

COVID-19 RESOURCE CENTER

Co-parenting during COVID-19 - Update

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There is additional case law coming out of Ontario setting out some additional factors to consider in determining whether a family law action is urgent.

In the case of *Thomas v. Wohleber*, 2020 ONSC 1965, the respondent husband is alleged to have removed over \$775,000 from the parties' joint line of credit, thereby draining it. The line of credit was secured against the parties' family home. Amongst other orders, the applicant wife sought a return of those funds and a financial freezing order over the line of credit account.

It should be noted that the superior family courts in Ontario are allowing urgent matters involving both children and financial issues during the COVID-19 pandemic. Under that policy, urgency in non-child protection family law matters is not defined, but it is described as including:

- a) Requests for urgent relief relating to the safety of a child or parent (e.g., a restraining order, other restrictions on contact between the parties or a party and a child, or exclusive possession of the home);
- b) Urgent issues that must be determined relating to the well-being of a child including essential medical decisions or issues relating to the wrongful removal or retention of a child; and
- c) Dire issues regarding the parties' financial circumstances including, for example the need for a non-depletion order.

In British Columbia, our Supreme Court is only hearing essential or urgent matters involving children during the pandemic. Financial issues are not mentioned. Essential or urgent matters in BC family proceedings include those in which the following relief is sought:

- a) Orders relating to the safety of a child or parent due to a risk of violence or immediate harm (e.g., a protection order, conduct orders, or exclusive possession of the home);
- b) Orders relating to the risk of removal of a child from the jurisdiction (e.g., relocation, non-removal, wrongful removal, or retention of a child); and
- c) Orders relating to the well-being of a child (e.g., essential medical decisions, urgent issues relating to parenting time, contact, or communication with a child that cannot reasonably be delayed).

In the *Wohleber* decision, the Court found that the wife's financial circumstances were "dire" and agreed to hear her application on an urgent basis. In doing so, the Court set out some additional helpful factors for

parties and lawyers here in BC to consider in determining whether an application is “urgent” even though they are not binding in BC:

1. The concern must be immediate; that is one that cannot await resolution at a later date;
2. The concern must be serious in the sense that it significantly affects the health or safety or economic well-being of parties and/or their children;
3. The concern must be a definite and material one rather than a speculative one. It must relate to something tangible (a spouse or child’s health, welfare, or dire financial circumstances) rather than theoretical; or
4. It must be one that has been clearly particularized in evidence and examples that describes the manner in which the concern reaches the level of urgency.

At this point, it remains to be seen whether the BC court will amend its policy and consider dire issues regarding the parties’ financial circumstances on its list of essential or urgent family matters.



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