

**CITATION:** Ramirez-Scrimshaw v. Ingram, 2020 ONSC 2278  
**COURT FILE NO.:** FC-20-80  
**DATE:** 2020-04-14

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Toran Ramirez-Scrimshaw, Applicant

- AND -

Kaitlyn Ingram, Respondent

**BEFORE:** Madam Justice L. Madsen

**COUNSEL:** Alex Toolsie, Counsel for the Applicant

Erika MacLeod, Counsel for the Respondent

**HEARD:** In Chambers

**ENDORSEMENT – COVID-19 PROTOCOL**

[1] **AS A RESULT OF COVID-19** the regular operations of the Superior Court of Justice operations at this time, as set out in the Notice to the Profession dated March 15, 2020 available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>.

[2] The Notice of the Chief Justice provides that “urgent and emergency” matters shall continue to be heard by the Superior Court of Justice during the suspension of operations due to COVID-19, and that urgency is “as determined by the presiding justice.” The Notice specifies that such matters may include requests for urgent relief relating to the safety of any child and urgent issues related to the wellbeing of a child. This preliminary determination of urgency is an exercise of judicial discretion.

[3] The Applicant father has brought an urgent motion asking that his motion initially returnable March 4, 2020 with respect to access to his children be heard at this time. He has filed his materials for that motion, as well as those of the Respondent, electronically at the email address of the Superior Court of Justice. He also submitted materials filed by the parties with respect to the Respondent’s mother’s cross motion for supervised, graduated access, and child support.

[4] This matter was referred to me as Triage Judge for a determination of urgency and of how this matter should proceed.

[5] The determination of urgency is intended to be simple and expeditious, recognizing the summary nature of the determination. Further, any determination of potential urgency or lack of urgency is wholly without prejudice to either party on the ultimate hearing of the motion.

[6] The court received the following materials at [Kitchener.Superior.Court@ontario.ca](mailto:Kitchener.Superior.Court@ontario.ca) initially filed for the motion and cross motion. It is my understanding that these materials have already been filed in the physical court record:

- a) Applicant father's Notice of Motion dated February 25, 2020;
- b) Applicant father's Affidavit sworn February 25, 2020;
- c) Respondent mother's Affidavit sworn February 28, 2020;
- d) Applicant father's Reply Affidavit sworn March 3, 2020;
- e) Respondent mother's Notice of (Cross) Motion dated March 9, 2020;
- f) Respondent mother's Affidavit in support of cross motion, sworn March 9, 2020; and
- g) Applicant father's Affidavit in response to cross motion, sworn March 11, 2020.

[7] The following additional materials were filed in support of the motion being heard on an urgent basis:

- a) Notice of Motion of the Applicant father dated April 1, 2020, seeking that the pending motions be treated as urgent due to the father not having had access to the children, and that he be granted weekend access with the children;
- b) Applicant father's Affidavit sworn April 8, 2020 in support of urgent motion.

[8] I note that when the matter was initially submitted as an urgent motion, both parties filed affidavits sworn by the lawyers' respective law clerks, in an effort to have the matter heard on an urgent basis. Both law clerks purported to attest to facts of which they clearly had no personal knowledge. For example, Ms. Yzerman (for Ms. MacLeod's office) attested to the father never having had the two youngest children in his care unsupervised; and Ms. Gagnon (for Mr. Toolsie's office) attested to the father not having had any access since November 2019. Counsel are reminded that having law clerks swear affidavits about matters about which they do not have personal knowledge is no substitute for clients swearing their own affidavits. Counsel were informed by the court that the affidavits of the law clerks are not appropriate and I have not considered them.

[9] Upon the resumption of court operations, the parties shall file any materials not already filed in the continuing record at the courthouse. I would note that I do not have access to any other portion of the continuing record other than the materials set out above.

[10] As set out below, I find that this matter is not urgent at this time.

[11] The following is a brief summary of the key facts set out in the parties' affidavit materials:

