proceedings, this behaviour will most certainly not engender a positive impression in the mind of any judge.

Do I have to follow the court order, separation/parenting agreement, or regular

routine?

Parents need to reasonably comply with court orders and agreements and keep a child's established routine as normal as possible. If circumstances arising from COVID-19 make it unreasonable to strictly follow an order or agreement, parents should try and work out any changes that are reasonably necessary to give effect to the order or agreement.

To ensure that there is no misunderstanding, parents may evidence any agreement that they make in writing, whether by formal written agreement, e-mail or text. Unless parents otherwise agree, it should be clearly understood that any changes in routine continue only as long as the COVID-19 pandemic remains in Manitoba.

For example, if an order or agreement specifies that exchanges occur at school and schools are closed due to COVID-19, it would be reasonable for parents to quickly agree to a reasonable time and a neutral public location to effect the exchanges until schools reopen. When the pandemic passes, the exchanges return to taking place at the school.

Where parents have difficulty communicating with each other, they may require a lawyer, mediator or other third party to assist in the discussion and the preparation of a short-term agreement.

Reasonable or an Excuse?

If a parent or a child needs to self-isolate, it is important to remember and to be able to establish that the isolation was not used as an excuse to exclude the non-isolated parent from the child. There will be no respect for a parent who uses the pandemic as an excuse to cut the other parent out of a child's life or to interfere with a parent-child bond.

In the event that a child must be isolated with one parent, ensure that the other parent is fully informed of what is going on, where the child is, and how the child is doing. This can be accomplished by a simple "touch base" phone call or text. A phone call or text message may be a daily occurrence or an occurrence on specified days. In the event of a sudden change in a child's condition, the other parent should be notified immediately.

If you are engaged in contested court proceedings that concern custody and care of a child, you should anticipate that you may have to explain why your actions were reasonable taking into account the best interests of the child. You may also need to establish that you tried your best to communicate and work with the other parent. Written communications and other documents exchanged during the pandemic will often be helpful if you are required to deal with these issues.

Parents should attempt to discuss and have agreement about continued contact during isolation and should set up telephone calls, or FaceTime/Skype calls between the child and the parent who is not in isolation. During these calls, the parent and the child should have as

much privacy as is practical in the circumstances to be able to “hang out” and talk freely.

Ask yourself, if the roles were reversed, how would you feel about the level and quality of contact and information provided?

After the period of isolation has ended, taking into account the best interests of the child, it would be reasonable (and almost expected) that the parent and the child who were separated have “make-up” time with each other.

Increase of Parenting Time

With the closure of schools and daycares some parents may be concerned that if they allow the other parent to assume additional periods of parenting time to fill in the gap of school or childcare, this may prejudice their position or “hurt their case” and be used to change the existing parenting arrangement.

Decisions and actions of a parent that are in the best interests of a child during the novel circumstances in which parents find themselves at this time will not likely prejudice anyone.

It would be reasonable to rely first on the other parent to assist with the care of their child. Depending on the circumstances, it may be unreasonable to make other accommodations for childcare if the other parent is not working and is available, able and willing to provide care. Expecting a parent without regular employment income to share a daycare expense in this circumstance would almost certainly be viewed as unreasonable as well.

Making a short-term agreement that will be reviewed by the parents as circumstances unfold, which may include the other parent going back to work or school/child care resuming, would be reasonable and is not likely to prejudice anyone who has acted reasonably.

Travel

At the moment, citizens in Manitoba are encouraged not to travel unless it is essential. While typical in-province travel to Winnipeg, Brandon or other Manitoba destinations would not normally be something to be concerned about, it is a best practice for a parent contemplating such travel to discuss the plans to travel with the other parent before they are finalized.

Parents should remember that if friends or family have recently returned from international destinations, including the United States, it is necessary to observe the recommended 14 day self-isolation period before children are exposed to those friends or family members.

Family Proceedings

The Court of Queen’s Bench and the Provincial Court of Manitoba, in responding to the pandemic, at the present time, have limited the scheduling of family proceedings to only emergency or urgent matters. A request for an emergency hearing must be filed with

supporting documents which will be considered by a designated duty judge.

It is important for parents who are engaged in court proceedings to not attempt to exploit the pandemic for their benefit or utilize delay tactics or other excuses. Judges will not be sympathetic to parents who have not acted in the best interests of their children.

Child Support

All parents have an obligation to support their child. Many parents who support their child by making monthly child support payments are facing temporary work shortages, layoffs, and financial uncertainty in the months ahead. They are reasonably concerned about their ability to pay support. Many parents who support their child by caring for them on a day-to-day basis are facing the same concerns.

There are few circumstances where the payment of child support should be entirely stopped by one parent. However, a temporary reduction in the amount of monthly support paid while the pandemic is unfolding in the months ahead may be reasonable.

Parents should attempt to be reasonable and be sympathetic toward the other in regard to the circumstances that they find themselves in when discussing a temporary change in the amount of child support that is payable. If one parent unreasonably withholds agreement or causes unreasonable delays or expenses to the other parent, that parent will not benefit from those actions. Rather, after the pandemic has passed, that parent could face the obligation of providing retroactive reimbursement and paying an order of costs.

Where there is an existing court order or agreement that is registered with the Manitoba Maintenance Enforcement Program (MEP), parents who agree upon the payment of a reduced amount of monthly support may complete and provide the “Agreement to Change Child Maintenance Obligations under Section 53.2 of the Family Maintenance Act” form to MEP. Changing the amount of child support being enforced does not change the court order. MEP provides additional information at its website:

<http://www.manitoba.ca/justice/courts/mep/index.html>

If you have questions concerning your family obligations that have been affected by the COVID-19 pandemic, please do not hesitate to contact us.

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