- a) The parties are the parents of three children: M., who is almost 8 years of age; L., who is 2 years old; and A., who is 8 months old.
- b) The parties did not live together. They ended their relationship in November 2019.
- c) The mother says she has always been the children's primary caregiver. The father says that this is true, but that it is because the mother would not allow him to independently parent the children. The mother says that the father has never exercised access on a regular basis.
- d) The mother alleges that the father was violent against her during the relationship. She also alleges that the father has been violent against the children, including an incident in November 2019 when he tried to muffle L.'s screams by putting his hand over her mouth, and an incident, also in November 2019 when he punched M. in the stomach and called him a "little shit." The mother says she reported this to the police. The father denies these allegations, and doubts that there was a police report, since he was never contacted by the Children's Aid Society or by the police at the time the mother says these incidents were reported. He does acknowledge, however, being told by the police in March 2020 not to contact the mother.
- e) The father lives with his father, the paternal grandfather. The mother alleges that the paternal grandfather is an alcoholic and has an extensive criminal history in the Dominican Republic. The father confirms that he lives with his father but states that his father has never lived in the Dominican Republic. He denies that the paternal grandfather has a criminal history.
- f) The father has not had parenting time with the children since the separation in November 2019. He would like to see the children and requests access every weekend from Saturday at 8:00 a.m. to Sunday at 6:00 p.m.
- g) In the mother's cross motion, she seeks an order that the father's time be supervised and that it commence on a graduated basis (the request for supervision is in her affidavit, not in the notice of motion). She also seeks child support for the three children.

[12] For the following reasons, I find that this matter is not urgent at this time:

- a) No parenting order or agreement has been made since the parties separated. There is no *status quo* of the father exercising parenting time since November 2019;
- b) The Notice to the Profession indicates that matters will be found to be urgent where there is a question relating to the “safety of a child or parent,” or an urgent issue related to a child’s “well-being.” On the evidence I do not see issues related to either the safety or the well-being of the children at this time;
- c) Although the father blames the mother for this, his materials acknowledge that he has not had independent time parenting the children, except limited time with the oldest, M. His request for immediate overnight access each weekend in this context is, on its face, not reasonable;
- d) In his affidavit dated March 3, 2020, the father acknowledges that the mother offered supervised access to him after she retained counsel. He has apparently not accepted that proposal, which is not an unreasonable proposal in the circumstances;
- e) The mother’s allegations of abuse against the children are serious. The court would require further evidence about the mother’s report to the police and any subsequent investigation by Family and Children’s Services of Waterloo Region before any order for unsupervised parenting time would likely be made. More evidence will be required before a determination can be made on motion about appropriate parenting arrangements.
- f) The father has made no realistic proposal for how parenting time would reasonably be structured at this time, given the situation with COVID-19. He has provided no evidence about what precautions he is taking or would take in relation to transitions for the three young children, or of how he would keep the children safe and secure in his care. Indeed, in his affidavit sworn April 8, 2020 in support of urgency he makes *no mention* of the current circumstances nor does he demonstrate any acknowledgement that precautions must be considered.

[13] While I am finding that this matter is not urgent at this time, this is not intended to give the mother “carte blanche” to deny access to the father on an indeterminate basis. Her own cross motion seeks access to be phased in on a supervised and graduated basis. This shows that she acknowledges that the children should have some contact with their father.

[14] The parties are encouraged to continue their discussions, through counsel, to develop a parenting schedule that ensures that the children have some contact with their father, in a safe and secure way, on a graduated basis, recognizing the additional challenges in the COVID-19 context. The father should share detailed information about his current living situation, including safety precautions being taken in his home. The parties may additionally wish to consider

arrangements for access through FaceTime, Skype, or other means, particularly with the oldest child. At this time, until further evidence is available with respect to the mother's police report and any involvement of Family and Children's Services, any face to face contact with the father should reasonably involve the presence of a third party.

[15] While I have found this matter not to be urgent at this time for the reasons set out above, I would note that on the consent of both parties, the motion with respect to parenting time and the cross motion which addresses child support could be addressed in writing, in accordance with the Regional Protocol dated April 7, 2020, as it appears that a case conference may already have been held. A copy of that protocol is being provided to counsel with this endorsement. In that event, the mother would be entitled to file an affidavit in reply to the affidavit of the father dated March 11, 2020 (on the cross motion). If the parties agree to proceed in writing, such reply affidavit should be filed with the balance of the materials at [Kitchener.Courthouse@ontario.ca](mailto:Kitchener.Courthouse@ontario.ca) in the manner set out in the Protocol. **Note that this is not the same email address at which the materials for the urgent motion were filed.**

[16] Notwithstanding Rule 25 of the *Family Law Rules*, this endorsement is effective from the date it was made and is enforceable as an order of the court without the need for an order to be prepared or approved by the parties and then issued by the court. No formal order is necessary unless an appeal or a motion for leave is brought, or alternatively unless one is necessary for enforcement by a third party. A party who wishes to prepare a formal order for approval and issuance may do so and submit materials by Form 14B Motion Form to the court.

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L. Madsen, J

**DATE:** April 14, 2020